

RESULTS OF THE SURVEY ON RULES OF ORIGIN

2018

Executive summary

In summer 2018 the European Commission carried out a survey on rules of origin as part of a broader effort to better understand the role and the impact of rules of origin in the implementation of EU FTAs. The 1011 responses received from EU exporters of various sizes, active in various product categories, established in all EU Member States point to several factors that may influence the use of Free Trade Agreements preferences.

- *The survey asked questions on the awareness about EU FTAs and the difficulties encountered when exporting under preferences, the experience with the preferential rules of origin in EU FTAs and views on a test version of a rules of origin guidance tool.*
- *A vast majority of the participants of the survey (80%) have 10 years or more experience in exporting and 69% of the respondents have already benefited from preferential exports under EU FTAs. Only 9% of the respondents do not use preferences inter alia. due to low preference margin, MFN duty free market access or lack of knowledge about how to apply for preferences.*
- *37% of the respondents found rules of origin a burdensome (based on various criteria) requirement when exporting under EU FTAs.*
- *Despite the extensive experience of the respondents, only 33% of all the companies consider that they have all the information they need to comply with rules of origin. The larger the company the higher the level of expertise on rules of origin.*
- *44% replied that they would need more explanation on product specific rules and provided several suggestions how to improve the available information (e.g. practical examples, glossary, information in mother tongue and easier access to legal texts). 37% welcomed an interactive online tool that would help a self-assessment of compliance with the rules.*
- *Economic operators find information on rules of origin mainly on the websites of Member States' customs authorities and of the European Commission. 60% of the respondents using the European Commission's websites considers it easy or very easy to find information on rules of origin while 40% find it difficult.*
- *A significant number of companies, 30% of the respondents, is not aware that information on rules of origin can be found in the European Commission's Market Access Database.*
- *Overall, 76% of the respondents can meet the rules of origin (even though in some agreements they find it easy to meet, in some others it is more difficult). Only a limited percentage of 13% of the respondents admitted that they cannot meet rules of origin in EU FTAs. Several respondents highlighted the importance of ensuring coherent rules of origin across EU FTAs.*
- *21% of the respondents do not have problem to comply with procedures on rules of origin. The others have mainly difficulties to obtain supplier declarations (24%), and face problems with procedural requirements before exporting.*

Overall, the survey provided useful input for ongoing efforts by the European Commission to help European exporters to take fuller advantage of EU trade agreements. Facilitating access to information on rules of origin and making access more user-friendly stands out as one of the most important actions that the European Commission should be able to do in the short term.

1. INTRODUCTION

The European Commission is committed (i) to ensure effective implementation of Free Trade Agreements (FTAs) concluded by the EU and (ii) to facilitate for the EU economic operators, in particular small and medium size enterprises (SMEs), to take advantage of EU FTAs. To that effect, the European Commission carried out a survey over summer 2018 to gather information about the implementation of rules of origin in EU FTAs and to assess the extent to which rules of origin pose a challenge for European companies exporting or wishing to export under the preferential conditions offered by EU FTAs.

Rules of origin's role in FTAs is to ensure that the tariff preferences granted under an FTA are applied only to products that indeed originate in the contracting parties to an FTA. Rules of origin define a specific level of working or processing that allows a product to be considered originating in a party as well as procedures to prove and verify the origin.

2. THE SURVEY

The survey took the form of an online questionnaire including multiple-choice questions as well as questions with a possibility to provide free-text replies. The survey was launched on 31 May 2018 and was publicly available until 31 July 2018 (2 months) under the European Commission's Market Access Database. Numerous channels were used to reach out to the economic operators via contacts with Member States' authorities, Chambers of Commerce, industry associations, business events and EU delegations. We received 1011 replies.

It was very important to involve SMEs in the survey since independent studies show that those companies are the ones who may face most difficulties in taking advantage of EU FTAs, including as regards rules of origin. Bigger companies with global value chains have much more experience and have the financial means to invest in relevant expertise and/or IT tools (e.g. SAP).

When filling in the questionnaire it was possible to leave a question without reply. The amount of "No reply" responses accounts on average for about 2-8%, depending on the question. The "No reply" ratio is not specifically mentioned in the below analysis.

A Glossary is provided at the end of this document with the most often used rules of origin terminology.

