COMPARISON ON THE RULES OF ORIGIN FOR CUSTOMS AND EXCISE

by

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ABSTRACT

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South Africa is currently an emerging economy and has various trade agreements with the United States of America and the United Kingdom according to which South Africa enjoys different preferential rules of origin. In some respects, current customs and excise legislation relating to rules of origin places South Africa at a disadvantage in the global arena. In some cases, preferential rules of origin with developed countries benefit South Africa little if they are not properly structured, or if the rules of various trade agreements contradict each other.

The aim of this study was to ascertain whether South Africa's rules of origin are sufficiently aligned with those of more developed economies to improve the economy, thereby increasing trade growth and tax revenue. This study compared the South African rules of origin with rules of origin that are applied in another developing country, namely Brazil, as well as to those applied in two developed countries, namely the United Kingdom and the United States. To illustrate the application of the rules of origin, this study focused specifically on rules of origin applicable to individual quick frozen poultry. This comparative study identified similarities and differences between the countries, and noted possible improvements to South African customs and excise tax legislation for this industry.

It was found that the rules of origin applied in South Africa are similar in some respects to those used in the UK. An improvement that South Africa could make is to minimise the number of rules in effect by negotiating better preferential rates of duty across more than one country. South Africa could also ensure that it can comply with all obligatory conditions of trade agreements entered into to avoid under-utilisation of the benefits of a trade agreement. By adopting or adapting some of the advantages of the rules of origin in the countries chosen for comparison, South Africa can grow its international trade and generate increased tax revenue to support the government's revenue income demand.

KEY WORDS:

Origin

Rules of origin

Customs and excise

Taxation

South Africa

Brazil

United Kingdom

United States of America

OPSOMMING

VERGELYKING VAN DIE REËLS VAN OORSPRONG VAN DOEANE EN AKSYNS

deur

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Suid-Afrika is tans 'n opkomende ekonomie en het verskeie handelsooreenkomste met die Verenigde State van Amerika en die Verenigde Koninkryk, waarvolgens Suid-Afrika verskillende voorkeurreëls van oorsprong geniet. In sommige opsigte is die huidige doeane- en aksynswetgewing rakende die reëls van oorsprong tot Suid-Afrika se nadeel in die wêreldarena. In sommige gevalle vind Suid-Afrika min baat by hierdie voorkeurreëls van oorsprong met ontwikkelde lande, veral indien hulle nie behoorlik gestruktureer is nie, of indien die reëls van die verskeie handelsooreenkomste teenstrydig is.

Die doel van hierdie studie was om te bepaal of Suid-Afrika se reëls van oorsprong in lyn is met dié van meer ontwikkelde ekonomieë ten einde die ekonomie te verbeter en sodoende handelsgroei en belastinginkomste te verhoog. Hierdie studie het die Suid-Afrikaanse reëls van oorsprong vergelyk met die reëls van oorsprong wat aangewend word in 'n ander ontwikkelende land, naamlik Brasilië, sowel as dié wat in twee ontwikkelde lande, naamlik die Verenigde Koninkryk en die Verenigde State van Amerika, toegepas word. Om die toepassing van die reëls van oorsprong te illustreer, het die studie spesifiek gefokus op die reëls van oorsprong wat van toepassing is op individueel vinnig-gevriesde hoendervleis. Hierdie vergelykende studie het ooreenkomste en verskille tussen die lande geïdentifiseer, en het moontlike verbeterings aan die Suid-Afrikaanse doeane- en aksynsbelastingwetgewing aangedui.

Daar is gevind dat die reëls van oorsprong van toepassing in Suid-Afrika in sommige opsigte soortgelyk is aan dié wat in die Verenigde Koninkryk gebruik word. 'n Verbetering wat Suid-Afrika kan maak, is om die aantal reëls wat gebruik word, te verminder deur beter voorkeur-tariewe te beding met meer as een land. Suid-Afrika kan ook seker maak dat dit voldoen aan al die verpligte voorwaardes van handelsooreenkomste wat die land aangaan om onderbenutting van die voordele van ‘n handelsooreenkoms te vermy. As Suid-Afrika sommige van die voordele van die reëls van oorsprong in die lande wat in hierdie vergelyking gebruik is, aanvaar of aanpas, kan Suid-Afrika se internasionale handel groei en so verhoogde belastinginkomste genereer om die regering se belasting-inkomstebehoefte te help aanspreek.

SLEUTELWOORDE:

Oorsprong

Reëls van oorsprong

Doeane en aksyns

Belasting

Suid-Afrika

Brasilië

Verenigde Koninkryk

Verenigde State van Amerika

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LIST OF ACRONYMS AND ABBREVIATIONS

Abbreviation	Meaning
AGOA	(United States) *African Growth and Opportunity Act*
AICPA	American Institute of Certified Public Accountants
BRICS	Brazil, Russia, India, China and South Africa (an association of five major emerging national economies)
EC	European Commission
EU	European Union
IQF	Individual Quick Frozen
MERCOSUR	Common Market of the South, comprised of Argentina, Brazil, Paraguay and Uruguay
SACU	Southern African Customs Union
SADC	Southern African Development Community
SARS	South African Revenue Service
UK	United Kingdom
USA	United States of America
USD	United States Dollar
WCO	World Customs Organization

CHAPTER 1:
INTRODUCTION

1.1 BACKGROUND

South Africa, as an emerging market, faces the challenge of constantly ensuring that the country can trade competitively on a global platform. To remain competitive, South Africa must make sure that its international trade policies and agreements are current and relevant to its ever-changing economy. South Africa has to define itself as a country worthy of foreign investment and international trade in the global economy.

Increased trade would boost the South African economy and increase revenue, which should fall within the South African tax net. An increase in tax revenue would be of great assistance in alleviating the pressure on the government to cover its spending (Steenekamp, 2012) and would assist in reducing the current account deficit. In 2013, customs and excise duties accounted for approximately 10% of the South African tax revenue collected (National Treasury, 2013). Thus it forms a crucial component of the South African revenue collection mechanism. Given the quantitative value of the contribution that customs and excise make to the national tax revenue coffers, it would be in all stakeholders' best interests to ensure that the customs and excise system is fair and relevant.

Customs and excise policies are also a significant aspect in promoting South Africa to a key player in global trade. One way to check whether South Africa's international trade policies are competitive is therefore to analyse its customs and excise rules and regulations. There are three fundamental aspects of customs and excise on goods that are important, namely tariffs, the origins and the valuation of goods.

This study focuses on one of these fundamental parts of customs and excise, namely the rules which govern the origin of goods. The economic nationality (the country of origin) of all goods must be ascertained in terms of specific criteria, which are set out in rules of origin. These criteria to determine the origin of goods are formulated between two countries through international agreements, for example, double tax agreements.

1.2 PROBLEM STATEMENT

South Africa is an emerging economy which has a number of different trade agreements, for example, with the United States of America (hereafter referred to as the 'USA') and the United Kingdom (hereafter referred to as the 'UK'), with whom South Africa enjoys preferential rules of origin. In some instances, current customs and excise legislation in respect of rules of origin puts South Africa at a disadvantage. In those cases, the ostensibly preferential rules of origin with developed countries give South Africa little benefit, especially if they are not properly structured, or if the rules between various trade agreements contradict each other.

This study seeks to identify whether South Africa's rules of origin are aligned with those of developed economies in ways that can improve the economy, thereby increasing trade growth and tax revenue, with reference to a specific industry.