2.1. Subjects targeted by the survey

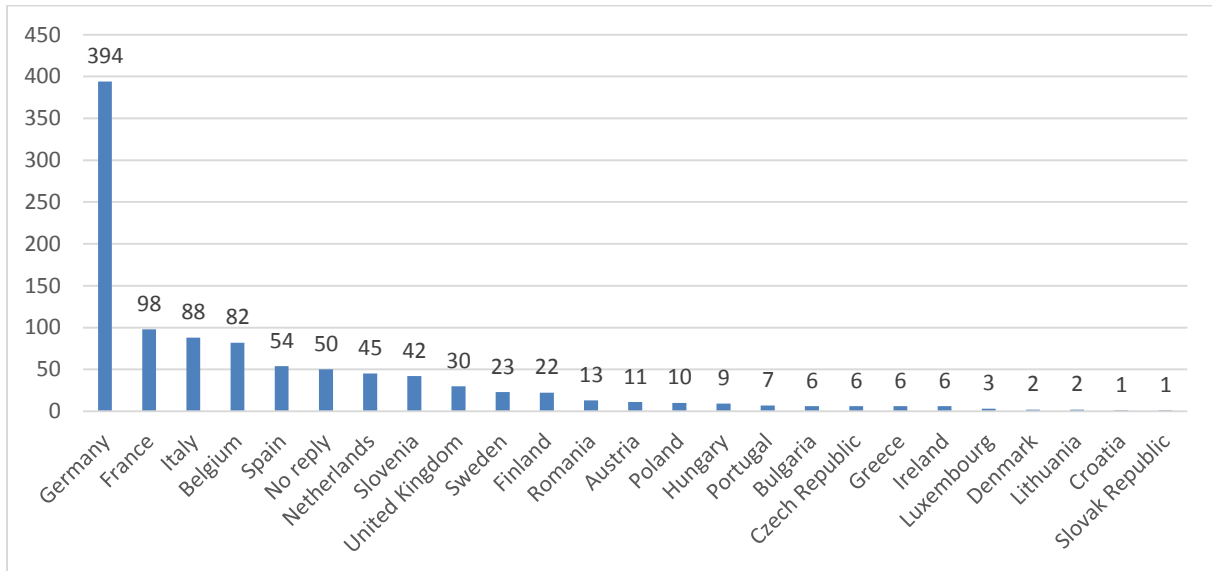
The survey focused on the following aspects:

- The use of preferences granted under the EU FTAs,
- Awareness among economic operators about requirements related to rules of origin in EU FTAs,
- Possible difficulties encountered with rules of origin when exporting under preferences,
- Feedback of economic operators regarding a test version of rules of origin guidance tool.

2.2. Profile of the respondents

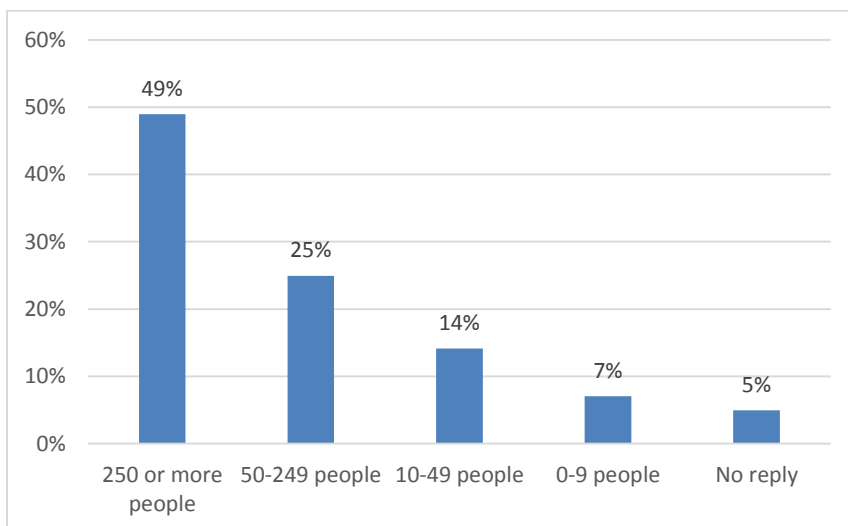
The EU economic operators filling in the questionnaire, predominantly individual companies and industry associations, represented all EU Member States (MS). An important portion of the respondents (39%) is established in Germany.

The EU Member State where your company is established (number of companies)



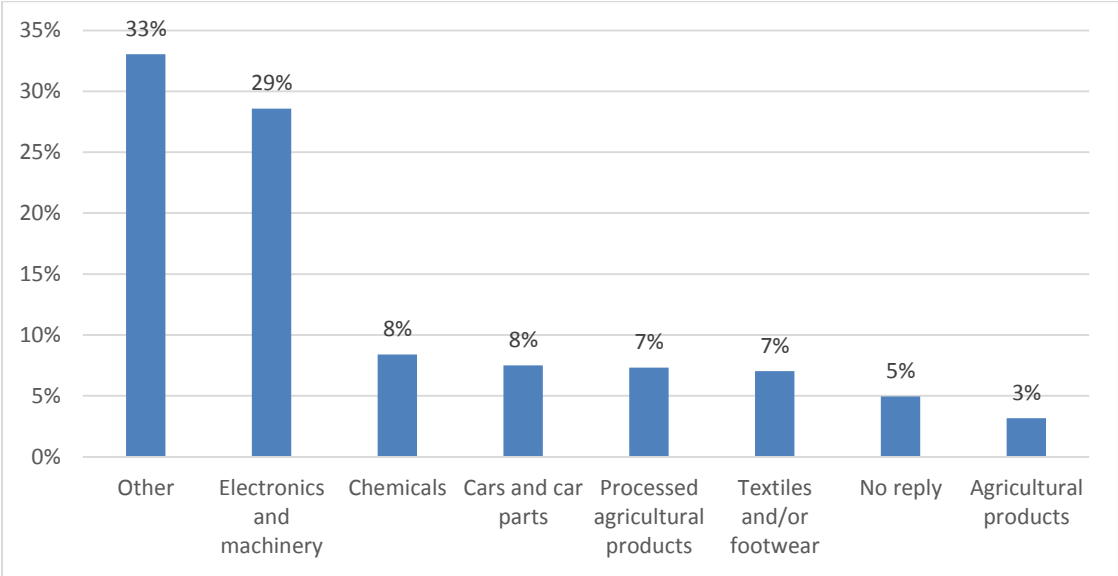
Both SMEs as well as big companies participated to the survey. Half of the respondents represented large companies of 250 or more employees. In Italy, Spain and United Kingdom proportionally more small companies participated than in other Member States.

Size of your company



In terms of the product range, a variety of **business sectors** replied to the survey: mainly electronics and machinery representing 29% of respondents but also chemicals, cars, agricultural and processed agricultural products, textiles as well as niche products like beekeeping, casino supplies and steel knives.

The product range your company is exporting



80% of the respondents have 10 years or more experience in exporting. 4% of respondents have less than 2 years of experience.

When the economic operators were asked to assess their **level of experience about rules of origin**, 79% of the respondents considered that they have at least an average level of experience about rules of origin. There is correlation between the level of experience about rules of origin and the size of the companies: the larger the company the higher the level of expertise.

Looking at the experience level by sector:

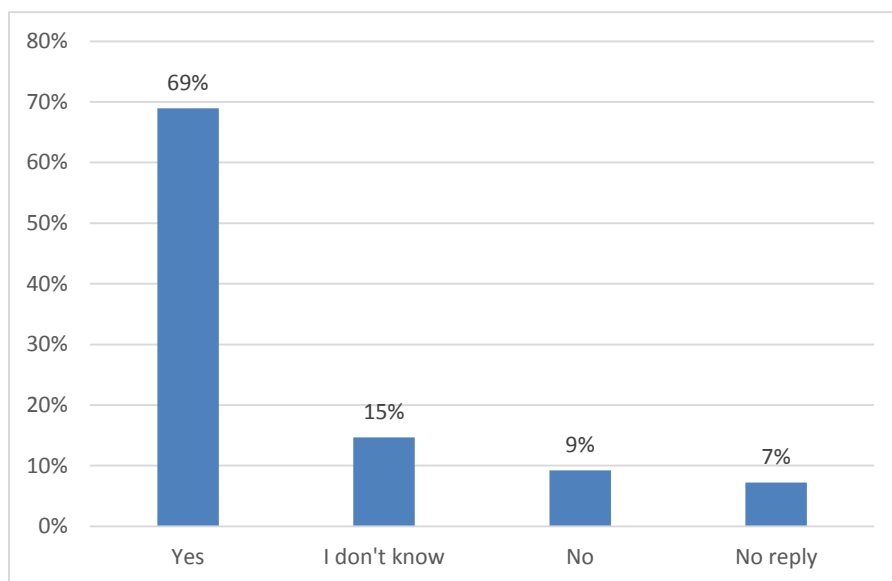
Sector	% of respondents in a given sector who considered his/her/the company's level of experience with rules of origin at least average or better
Chemicals	93%
Electronics and machinery	86%
Textiles and footwear	86%
Cars and car parts	81%
Processed agricultural products	81%
Agricultural products	60%

Different **departments** in companies handle management of rules of origin, for example 34% responses indicated logistics department, 23% sales department, 7% legal department, 12% use customs agent and 3% other external advisors.

3. EXPORTING UNDER THE EU FREE TRADE AGREEMENTS

69% of the respondents have already benefited from preferential exports under EU FTAs. For companies who are involved in exporting for 10 years or more (mainly medium sized companies employing 50 people or more), this figure is higher (77%). However, only 25% of the companies who are exporting since less than 2 years (mainly small companies employing less than 50 people), export under preferences. It appears there is a correlation between the length of experience in exporting and the use of free trade agreements; the longer the experience, the higher the use of preferences.

Do you export under the lower, preferential duties provided for in the EU's Free Trade Agreements (FTAs)?



It is interesting to note that **15% of all the respondents do not know** whether they are exporting under preferences (representing a balanced division when it comes to the size of the companies).

9% of the respondents do not use preferences at all. Free text comments from the respondents suggest i.a. lack of knowledge about how to apply for preferences, low preference margin or applied MFN duty free market access.