1.3 PURPOSE STATEMENT

The main purpose of this study is to compare South Africa's customs and excise rules of origin with those of another emerging market, Brazil, as well as to compare them to the rules of origin of developed countries such as the UK and the USA. This comparative study aims to ascertain whether South Africa is on par with other emerging markets, and to what extent (whether South African legislation and the country's free trade agreements are competitive when compared to those of developed economies, so as to not put South Africa at a disadvantage at an international trading level).

This study focuses on the example of one industry, namely the poultry industry, specifically the individual quick frozen (hereafter referred to as 'IQF') chicken sector. This industry was chosen because it is a substantial industry that all four countries that are examined have in common. It is also a topical issue in the international trading arena, and it is a popular discussion point in respect of customs and excise. Each of the countries included is a key consumer of different portions of frozen chicken, making the combination of countries chosen an ideal contrast. The concept of 'balancing a carcass' (Infor.com, n.d) can be applied between these four countries. In order for any portion of a chicken to be sold, a whole chicken must be raised and slaughtered. It is therefore essential to ensure that there is an economic market for the entire chicken to be sold in, and that each different portion is able to attract the best possible price. The manner in which the chicken is cut also has an impact on the size of the different parts of a chicken and determines the price obtained.

The three countries chosen for comparison with South Africa were Brazil, the UK and the USA. These countries were selected for the reasons outlined below.

1.3.1 Brazil

Brazil was included in this study for the following reasons:

- Brazil, like South Africa, is an emerging market, and its economy is in a development phase;
- Brazil and South Africa have a double tax agreement in place and in force in both countries (SARS, 2014b);
- Brazil is a member of Mercosur, the Common Market of the South comprised of Argentina, Brazil, Paraguay and Uruguay (Klonsky, Hanson & Lee, 2012);
- Brazil and South Africa are both members of the BRICS countries (an association of five major emerging national economies, namely Brazil, Russia, India, China and South Africa) (Investopedia.com, 2014); and
- Brazil is a prominent exporter of chicken and also has a large Brazilian consumption base.

1.3.2 United Kingdom

The UK has been included in this study for the following reasons:

- the UK has one of the largest economies in the world (Bergmann, 2014) and forms part of the G8;
- the UK and South Africa currently have a double tax agreement in place and in force in both countries (SARS, 2014b);
- the UK is a member of the Commonwealth, as is South Africa;
- the UK is a member of the European Union (hereafter referred to as the 'EU') and will be a participant in the European Union Economic Partnership Agreements and 'Everything but Arms' (hereafter referred to as 'EBA') initiative to be signed in 2014 – South Africa is the leading African beneficiary of this initiative (Cernat, Laird, Monge-Roffarello & Turrini, 2003); and
- the UK has a large UK consumption base for chicken filleted breast portions (AVEC, 2013).

1.3.3 United States of America

The USA has been included in this study for the following reasons:

- the USA has the world's largest economy (Bergmann, 2014) and forms part of the G8;
- the USA and South Africa currently have a double tax agreement in place and in force in both countries (SARS, 2014b);
- the USA currently has legislation in place which governs preferential rules of origin between the USA and African countries, otherwise known as the USA's *African Growth and Opportunity Act* (hereafter referred to as '*AGOA*'), which is up for renewal in 2015 (Williams, 2013);
- the USA is a global leader in securing reductions in international trade barriers to develop international economic opportunities (Florance, Kim & Schaefer, 2013); and
- the USA has a large consumption base in the USA for chicken wing portions (AVEC, 2013).

1.4 IMPORTANCE AND BENEFITS OF THE STUDY

In light of the renewal of the USA's *AGOA* in 2015 (Florance *et al.*, 2013), as well as the EU Economic Partnership Agreements and the Everything But Arms initiative to be signed in 2014 (Cernat *et al.*, 2003), the topic of rules of origin is currently hotly debated in the world's customs and excise community. There is some uncertainty on the creation and implementation of rules of origin and their impact on international trade. The South African customs and excise duty legislation, on which its rules of origin are based and in terms of which the rules are maintained, must therefore be scrutinised in order to determine whether these rules of origin are suitable to meet the purpose of aiding South Africa's financial sustainability in the ever-changing economic circumstances in the global markets. This study also aims to establish whether South Africa's customs and excise legislation is on par with that of other emerging markets, and whether its legislation and free trade agreements are competitive with those of developed economies, so as not to put South Africa at a disadvantage at an international level.

All the countries included in this study are also members of the World Customs Organisation (hereafter referred to as the 'WCO'). The WCO is a global intergovernmental institution that collectively represents 179 customs administrations. Its member countries represent 98% of all international trade that currently takes place (WCO, 2013b). Their membership of the WCO is indicative of the important roles which each of the countries included in this study play in the international trading arena.

In this study, the different rules of origin regarding the IQF chicken market of South Africa, Brazil, the UK and the USA are documented, and an attempt is made to comprehend these rules of origin and their impact. In addition, the advantages, disadvantages and limitations of the various rules of origin are identified and compared and any similarities are also highlighted. This comparison draws attention to possible improvements and changes that can be applied to the South African customs and excise tax legislation on rules of origin.

1.5 RESEARCH OBJECTIVES

The research objectives of the study are the following:

- to compare the rules of origin relating to the IQF chicken market according to South African customs and excise duty legislation with the corresponding customs and excise duty legislation of Brazil, the UK and the USA; and
- to analyse the identified similarities and differences in order to propose improvements and amendments the relevant South African tax legislation, so as to enable South Africa to generate increased trade and additional tax revenue, as well as close any loopholes in the rules of origin for customs and excise duty.

1.6 DELIMITATIONS AND ASSUMPTIONS

1.6.1 Delimitations

This study has the following delimitations:

- the study focuses only on the customs and excise tax base, and does not cover any other form of taxation that might be evident or might become evident during the study;
- although rules of origin are multidisciplinary in nature (Inama, 2013), the comparative analysis is limited to characteristics relating to customs and excise;
- the influence of tax duties on the customs and excise tax base is not considered;
- only the countries listed in the purpose statement are studied, namely South Africa, Brazil, the UK and the USA; and
- only frozen chicken tariff headings are addressed in this study, all other forms are excluded.

1.6.2 Assumptions

An assumption is defined as ‘a condition that is taken for granted, without which the research project would be pointless’ (Leedy & Ormrod, 2012:5). The following basic assumptions underlie the study:

- the terms ‘origin’ has the same meaning in South Africa as in Brazil, the UK and the USA, although it may be interpreted slightly differently in the said countries;
- the term ‘rules of origin’ has the same meaning in South Africa as in Brazil, the UK and the USA, although it may be slightly interpreted differently in the said countries;
- the term ‘tax base’ has the same meaning in South Africa as in Brazil, the UK and the USA, although it may be interpreted slightly differently in the said countries; and
- frozen chicken tariff headings in totality consist of chicken with bone, and boneless chicken.

1.7 DEFINITION OF KEY TERMS

This study involves a number of key concepts, which are defined briefly for the purposes of the study below.

1.7.1 Origin

The origin (of goods) is defined as the country from which the goods originated, in other words, the country of manufacture, production or growth of any article of foreign origin entering another country (Du Preez, 2013). The origin of a product determines the import duty payable, and the possible antidumping duties applicable.