The survey provided for a multiple-choice question to assess which are the most burdensome requirements for exporting under EU FTAs. **37% of the respondents found rules of origin as the most burdensome requirement** when exporting under EU FTAs, 27% mentioned **additional administrative paper work**, 12% requirements of **proof of conformity** and 10% requirements related to **customs procedures**.

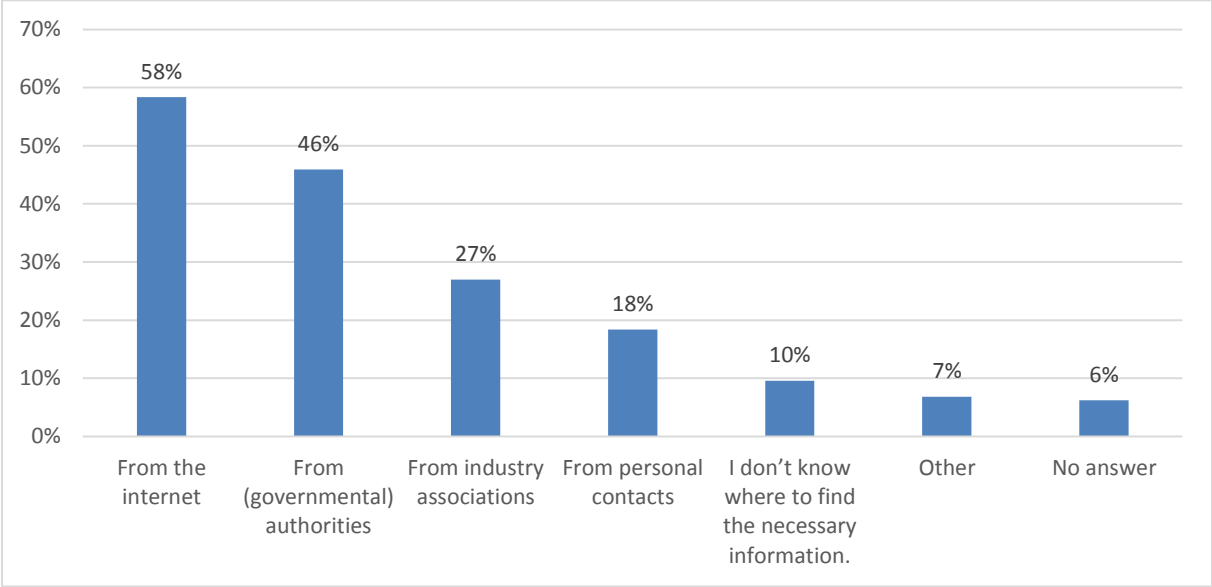
4. AWARENESS ABOUT RULES OF ORIGIN

4.1. Access to information

33% of the respondents consider that they **have all the information** they need to comply with rules of origin. 34% can find all the necessary information in English but would prefer it in their **mother tongue**. However, 25% has difficulties to find the necessary information.

When looking for information on rules of origin in EU FTAs, 34% of the respondents use the information available on the internet, 27% directly contacts governmental authorities, 16% obtains information from industry associations, 11% from personal contacts. Only 6% of the respondents do not know where to find the necessary information, but as the following paragraphs demonstrate, a greater percentage may struggle with the need to gather information from several different sources, some of which may not be particularly user-friendly.

Where have you found information on rules of origin in the EU's FTAs?



The **websites most used** are the ones of **Member States customs authorities** (29%) and the **European Commission** (24%). This ratio varies among member States, for example in Germany 41% of respondents use German websites, 24% use European Commission websites, whereas e.g. in France, Italy and Belgium more exporters use the European Commission websites than the websites of national customs. Some companies mentioned that they use both websites of the European Commission and Member States. Websites of international organisations (e.g. WCO and ITC) are less used (8%). Several exporters mentioned that they get further information on rules of origin from **seminars** organised by external consultants or the customs in Germany. The size of the company and the product sector does not have an influence on this breakdown.

4.2. Information on rules of origin on EU websites

60% of the respondents who use the **European Commission's websites**, find it **easy or very easy** to find information on rules of origin whereas 40% find it difficult.

Among the respondents, 61% of the users of the European Commission websites are bigger companies with 250 or more employees.

30% of the respondents is not aware that information on rules of origin can be found in the European Commission's Market Access Database. A further 14% claimed that they are aware that the Market Access Database has information on rules of origin but are not using it, mentioning some of the following reasons:

- perception that it is not user-friendly, complicated to use, complex structure,
- information is easier to find on other websites (e.g. German customs websites),
- it does not offer direct access to the legal texts,
- the information provided is too theoretical, specifically for SMEs,
- it would be good to have it in other languages,
- a display of rules of origin in all EU FTAs for a specific product is missing,
- some use the Market Access Database only for tariff information (but also tariff information is incomplete sometimes e.g. unilateral suspension of tariffs),
- some respondents specifically suggested that tools designed by the European Commission to support EU businesses should be better publicized. Educating companies should be a joint effort undertaken by EU authorities, national authorities, chambers of commerce and trade associations.