Origin as a concept was first introduced into international trade to enable governments to determine the provenance of goods (Bourgeois, Vermulst & Waer, 1994) and to assist with supply and demand analysis for economic reasons. The more economically developed countries became, the greater the need for special

arrangements between countries in order to obtain the most benefit from cross-border trade. Before origin was defined, countries created individual special arrangements that led to inequalities in some industry sectors and regions around the world. Overlapping and conflicting arrangements between different countries resulted in disorder. The inconsistencies highlighted the necessity of defining the concept of 'origin' to provide a basis for international trade regulations. The benefits of establishing origin can be undermined by the freedom given to countries in creating their own origin criteria, as each contracting country would want to ensure that its own best economic interests are taken into account (Bourgeois *et al*., 1994). For this reason, emerging markets such as South Africa and Brazil have been targeted by developed countries such as the USA and the UK in attempts to even out the distortions created by the overlapping arrangements made in the past.

There are three different methods to determine the origin of goods. Every country is able to choose which method it will adopt, and different methods can be used for different types of goods or industry sectors. The method chosen depends on government policy needs and objectives. The three methods are

- the technical test;
- the economic test; and
- the custom classification test (Bourgeois *et al*., 1994).

Each test has its own merits. The tests can be used separately or in conjunction with each other.

The technical test examines the prerequisite set of properties and configuration of the resultant product from a process or operation in the exporting country that the product did not have before such a process or operation. The economic test analyses work performed on the goods concerned, the expenditure incurred for the work performed on the original goods, and the materials and added value to the end products. The custom classification test is an assessment of the effect of the process or operation that occurs in the exporting country which changes the classification of the resultant goods from one custom tariff classification to another (Bourgeois *et al*., 1994).

Proof of origin is commonly administrated in the form of a certificate of origin which provides confirmation that a supplier is able to apply the preferential tariff rates under a free trade agreement. The certificate of origin for goods should be issued by an approved customs or commerce authority in the country of export (Du Preez, 2013).

Consignment criteria are used to determine whether goods maintain their originating status for preferential tariff applications while in transit from one country to another. Goods that are shipped to their end consumer must either

- go directly from the exporter to the importer; or
- move indirectly through a middle country without entering the trade area of that middle country (Du Preez, 2013:31).

It is important to bear in mind the consignment criteria when analysing customs unions, because if goods in transit land in the wrong customs union, they could attract unnecessary anti-dumping duties. For example, Article 12 of the *Trade, Development and Cooperation Agreement* with the European Commission (hereafter referred to as the 'EC') states clearly that the goods must be directly shipped between the EU and South Africa.

1.7.2 Rules of origin

Rules of origin are the legislative criteria that are used to define where a product is made and where it comes from (Du Preez, 2013). The rules of origin are regulated by section 46 of the Customs and Excise Act, No 91 of 1964 (South Africa, 1964). These rules are formulated by international trade agreements and are applied by the countries that are party to the agreement to determine the origin of goods, effectively dictating how a product will be treated on importation. In this regard, South Africa has signed trade agreements with its trading partners (SARS, 2014d). South Africa also makes use of other international trade instruments in the course of its international trade.

Rules of origin also govern whether goods are subject to standard, reduced or zero import duties. Therefore a distinction is made between non-preferential and preferential rules of origin. Non-preferential rules of origin do not bestow any

benefits on imported goods (Du Preez, 2013). Goods imported into a country under this type of rule of origin are subject to the normal trade policy measures, which can hinder trade. Preferential rules of origin are applied in the instance of free trade agreements and other such trade schemes, whereas non-preferential rules of origin are applied for 'most-favoured-nation' trade purposes (SARS, 2008). Preferential rules of origin provide for and promote increased trade and economic activity between different countries by conferring stipulated prearranged benefits on goods traded between countries which are party to such agreements. These benefits can vary from privileged market access to free and reduced rates of duty on imported goods (Du Preez, 2013). There are different agreements with different trade regions and between differently grouped countries. The preferential rules of origin also limit the use of inputs into the production or manufacture of goods that emanate from outside the preferential trading area (which is created through a free trade agreement).

Criteria must be transparent and clear to enable countries to determine whether traded goods are eligible for beneficial duty rates and provisions. If goods do not meet the criteria for eligibility that are set, these goods are referred to as non-originating goods. In the current economic times, the production and manufacture of any one type of goods can be spread across a number of countries, which has made rules of origin controversial and difficult to determine (WCO, 2013a).

The origin qualification criteria can be categorised into two parts. The first is wholly obtained or produced goods, and the second is the substantial transformation criteria. The differentiating factor between these two parts is the origin of the materials used to produce the goods in question. Wholly obtained or produced goods are defined as basic resources that are obtained directly from the contracting country, with no changes to the goods, or if all materials used to produce the goods emanate from that same country. The substantial transformation criteria consist of three basic principles of rules of origin and may vary per trade agreement and between countries (Du Preez, 2013). These three principles are the principle of value added, the manufacturing or processing operations principle, and the principle of change in tariff classification (Du Preez,

2013). The principle of value added is commonly applied as an ad valorem percentage to goods. It refers to the value added to goods during their creation in a country that is satisfied by a specified percentage of the goods' value. The ad valorem percentage is either a maximum threshold for non-originating materials or a minimum local origin requirement (Du Preez, 2013). The manufacturing or processing operations principle refers to technical requirements that must be met. It focuses on where the main manufacturing process takes place (Du Preez, 2013). The third principle implies that a type of goods may be classified under a tariff heading which is completely different to the heading of the non-originating products which were used to make the final items (Du Preez, 2013). The substantial transformation criteria also include a list of non-qualifying operations which are specifically excluded.

Consignment criteria are used to determine whether goods retain their originating status for preferential tariff treatment while being transported from one country to another (Du Preez, 2013). If the origin of goods cannot be determined, the countries involved run the risk of

- not being able to use preferential duty rates;
- not being able to levy anti-dumping levies or legislative tariff quotas; and
- opening themselves up to damaging licence controls exposure (Du Preez, 2013).

Rules of origin are also a preventative measure to curb misuse of the provisions of international trade agreements. Rules of origin that are stipulated in trade agreements are very precise, and the criteria must be strictly adhered to, to avoid international labour and wages issues in the world economy. These rules of origin are closely monitored by each country's tax authority to ensure compliance and global cooperation at an international level (Du Preez, 2013).

1.7.3 Trade agreements

A trade agreement is an international agreement. A trade agreement is defined as a mutually beneficial arrangement which is made between two or more countries, and which details the specifications of how each of the contractual parties to such

an agreement will work together in the field of trade and investment (Du Preez, 2013). The mutual gains can vary from preferential import rates, to tax collaboration and global cohesion. Each contracting country to a trade agreement is free to determine its own rules of origin that will be preferential to a specific trade agreement.

There are variations of trade agreements, depending on the number of participating beneficiary countries to the trade agreement; for example, a bilateral trade agreement is between two countries, and a multilateral trade agreement is between more than two countries (Du Preez, 2013:10). In unilateral trade agreements, some of the signatories to the agreement gain preferential access to the market of the other signatories, without lowering their own tariffs.