5. THE DIFFICULTIES ENCOUNTERED WITH RULES OF ORIGIN IN EU FTAs WHEN EXPORTING UNDER PREFERENCES

5.1. General aspects

When asked about their **experience with rules of origin when exporting** under the EU's FTAs, the respondents provided the following replies:

20%	I have the relevant information but it is complex to understand all the requirements for my product.
20%	I export the same product to different markets but the rules of origin requirements are not the same. It is burdensome to keep track of these differences.
18%	I don't have any problems with rules of origin.
15%	I cannot obtain the necessary supplier declarations confirming the origin of the inputs from my supplier.
8%	I export the same product to different markets but the rules of origin requirements are not the same. It is too costly to adjust the production process to comply with the different criteria.
6%	My product does not fulfil the necessary rules of origin criteria.
5%	I don't know where to find the relevant information.
2%	My export transactions do not meet the non-alteration criterion. Therefore, the product is losing EU origin before arriving to the export market (e.g. on the way to the export market the shipment is leaving customs supervision or the products are slightly modified).
6%	No reply or 'Other'

Free text answers provide some further details:

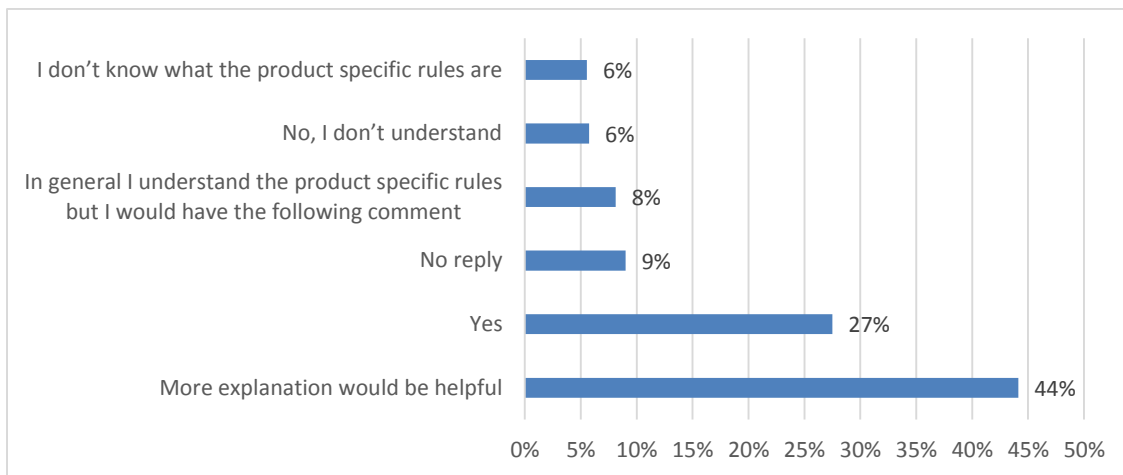
- A large number of the respondents underline the difficulties in obtaining the necessary supplier declarations (not always provided or provided with a delay) or lack of trust in supplier declarations and the resulting risks (supply chains are long and complex, poor knowledge of the suppliers concerning their role, knowledge about rules of origin and importance of using preferential rules of origin, they provide only information whether a product is originating or not); in some cases, the exporter prefers to count materials from an EU supplier as non-originating to avoid the risk.
- The requirements related to rules of origin and available information are perceived as complex and too technical:
 - legal texts are too complex to understand, terminology is not clear,
 - the necessary information is not available at one place and/or one legal document.

- The extra costs related to proving the origin include maintaining an audit trail for the value added rule (e.g. when the production takes place in several different third countries it is difficult to assess the origin of the final product).
- Rules are not always harmonised in EU FTAs and/or these rules are difficult to implement by a computer based system,.
- Certain respondents made sector specific comments:
 - Rules of origin for machinery in old EU FTAs (based on maximum 30% of non-originating materials) are difficult to comply with. More and more components are imported from third countries.
 - Specific actors in the textile sector suggested single transformation for clothing.
 - Specific actors advocated for value based calculation for high sugar content products (instead of weight based).
- Even though many EU FTAs allow accounting segregation for fungible materials, the requirements set by some national customs authorities in order to implement it are difficult to fulfil in certain cases.
- Averaging of prices over a period of time would facilitate compliance with rules of origin.
- Some respondents are not able to meet rules of origin as intracompany pricing makes ex-works prices too low to be able to meet the requirements.
- Lack of in-house expertise /IT-system on rules of origin. Putting in place a multi-sourcing IT system for several products is expensive. Business programs most often handle only one type of origin (non-preferential) and some companies have to keep manual track over products that fulfil also preferential rules of origin.
- Some respondents would like to export under the FTAs but are not familiar with the requirements or how to meet those requirements.