There are also various forms of trade agreements, for example, a free trade agreement and a double tax agreement (these are not the same types of agreement). A double tax agreement is an agreement which deals with all potential tax conflicts that could occur between two countries in respect of all taxes, not just customs and excise duties. A free trade agreement is a trading coalition consisting of more than two countries, where each participating member country consents to exclusive and preferential reductions or eliminations to trade tariffs and/or barriers between the coalition participants only. Currently, South Africa has agreed to free trade agreements with the EU and the Southern African Development Community (hereafter referred to as 'SADC'). The preferential rates and duty applicable to the various trade agreements entered into by South Africa are detailed in the South African customs and excise tariff book, per trade agreement, which is an annexure to the *Customs and Excise Act, No 91 of 1964* (South Africa, 1964).

1.7.4 Customs unions

A customs union is defined by the WCO (WCO, 2013a) as a type of trade bloc which consists of a free trade area and a common external tariff. Member countries of a customs union either establish a common external tariff policy, or

use import quotas to enable each country to gain equally from beneficial customs duties. Custom unions are created to promote economic integration by increasing economic efficiency, and to establish closer political alliances with member countries. Member countries also share a customs revenue pool which promotes free movement of goods within the common customs area (SARS, 2014e). The movement of goods within a customs union is not based on their originating status, but on their compliance with the free circulations provisions.

According to du Preez (2013), a customs union is a type of trade agreement in which all the participating countries eliminate all customs and excise tariffs amongst member countries, while a standardised tariff system is established and applied to imports from countries which do not form part of the customs union. South Africa is a member of the Southern African Customs Union (hereafter referred to as 'SACU'). There is a SACU agreement in place which has been signed by all participating countries. The core of this agreement is a common external tariff and the sharing of a common tax revenue pool which stimulates uninhibited movement of goods within the common customs area (SARS, 2008). South Africa is also a member of SADC. The member countries of these two economic blocs overlap in some cases, which, does result in conflicting customs practices.

Brazil is a member state of the Mercosur agreement. The UK, as a member of the EU, belongs to the European Union Customs Union. The USA belongs to the North American Free Trade Agreement customs union, whose other member countries are Mexico and Canada.

1.7.5 Trade initiatives

Trade initiatives such as trade agreements, legislation and customs unions form an integral part of increasing trade between countries. These initiatives establish the foundation for trade growth and economic stability, which would improve the generation of trade revenue and could ultimately increase tax revenue. South Africa has entered into various trade initiatives, in addition to those mentioned

above, across the world to enable its economy to become and remain competitive (Du Preez, 2013).

The trade initiatives between South Africa and the countries used for comparison are discussed in Chapter 3: Brazil, the United Kingdom and the United States of America.

1.7.6 General Agreement on Tariffs and Trade

The General Agreement on Tariffs and Trade was a multilateral agreement that regulated how international trade would be conducted. According to its preamble, its purpose was the 'substantial reduction of tariffs and other trade barriers and the elimination of preferences, on a reciprocal and mutually advantageous basis' (cited by Bourgeois *et al*., 1994). It was negotiated during the United Nations Conference on Trade and Employment as a result of the failure of negotiating governments at the time to create the International Trade Organization. The General Agreement on Tariffs and Trade was signed in 1947, and was replaced by the World Trade Organization in 1995.

1.7.7 Most-favoured-nation tariff

This is a preferential tariff regime that can be applied to imported goods. This tariff regime is extended to all signatories to the General Agreement on Tariffs and Trade (Bourgeois *et al*., 1994). It results in lower tariff duties.

1.8 RESEARCH DESIGN AND METHODS

1.8.1 Description of inquiry strategy and broad research design

As was indicated in the problem statement of this study, no prior research involving a comparison of South Africa's customs and excise tax legislation to that of other developing and developed countries could be found. To perform such a comparative study, the research adopted a qualitative approach. It was concluded that a non-empirical research method would be most appropriate for this international study.

Non-empirical research methods consist of conceptual analysis, theory-building studies, philosophical analysis and literature reviews (Mouton, 2001). This study focuses primarily on literature reviews. A literature review is defined as a critical and reasonable analysis and interpretation of the advantages and restrictions of the literature within a selected area (Saunders, Lewis & Thornhill, 2012).

The rationale of critically evaluating the literature is to establish a foundation on which the research can be built, to develop a good understanding and insight into relevant previous research conducted, as well as to review the most relevant and significant research on the specific topic selected. A literature review also identifies research possibilities that have been ignored or discounted, and therefore recommendations for further research are usually made (Saunders *et al*., 2012). According to Saunders *et al*. (2012), the components of a literature review include the following:

- conducting the research;
- obtaining the literature;
- reading and evaluating the literature; and
- recording the concepts and starting to draft the review.

In evaluating the literature identified as relevant, a content analysis was performed in this study. A content analysis is a detailed and methodical examination of the content of a particular form of material for the purpose of identifying outlines, themes, or preferences (Leedy & Ormrod, 2012). In principle, a content analysis is systematic and includes the following four steps (Leedy & Ormrod, 2012):

- Step 1: Identifying the form of material to be studied;
- Step 2: Defining characteristics or qualities to be examined;
- Step 3: If the material to study is complex or lengthy, breaking down each item into smaller sections to study separately; and
- Step 4: Examining the material to identify characteristics and qualities as set out in the second step above.

In this study, prior research that refers to the rules of origin was evaluated. The material consists of extracts from legislation, publications by international

organisations and government departments, books, newspaper articles, journal articles, electronic sources and court cases. This engendered an understanding of the issues and current debates of the subject matter, as recommended by Mouton (2001), in this case, the tax regimes in place.

The search engines used in the study were government websites (the Department of National Treasury and SARS for South Africa, HM Revenue & Customs for the UK, the Income Tax Department for Brazil, and the IRS for the USA), Google Scholar and the journal platforms Ebscohost and Proquest. In addition, where a reference was found to a relevant article in a particular journal article, that article was also reviewed. Additional journal articles were also obtained by referring to citations of articles obtained from electronic sources using the following key words:

- origin;
- rules of origin;
- customs and excise;
- opinions of Brazil, South Africa, UK, USA tax systems;
- tax base;
- tax base comparison;
- tax base of BRICS countries;
- tax policies;
- tax policy in developing countries;
- tax regimes; and
- taxation.

In order to ensure that the most relevant data were obtained, the emphasis was on data from 2008 onwards.

Once all relevant material was acquired, a content analysis was performed to gain an understanding of the individual tax systems of South Africa, Brazil, the UK and the US. Any similarities and differences between these tax regimes, as well as advantages and disadvantages are highlighted in the report in order to suggest possible improvements and changes to South African tax legislation.

The advantages and disadvantages identified during the content analysis are evaluated against the ten principles of good tax policy as prescribed by the American Institute of Certified Public Accountants (hereafter referred to as 'AICPA'). AICPA indicates that these ten principles must be taken into account when analysing proposals to change a tax rule or a tax system (AICPA, 2011).

1.9 OUTLINE OF THE STUDY

This study consists of five chapters, the first of which is the introduction. The introduction provides the background on the rules of origin and includes the parameters of the research to be conducted. This first chapter also includes all the necessary definitions and key terms used in the study.

The second chapter details the South African rules of origin. It discusses the focus industry of the study, namely the IQF poultry industry, and provides supplementary import and export statistics and corroborating case law.

The third chapter explains the rules of origin of the three countries used for comparison. It also provides country-specific statistics and industry information.

The fourth chapter presents a comparative analysis of the four countries: South Africa and Brazil, the UK and the USA. The literature on the similarities and differences between the countries is discussed and compared.