5.2. Product specific rules - details

Product specific rules specify the criteria, which have to be fulfilled for a product to be originating. Regarding the companies' understanding of the product specific rules, **27%** replied that they **understand the rules**, 8% understand the rules but nevertheless made some suggestions, 6% do not understand at all, 6% do not even know what this concept means. **44%** replied that they **would need more explanation on product specific rules**.

Do you find the product specific rules under the EU's FTAs easy to understand?

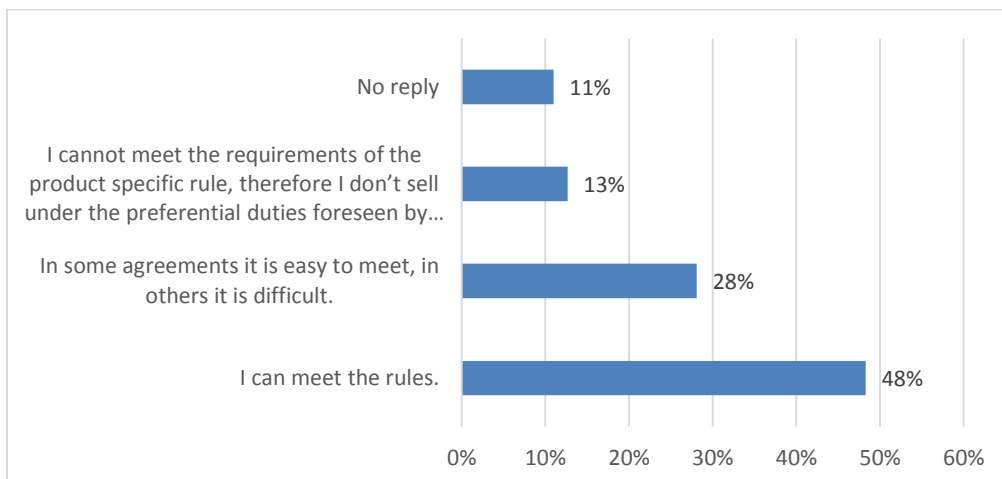


Looking at the results by **Member States**, in Germany the ratio of exporters who find the product specific rules easy to understand is much higher than in other Member States.

Regarding the difficulties to meet the product specific rule foreseen for their products, **48%** of the respondents confirmed that **they can meet the rule** while **28%** considered that **in some agreements it is easy to meet, in some others it is more difficult**. 13% replied that they cannot meet rules of origin and do not use preferences in EU FTAs.

For chemicals and agricultural products, more economic operators comply with rules of origin while the other sectors (machinery, textile and clothing, transport) represent an average.

Do you have difficulties to meet the product specific rules foreseen for your products?



Several respondents provided detailed comments on product specific rules, which can be summarised as follows:

- Not enough information:
 - trainings should be provided (some Chamber of Commerce, customs authorities do it and exporters find it very helpful),
 - reach out with information about FTAs to suppliers,

- set up a helpdesk e.g. per agreement.
- information should be available in mother tongue,
- explain basic terminology, definitions (e.g. manufacturer),
- it would be good to have clear guidance of how to apply the rules avoiding legal terminology (many guidance documents available today simply replicate the text of the regulations or origin protocols, this is not helpful),
- provide sector specific examples,
- provide for the possibility to download in excel an overview of the rules for the same product across FTAs/rules of the same FTA for several products.
- The product specific rules themselves:
 - some rules are difficult to meet/understand particularly if production is taking place in several countries,
 - rules and their wording should be aligned across FTAs (,
 - preferential rules of origin should be aligned with non-preferential rules of origin,
 - it would be easier to have as much as possible globally aligned rules of origin,
 - guidance on application of value added rule is needed,
 - it is not sure whether both rules need to be fulfilled when alternative rules of origin are provided,
 - the legal terminology is too complex and should be aligned across FTAs,
 - supplier declarations are often incorrect due to lack of information of the suppliers about rules of origin,
 - sometimes the rules require to investigate confidential information (e.g. recipe of the product),
 - rules of origin in the older FTA's should be adapted to the newer ones,
 - application of tolerance rules should be uniform in all EU Member States,
 - the rules should adapt to technical developments,
 - rules should be compatible with companies' IT-systems.

5.3. Rules of origin procedures – details

When asked about the **difficulties faced with the procedures linked to rules of origin**, the respondents mentioned the following factors:

24%	claim difficulties related to supplier declarations (exporters of chemicals, electronics and cars find it more difficult to obtain the necessary supplier declarations than the average. These are industries with more components and longer value chains).
21%	have no problem to understand and comply with them. Exporters of chemicals and processed agricultural products understand the procedural requirements better than the average.
20%	face difficulties related to procedural requirements before exporting (e.g. obtaining a certificate of origin); processed agricultural products more concerned than others, while the chemical sector is doing better than average on this.
8%	mention that the information available about procedures is not sufficient.
7%	find it difficult to register as a registered or approved exporter.
5%	would prefer to pay MFN tariffs to prevent audit controls of preferential rules of origin.
5%	do not understand procedural requirements
5%	have concerns regarding confidential information provided to customs authorities.

Several respondents provided detailed comments on the procedures, which can be summarised as follows:

- customs authorities in different EU Member States have often different interpretation concerning origin procedures,
- customs authorities in some destination markets have different interpretations of procedures in EU FTAs,
- too many different variations of proof of origin: some respondents advocate to use Registered Exporter System (REX) in all FTAs,
- concerns about providing confidential information (e.g. raw material supply contract) to the authorities of the importing party to prove preferential origin,
- difficult to meet the direct transport rule, customs ask for different proofs in different countries.

Furthermore, respondents were asked if they face issues with the **import procedures in the destination market**. As the survey focused on EU exporters, 36% of the respondents admitted that they are not involved in the import procedures in the destination market. **43% of the respondents do have some difficulties**, while 14% do not have issues. The specific challenges include the following:

- fear that the customs authorities in the importing country may deny preferences on the product (e.g. some respondents reported that the customs officials in some countries may not know the content of an FTA),

- customs authorities in the importing country don't follow clear procedures and the procedures are executed in different ways,
- local legislation and requirements are unclear,
- many respondents complain that invoice declarations made out by EU companies are not accepted, and EUR 1 is requested instead,
- electronic certificates are not accepted at importation in the destination market,
- labelling requirements in the destination market,
- post-clearance checks for certain types of goods (e.g. used vehicles).

6. WHAT WOULD BE HELPFUL TO FACILITATE COMPLIANCE WITH RULES OF ORIGIN?

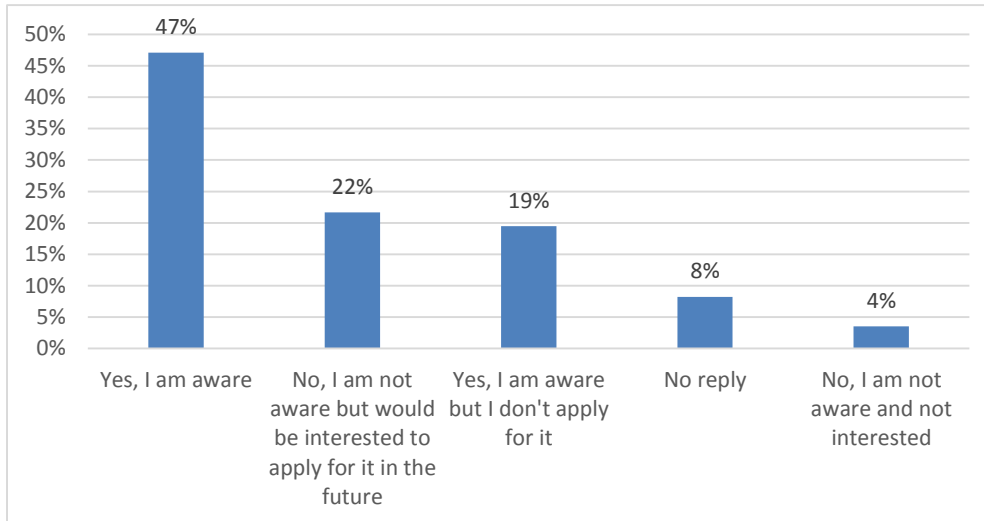
When the companies were asked what they would find helpful when determining whether their product is originating, one third mentioned **improved information on the European Commission's and Member States' websites**. One third of the respondents would welcome an interactive online tool. The following specific suggestions were made:

- More information on the European Commission's and Member States' authorities websites:
 - Provide easier access to legal texts of the rules of origin (e.g. not the full FTA but directly the rules of origin related provisions),
 - Information in various languages,
 - Glossary with terminology, explain the terminology in simple terms, and some concepts such as minimal operations,
 - Examples how to apply specific rules,
 - Provide an overview for one product across all FTAs,
 - Make it easier to identify the HS code.
- An online guidance tool
 - For each type of product specific rule an example how to calculate,
 - Give indicative result if a product is originating.
- Enhanced implementation: ensure that across EU MS the rules are interpreted the same way.

7. BINDING ORIGIN INFORMATION

Economic operators were asked if they were aware that they could apply for a Binding Origin Information to the customs authorities in EU Member States to confirm the origin of their product¹. **47% of the respondents are aware** of this possibility, 19% know about Binding Origin Information but do not use it, 22% are not aware but would be interested to use it.

Are you aware that you can ask customs authorities to confirm the origin of your product by applying for a Binding Origin Information?