The fifth chapter summarizes the four preceding chapters in a conclusion. The concluding chapter also provides direction for further research.

CHAPTER 2:
SOUTH AFRICA

2.1 INTRODUCTION

South Africa is the first of the four countries to be analysed. This chapter focuses pertinent sections of customs and excise legislation and the current South African rules of origin. It also illustrates how rules of origin theory is applied in practice.

2.2 LEGISLATION

Section 46 of South Africa's *Customs and Excise Act, No 91 of 1964* (South Africa, 1964) regulates the tax implications of the origin of goods. It also provides rules in cases where no trade agreement is in place with the exporting country.

Excise is imposed on goods in South Africa in terms of the *Customs and Excise Act, No 91 of 1964* (South Africa, 1964). The South African Revenue Service (hereafter referred to as 'SARS') is currently in the process of updating this legislation and it's accompanying legislative mechanisms via the 'Customs Modernisation Programme'. It is proposed that the new Customs Act will be split into the following three separate laws (once the *Customs Bills* are approved by Parliament):

- a *Customs Control Act*;
- a *Customs Duty Act*; and
- an *Excise Duty Act* (SARS, 2014g).

For now, the rules of origin are still governed by the *Customs and Excise Act, No 91 of 1964* (South Africa, 1964).

The *Customs and Excise Act, No 91 of 1964* (South Africa, 1964) regulates both customs and excise. Shepstone and Wylie (2012) provide clarity on the difference between the two: customs relates to the control of imported goods in contrast to

excise, which relates to the control of locally manufactured goods. Rules of origin would be applicable to both customs and excise, as it is imperative that every manufacturer in any country is able to prove the origin of the goods manufactured (Du Preez, 2013).

The *Customs and Excise Act, No 91 of 1964* (South Africa, 1964) contains provisions which constitute the legal basis for rules of origin and gives customs officials adequate authority to ensure that the rules of origin are correctly applied in respect of the various international trade agreements entered into by South Africa. Section 46 of the *Act* governs the origin of goods and is applicable where no trade agreement is in force (Du Preez, 2013).

For any type of goods to be classified as of South African origin, it must meet two conditions. Firstly, at least 25% of the production cost of goods must represent labour and resources from the exporting country (in this case, South Africa), and secondly, the last process of manufacture must have taken place in the export country (Du Preez, 2013). If both conditions are not met, then the goods are deemed to be stateless, which means, that it is not possible to confirm where the goods originate from. In such a case, the customs or excise on the goods, are then levied in terms of non-preferential rules of origin.

Origin must be ascribed to all products that move across borders, irrespective of whether or not this trade is conducted in the ambit of a particular preferential agreement. Section 39(1)(a) of the *Customs and Excise Act, No 91 of 1964* (South Africa, 1964) requires an importer (or exporter) to complete all the relevant fields on the bill of entry, which includes the origin of the product. It is important to note that South African legislation reflects the two key characteristics of origin determination, the first being the percentage of production that has taken place in the exporting country, and the second being the definition of ‘manufacture’.

Section 46A of the *Customs and Excise Act, No 91 of 1964* (South Africa, 1964) includes provisions where the preferential tariff treatment of goods exported from South Africa is one-sided. The non-reciprocal treatment is applied to goods of

South African origin through trade arrangements and agreements with other countries.

Section 48(1A) of the *Customs and Excise Act, No 91 of 1964* (South Africa, 1964) caters for the inclusion of the origin provisions in trade agreements in the general notes to Schedule 1 (SARS, 2008).

Sections 49 and 51 of the *Customs and Excise Act, No 91 of 1964* (South Africa, 1964) regulate the ratification of international agreements as part of the *Act* in respect of lower, preferential tariff rates being applied to goods from South Africa. This allows international agreements entered into by South Africa with other countries to be applied as legislation when interpreting customs and excise transactions. A law only becomes applicable once it is ratified by a specific section of the *Act*.

South Africa uses a 'Duty at Source' system which endeavours to keep a record of the goods manufactured and determines the relevant excise liability payable thereon, as close as possible to the actual point of manufacture of the goods (SARS, 2014f).

2.3 CUSTOMS AND EXCISE RULES OF ORIGIN

Customs and excise rules of origin are attached to the *Customs and Excise Act, No 91 of 1964* (South Africa, 1964). These rules provide greater clarity on and a practical interpretation of specific sections of the legislation so enacted. These rules apply concurrently with their respective and matching section numbers in the *Act*.

2.3.1 Rule 46

This rule is in respect of the origin of goods manufactured in any country other than South Africa, in circumstances where trade has occurred other than under a preferential trade agreement (SARS, 2014a). It focuses particularly on the

attributed and necessary costs of manufacture and production used to bring goods to a saleable condition, and also on those costs that should be excluded.

2.3.2 Rule 46A

This rule relates to the exporting of goods of South African origin for which a non-reciprocal preferential tariff treatment applies. This non-reciprocal treatment is offered in terms of the Generalised System of Preferences or other trade agreements with various countries and in terms of an assortment of goods (SARS, 2014a).

2.3.3 Rule 46A Part 1

This part of the rule specifies the requirements with reference to textiles and apparel exported directly to the USA in terms of *AGOA* (SARS, 2014a).

2.3.4 Rule 46A Part 2

This part of the rule specifies the requirements of the origin of goods in terms of the Generalised System of Preferences granted to developing countries by the EC, Norway and Switzerland (SARS, 2014a).

2.3.5 Rule 46A Part 3

This part of the rule specifies the requirements of the origin of goods in terms of the Generalised System of Preferences granted to developing countries by the Russian Federation (SARS, 2014a). The application of this rule is currently administered by the South African Department of Trade and Industry (SARS, 2014a).

2.3.6 Rule 46A Part 4

This part of the rule specifies the requirements of the origin of goods in terms of the Generalised System of Preferences granted to developing countries by the Republic of Turkey (SARS, 2014a).

2.3.7 Rule 49

This rule is in respect of binding origin determinations in respect of various double tax agreement protocols and customs unions (SARS, 2014a).

2.3.8 Rule 49A

The provisions of this rule relate to Protocol 1 of the Trade, Development and Cooperation Agreement with the EC, and it defines the concept of originating goods and joint administrative compliance (SARS, 2014a).

2.3.9 Rule 49B

The provisions of this rule relate to Annexure 1 of the Protocol on Trade to the treaty of the SADC with reference to the rules of origin for goods traded between SADC member states (SARS, 2014a).

2.3.10 Rule 49C

This rule is reserved for rules of origin relating to SACU members (SARS, 2014a).

2.3.11 Rule 49D

The provisions of this rule relate to Annexure V of the free trade agreement between the European Free Trade Association and SACU, which describes the concept of originating goods and joint administrative compliance (SARS, 2014a).