The main reasons given for not using Binding Origin Information were the following:

- Procedure: it takes too much time to get a response from customs authorities (4-6 months); it is valid only for one FTA and one kind of product, application is burdensome and requires submitting a wide range of documents.
- Nature of a product: composition of a product changes regularly; a product is too advanced to explain to customs, the product range sold by a company is too broad; frequent changes in pricing, suppliers and manufacturing countries (particularly when complying with the value added rule); Some respondents do not want to stress supplier relations to ask for required documentation.
- Exports vs imports: It is binding on its holder in the import market: not so useful for an exporter.
- Access to information: Some do not know how to apply, it is difficult to find information on the websites.
- No need to request a Binding Origin Information because: (i) the product specific rules are clear (e.g. for some agricultural products or it is change of tariff heading), (ii) electronic system (SAP) in place, (iii) a company has its own team that deals with origin determination, (iv) in case of doubt, producers contact customs office directly.

¹ https://ec.europa.eu/taxation_customs/sites/taxation/files/guidance_boi_en.pdf.

8. TEST VERSION OF A GUIDANCE TOOL ON RULES OF ORIGIN

The European Commission is assessing the feasibility of creating an online tool that could guide the economic operators to better understand the criteria that need to be met in order to benefit from preferential tariff treatment. A test version of such a tool was made accessible together with the questionnaire. 37% of the respondents find such a tool useful, 19% suggested a different structure, 19% found that the tool offers too many options, 19% did not find it useful. All product sectors considered share broadly similar views. The improvements suggested for the tool mirror replies on improvements regarding access to information (e.g. languages, simplified structure, glossary, better access to legal texts).

9. CONCLUSIONS

Since it is in the nature of an FTA to limit the preferential conditions to the parties of the agreement, it is also necessary to have in place effective rules of origin and verifying mechanisms to prevent circumvention. This inevitably implies compliance costs and challenges to companies, in particular SMEs.

The results of the survey show that a vast majority of the respondents (80%) have more than 10 years of experience in exporting. 69% of the respondents have already benefited from preferential exports under EU FTAs. Despite the fact that 37% of the economic operators indeed perceive rules of origin as complex and an administratively burdensome requirement, 76% confirm that they meet rules of origin requirements in EU FTAs. Almost half of the respondents underline the need to provide better access to information about rules of origin in EU FTAs. They also made several suggestions how to improve access to information and make it more user-friendly.

The survey also revealed that when looking at preference utilisation under the EU FTAs not on a more general level, the following aspects have to be borne in mind. A part of the exporters not using preferences may be aware that they could benefit from preferences, and also know how to meet the requirements for this, but have taken a conscious business decision not to do so. This may be the case e.g. in a situation where the difference between the standard MFN duty and the reduced duty under an FTA (the so-called preference margin) is too low to justify a change in sourcing patterns (sourcing more from the EU as opposed to non-EU inputs) or the costs related to meeting the administrative requirements.

The survey provided the Commission with valuable input for its ongoing efforts to help European exporters to take fuller advantage of EU trade agreements. In the short term, the Commission can help EU exporters by providing simpler, more accessible and user friendly access to already existing information on FTAs and rules of origin (easy access to relevant legal texts instead of full trade agreement, explanation of the technical terminology, make it accessible in a simple manner) on the European Commission websites. For the medium term, the Commission is assessing the feasibility of creating an online guidance tool, and reflecting on further facilitative elements in developing the EU rules of origin policy. Awareness raising, "go local" type of reach out and trainings, especially for SMEs, could be of great help to exporters. For this approach, as also mentioned by the respondent to the survey, in addition to the work of the European Commission, Member States, ministries, chambers of commerce, customs authorities and business associations could have a valuable contribution.

GLOSSARY

Certificate of origin - document certifying the country of manufacture. Different preferential arrangements require different specific proofs of origin. For example, the EU's preferential arrangements with certain countries require a movement certificate EUR.1 or EUR-MED.

Cumulation - a system allowing products originating in country A to be further processed or added to products originating in country B, as if they had originated in country B. The resulting product has the origin of country B.

Minimal operations - minimal operations are operations regarded as too minor to ever confer originating status, whether carried out individually or in combination.

Proof of origin – proof that the goods fulfil the origin requirements laid down in an FTA(e.g. EUR.1, Form A, invoice declaration).

Product Specific rules - list of working or processing which must be done on non-originating materials in order for the product manufactured to obtain originating status.

REX (Registered Exporter System) - the system of self-certification of origin of goods. Economic operators declare the origin of goods themselves (make out a so-called “statements on origin”) on *an invoice or any other commercial document*. To be entitled to make out a statement on origin, an economic operator will have to be registered in a database by his competent authorities. The economic operator will become a "registered exporter".

Rules of origin - Laws, regulations and administrative procedures that determine a product's country of origin, i.e. what country it is deemed to have been made in for tariff and other trade purposes. These rules can vary from country to country.

Tolerance rule - manufacturers can use non-originating materials up to 10- 15% value of the ex-works price.