2.4 POULTRY INDUSTRY

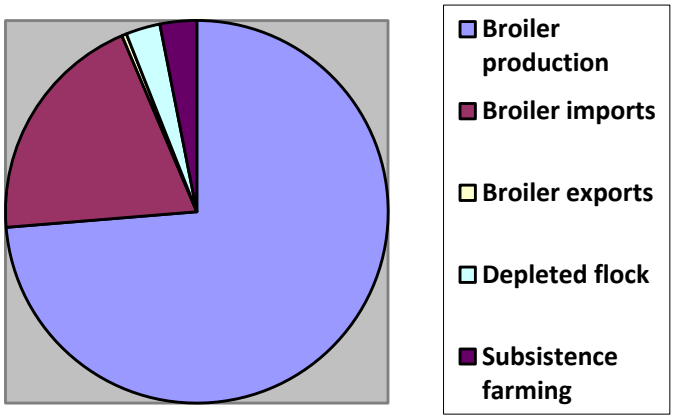
According to SAPA (2012), approximately 60% of all protein consumed in South Africa takes the form of chicken. An estimated 10% of chicken consumed in South Africa is imported. This 10% adds up to roughly 100 million chickens. Per capita, South Africa has the largest consumption of chicken sold with the bone still in (classified as ‘bone-in’ chicken). South Africa consumers have a high preference for the leg quarter portions of a chicken. It is estimated that as a country South Africa consumes more than 1 billion chickens per year, which is more than double

the equivalent in weight of beef eaten (Bricpartner.com, n.d.). During 2012, chicken consumption totalled 1 851 000 tonnes, which equates to a per capita consumption of chicken (including the brining solution) meat of 36.16 kg per annum (SAPA, 2012).

The South African slaughter cycle is loosely estimated at 35 days (SAPA, 2012), providing a timeline of 35 days in which maize is converted into meat. This slaughter cycle is lower than the international industry norm of 56 days. The South African poultry industry employs over 100 000 direct and indirect labourers (Bricpartner.com, n.d.).

Broiler production is clearly a significant portion of the poultry industry. Broiler chickens are a domesticated fowl bred and raised specifically to produce meat (SAPA, 2012). The raising of this type of chicken forms a specific sector in the poultry industry. This broiler industry has been under severe pressure in recent years, mainly due to a flood of imports of frozen poultry meat into South Africa. Broiler production, which includes the brining of IQF products, grew by nearly 22% in 2012 to 1 815 000 tonnes. Brining refers to a process, used in a food manufacturing environment, where a solution containing salt and cold water is used to marinate and preserve the meat before packaging. If one includes the brining solution of IQF products, the per capita chicken product consumption in 2012 was 42.55 kg (SAPA, 2012). Figure 1 illustrates the different types of chicken suppliers that met the demand for chicken in South Africa during 2012.

Figure 1: Sources of chicken to meet demand in South Africa (2012)



Source: Adapted from SAPA (2012:46)

Annual imports under poultry tariff headings (refer to 2.5 below for the explanation of a tariff heading) 0207 and 1602 are calculated to be roughly 20% of domestic consumption. Imports of poultry into South Africa are, to a degree, driven by exchange rate fluctuations, and have had a negative impact on the local poultry industry (SAPA, 2012). Relatively unrestricted imports of poultry meat from other countries have placed local poultry producers at a disadvantage (SAPA, 2012).

Exports by the local poultry industry to developed markets such as the UK and USA remain riddled with difficulties, due to the hygiene and sanitary requirements imposed by these countries. Avian influenza (popularly known as 'bird flu') has negatively affected the ability of the chicken industry to export its products (SAPA, 2012). Competitor countries such as Brazil can leverage low production costs to beat the local South African poultry industry, due to substantially lower input costs on feed, which account for 70% of the total input costs (SAPA, 2012). Nevertheless, the South African production efficiency factor of 263 is still lower than international production efficiency factors, which range from 270 to 300. The difference can be supported by high altitude production systems and a market mix of products and weights.

2.5 TARIFF STRUCTURE

All commercial import and export transactions require goods on customs declarations to be classified according to an appropriate tariff heading. The tariff classification code is directly linked to the rate of duty payable on the goods imported or exported (SARS, 2014c). The tariff classification and structure operate as part of the international Harmonised Commodity and Coding System, under the WCO Harmonised System Convention (SARS, 2014c). The customs duties payable are calculated based on the rate of duty dictated by the specific tariff code (SARS, 2014c). The tariff structure provides guidance regarding the correct tariff code to be used.

Table 1 provides an extract from the tariff structure used in South Africa. IQF products would be classified under tariff headings 0207.14.10 and 0207.14.90, depending on whether or not the IQF goods are boneless or the chicken still has bone in.

Table 1: Tariff structure for chicken meat in South Africa

Heading/ Sub-heading	CD*	Description	Statis-tical unit	Rate of duty			
				General	EU	EFTA**	SADC
0207.12.20	1	Carcasses (excluding necks and offal) with all cuts (e.g. thighs, wings, legs and breasts) removed	kg	31%	Free	31%	Free
0207.12.90	2	Other	kg	82%	Free	82%	Free
0207.14.10	7	Boneless cuts	kg	12%	Free	12%	Free
0207.14.20	4	Offal	kg	30%	Free	30%	Free
0207.14.90	5	Other	kg	37%	Free	37%	Free

* CD = Customs Duty table number; ** EFTA= European Free Trade Association

Source: Adapted from SARS (2013).

2.6 STATISTICS

During 2011, the total production of chicken meat in the SADC countries was 1 803 142 tonnes, and South Africa produced 82.4% of the total (SAPA, 2012:18),

which is approximately 1 485 789 tonnes. South Africa is the largest producer of chicken meat (through the broiler industry) in the SADC region.

Table 2 (overleaf) demonstrates the growth in South African export volumes of IQF products from 2011 to 2013 and the vast difference between import and export volumes (import volumes were roughly five times higher than export volumes). However, it also reflects how saturated the domestic chicken industry in South Africa is with imported IQF products, which are placing the domestic broiler industry under strain. The South African per capita consumption of chicken meat in 2012 was 33.5 kg (excluding the brining solution) (AVEC, 2013:38).

Table 2: South African import/export statistics for IQF chicken (2011-2013)

Year	Value of imports (USD)	Import volumes (tonnes)	Value of exports (USD)	Export volumes (tonnes)
2011	246 831	177 287	7 819	3 852
2012	304 163	214 004	9 837	5 718
2013	268 951	194 091	55 137	36 207
Total	**819 945**	**585 382**	**72 793**	**45 777**

Source: Adapted from International Trade Centre (2014).

Customs duties, taxes and customs brokerage fees are included in the net cost of goods, and therefore the negotiated, agreed-upon preferential duty rates have a significant impact on the amount of exports and imports. Therefore, where possible, South Africa should use the preferential duty available to it to increase market share and increase trade revenues, and ultimately tax revenues (Du Preez, 2013).

2.7 CASE LAW

The following two cases illustrate two key terms that are relevant to this study. The first case demonstrates how rules of origin are applied in practice. The second case is pertinent to the poultry industry and shows how the different cuts of chicken and the terms relating to them are interpreted.

In *AM Moolla Group Ltd v C: SARS*, the origination of goods legislation was tested. Here the meaning of goods' being 'produced or manufactured' in Malawi for the purposes of being imported into South Africa was the focus. The dispute centred around the interpretation of the words 'production cost' in relation to Article 6 of the double tax agreement between Malawi and South Africa, which requires a minimum ad valorem percentage of 25% for the goods to be classified as being of Malawian origin. Malawi was assembling clothes for a South African entity, but, since Malawi did not produce sufficient cloth and buttons for the number of clothes to be manufactured, the additional items required were imported. SARS contended that the predetermined ad valorem rate in terms of the bilateral trade agreement between South Africa and Malawi had been breached, and therefore Malawian origin could not be conferred upon these goods. Hence, SARS argued that the South African entity could not benefit from the preferential duty rates available in terms of the trade agreement between South Africa and Malawi. The courts agreed with SARS, and the South African entity's appeal was dismissed (AM Moolla Group Ltd and Others v Commissioner for SARS, 2003).

The definition of a carcass was clearly set out in the judgement in *Crown Chickens (Pty) Ltd v Minister of Finance and Others*. In this case, the technical language and usage of the words 'carcass' and 'cuts' in the *Harmonized Customs and Excise Tariff Code* was tried. The Court concluded that such words should be given their ordinary meaning. Therefore a 'carcass' in reference to the language used by a butcher would be defined as 'the whole trunk of a slaughtered animal, after removal of the head, limbs and offal' whereas a 'cut' with reference to meat is 'a piece of anything cut off' and includes the results of cutting up a carcass into different pieces, in this case, imported frozen mutton purchased as whole carcasses that were cut into six pieces for packaging and shipping purposes.

Chapter 2 of the *Harmonized Customs and Excise Tariff Code* distinguishes between carcasses (the body of an animal with or without head, half carcasses (lengthwise splitting of carcasses), quarters and pieces. Therefore a carcass that has been cut into six pieces of frozen meat can never be 'the whole trunk of a slaughtered animal after removal of the head, limbs and offal'. The contention of

the importer was that the company intended to import carcasses and nothing but carcasses, and that the carcasses imported were only cut up for packaging and shipping purposes. The court held that the importer's intention did not matter – the question that needed to be answered was whether or not the goods were still classified as carcasses. The court held the carcass had already been cut into pieces and was therefore not classifiable under the lower tariff heading of a carcass, but should be classified under the higher tariff heading as other cuts of mutton with bone in, because that was the state in which the meat arrived at the customs area for clearance (Crown Chickens (Pty) Ltd v Minister of Finance and Others, 1994).

2.8 CONCLUSION

South Africa has a created a good foundation in respect of its customs and excise legislation, on which it can build a firm international trading platform. However, the rules of origin are very simplistic, and need to be developed in order to meet global standards. South African case law also provides proof that the customs and excise rules of origin are being applied thoroughly. With the right rules of origin, South African producers, such as the South African chicken broiler industry, have the potential to be significant participants in international trade, such as the IQF trade.

CHAPTER 3:
BRAZIL, THE UNITED KINGDOM AND THE UNITED STATES OF AMERICA

3.1 INTRODUCTION

This chapter discusses the same aspects that have been examined for South Africa in respect of Brazil, the UK and the USA, in order to perform a comparative study. It includes details of the focus industry, namely the poultry industry, as it is present in each of the comparative countries, as well as the relevant customs and excise information.

3.2 BRAZIL

3.2.1 Legislation

The cross-border movement of goods in Brazil is regulated by the Foreign Trade Secretariat, the Federal Revenue Secretariat, the Brazilian Foreign Trade Chamber and the Central Bank of Brazil. All foreign trade transactions are managed through an integrated computer system generally known by its acronym, SISCOMEX, which centralises the flow of data between all governmental organisations and other relevant parties engaged in import and/or export processes (Bacchus, 2010).

3.2.2 Customs and excise rules of origin

Brazil's customs and excise rules of origin are administered by the Brazilian Foreign Trade Chamber Resolution (Deloitte, 2012).

In terms of article 557 of the *Decree 6.759/09* issued by the Brazilian Foreign Trade Chamber Resolution, the following three definitions (overleaf) are the key to understanding the rules of origin applied in Brazil (Deloitte, 2012):

- Country of origin: This is the country where the goods were produced or the country where the last 'substantial transformation' has occurred;
- Country of acquisition: This is the country in which the goods were purchased for the intention of export into Brazil; and
- Country of precedence: This is the country in which the item was first situated at the time of purchase by the importer.

The Brazilian Foreign Trade Chamber Resolution also provides a list of activities that are excluded from consideration as 'substantial transformation' and thus do not confer originating status on resultant goods. The list contains the following activities (Deloitte, 2012:20):

- assembly;
- packing;
- division into lots or volumes;
- selection;
- classification;
- labelling;
- simple dilution in water or in other substance that does not convert the goods' original characteristics; and
- other equivalent process.

The manufacturing process must significantly alter the nature, purpose or presentation of the finished goods to qualify as a substantial transformation.

3.2.3 Poultry industry

Brazil is one of the world's largest poultry producers, with a production volume of 12 600 000 tonnes in 2012 (Van Horne & Bondt, 2013). This is mainly because Brazil has gained an advantage through lower input costs, high productivity and high technology in respect of broiler production (Bricpartner.com, n.d.). All these factors mean that Brazil has the best conditions for poultry production and development. Approximately 69% of annual production remains within the domestic market, illustrating how strong the local poultry industry is in Brazil

(Brazilianchicken.com, n.d.). The Brazilian poultry industry provides a variety of cuts of chicken to meet the demands of its global customers. Brazil has built an exemplary reputation in the industry by producing high quality and safe chicken products at aggressively low prices, providing consumers around the globe with what they want. Brazil exports its poultry meat to over 100 countries across five continents – its biggest export market is the Middle East, followed by Africa and the EU (Bricpartner.com, n.d.).

3.2.4 Tariff structure

The tariff structure set out in Table 3 provides guidance on the correct tariff code to be used for particular products. IQF products would be classified under tariff headings 0207..1.4.00. It is interesting to note that Brazil does not differentiate between IQF boneless chicken and chicken with bone in. Therefore, irrespective of whether or not the IQF product contains bone, it would attract the same rate of duty (see Table 3 below).

Table 3: Tariff structure for chicken meat in Brazil

Heading/ Subheading	Description	Statistical unit	Rate of duty: general
02.0.7	Meat and edible offal, of the poultry of heading 0105, fresh, chilled or frozen		
	Of fowls of the species *Gallus domesticus*		
0207..1.4.00	Cuts and offal, frozen.		common external tariff (%) – 10

Source: Adapted from Mackay (2014:1)

3.2.5 Statistics

Brazil is the leading exporter of chicken meat. Brazil's main export is breast fillets, which attract a better price outside of their domestic market. Table 4 (overleaf) illustrates the vast difference between the import and export

volumes in Brazil, as well as the strength of Brazilian production capacity. Brazil's per capita consumption of chicken meat in 2012 was 46.7 kg (AVEC, 2013:38).

Table 4: Brazil's import/export statistics for IQF chicken (2011-2013)

Year	Value of imports (USD)	Import volumes (tonnes)	Value of exports (USD)	Export volumes (tonnes)
2011	6 979	2 220	4 454 340	2 067 339
2012	5 784	2 136	4 272 332	2 142 946
2013	8 410	2 448	4 198 992	2 067 873
Total	**21 173**	**6 804**	**12 925 664**	**6 278 158**

Source: Adapted from International Trade Centre (2014)

3.2.6 Trade initiatives

Mercosur, the Common Market of the South, is an economic and political agreement among the Mercosur member states Argentina, Brazil, Paraguay and Uruguay to promote the free movement of goods, services and people amongst member states in an equitable manner (Klonsky *et al*., 2012). Mercosur's primary interest has been to eliminate obstacles to regional trade, such as high tariffs and income inequalities. Analysts say 'Mercosur has become somewhat paralyzed in recent years, with its members being divided over whether the organization should remain focused on regional trade or whether it should add political affairs to its original mandate' (Klonsky *et al*., 2012).

SACU has an unimplemented agreement with Mercosur that could provide South Africa with improved preferential rates (SARS, 2008:15).

3.3 UNITED KINGDOM

3.3.1 Legislation

In the UK (which forms part of the EU), customs and excise transactions are governed by the Customs Code of the EC. The EU member countries are bound by the regulations set out by the EC. The EC issues 'Commission Implementing Regulations' which govern each industry sector and how goods from each sector must be taxed for customs and excise purposes (EC, 2014a).

Non-preferential rules of origin are regulated in terms of the Basic Origin Regulation, issued by the EC. This Regulation details the provisions provided to member states, including the UK, to manage rules of origin within the ambit of the customs authority, in this case, the UK. The Basic Origin Regulation contains articles which manage all origin matters. Article 1 defines the concept of origin of goods for purposes of applying the Common Customs Tariff to the importation and exportation of goods (Bourgeois *et al*., 1994).

Preferential rules of origin are regulated in terms of the different trade agreements negotiated between various countries and also, in the case of the EU, by the EC. There is a general system of preferential rules of origin that is used by all EU member countries. This system is then adjusted, based on negotiations between the contracting countries.

3.3.2 Customs and excise rules of origin

The EU's Generalised System of Preferences is a system of preferential duty rates that have been granted unilaterally by the EU to goods that originate from developing countries. The preferential rates are either in the form of reduced or zero rates. The rules of origin are used to determine where the country of origin of the goods is, in other words, where the goods are deemed to have been manufactured (EC, 2014a).

The application of the EU rules of origin determines whether goods originate in the beneficiary country in question. A positive result of this tax regime is that goods become eligible for preferential tariff treatment upon importation into the EU (EC, 2014a). Goods are deemed to originate in a particular beneficiary country if they are either wholly obtained in that country, or have been sufficiently processed there (EC, 2014b).

The rules of origin detailed below (overleaf) are the preferential rules of origin applied by the UK when dealing with goods that are imported or exported. The articles below are the rules of origin, as extracted from the Generalised System of Preferences, are those adopted by the EC (2014b:12-23):

- *Article 75*

  In terms of article 75, for goods to be wholly obtained in a particular country if the goods were solely produced in that country. Any minor addition from any other country will prohibit the goods from being labelled as wholly obtained. Examples of goods that would fall into the wholly obtained category would include goods that naturally occur in a country or where the raw materials used to produce the goods are all naturally occurring materials. An exhaustive list of items that can be considered for classification as wholly obtained is detailed in Article 75. The items of relevance to this study are the following (EC, 2014:12):

  - c. live animals born and raised in that country;
  - d. products from live animals raised in that country;
  - e. products from slaughtered animals born and raised in that country;
  - f. products obtained by hunting or fishing conducted there; and
  - m. goods produced there exclusively from products specified in (c) to (f).

- *Article 76*

  Article 76 provides clarity on 'sufficiently worked or processed products'. It has become rare to find instances where only a single country is involved in the manufacture of goods. Due to globalisation of the manufacturing process, goods are made from components and materials from numerous countries. Such goods are not classified as wholly obtained (as explained in Article 75 above), but these goods can obtain originating status by meeting the conditions set out. The condition is that only the non-originating materials used in manufacture have undergone 'sufficient working or processing'. The assembly or processing methods that qualify as 'sufficiently worked or processed' depend on the type of goods made and are listed in Annexure 13a to the EU journals. Table 5 (overleaf) displays the details of the 'sufficient working or processing' required for non-originating materials in order for originating status to be conferred on IQF products (EC, 2014:12-13).

Table 5: Qualifying conditions for IQF products (EU rules of origin)

Harmonised System Heading	Description of product	Qualifying operation
Chapter 2	Meat and edible meat offal	Manufacture in which all the meat and edible meat offal in the products of this chapter is wholly obtained.

Source: Adapted from the EU (2010:6)

In summary, there are three methods that can be used, on their own or in a combination, to effectively determine what amount of work or processing is considered 'sufficient':

- the change of tariff heading criteria – a product is considered to be sufficiently worked or processed when the product obtained is classified in a 4-digit heading of the WCO Harmonised System, which is different from the heading in which all the non-originating materials used in its manufacture are classified;
- the ad valorem criteria – the value of non-originating materials used may not exceed a set percentage of the ex-works price of the produce; and/or
- the specific process criteria – certain operations or stages of the manufacture process have to be carried out on any non-originating materials (EC, 2014b:14).

One of the three above methods must be used to determine origin of goods, which includes non-originating materials.

- *Article 77*

Article 77 stipulates that a test of whether or not the conditions of Article 76 have been satisfied must be carried out for each different set of goods. In other words, if the goods in question only contain originating materials, then they are not subject to the conditions of Article 76, and Article 77 is not applicable, so origin has to be determined in terms of Article 75.

- *Article 78*

  Article 78 provides criteria directly opposed to those in Article 76. It contains the list of operations which, individually or in combination, are excluded from being able to confer origin. This list applies only to instances where no other operations have been carried out. This serves a double purpose, firstly, within the framework of the rules of origin as set out in Annexure 13a of the EU journals, and secondly, in the framework of Article 84 (set out below). The intention, however, remains the same, namely to avoid origin being conferred on a product where the amount of processing done, in terms of the Article 78 list of operations, in insignificant. The following items from the list are applicable to the current study:

  - a. Preserving operations to ensure that the goods remain in good condition during transport and storage;
  - i. sharpening, simple grinding or simple cutting;
  - n. simple addition of water or dilution or dehydration or denaturation of products;
  - p. a combination of two or more of the operations specified in points (a) to (o); and or
  - q. slaughter of animals (EC, 2014b).

  In the case of IQF products, brining of such products by way of dilution or the adding of water is included, indicating how strict the UK is when conferring origin on any goods.

- *Article 79*

  Article 79 clearly sets out the tolerance rule. The rule is that non-originating materials may be used during the manufacture of goods, even if the conditions of Article 76 are not met, provided that their total value does not exceed either

  - 15% of the weight of the total product, except in the case of fishery products; or
  - 15% of the ex-works price of the total product for other products.

  This is similar to the ad valorem percentage used in South Africa.

- *Article 80*

  This article stipulates the basic unit of measure for the purposes of determining the origin of goods. This unit is the same unit used in terms of the WCO Harmonised System.

- *Article 81*

  This is a presumption provision for accessories, spare parts and tools which are delivered with any piece of equipment, machine, apparatus or vehicle. The above mentioned additional items are deemed to have the same origin as that of the equipment, machine, apparatus or vehicle as determined in terms of the articles above. If the additional items are shipped separately to the equipment, the presumption may not be applicable (Bourgeois *et al*., 1994:98-100).

- *Article 82*

  Article 82 deals with a set of goods. A set of goods is generally considered as originating goods when all the items that make up the set are originating. In circumstances where a set contains originating and non-originating components, the entire set of goods is deemed to be originating if the sum of all the non-originating items does not exceed 15% of the ex-works price.

- *Article 83*

  This article lists the items to be excluded from inclusion in the determination of origin of goods. The excluded items are the following:

  - energy and fuel;
  - plant and equipment;
  - machines and tools; and
  - any items which should not and are not intended to be a part of the final product.

- *Article 84*

  It is a common rule of trade that all working and processing for origin purposes must have been carried out in the country of export. However, Article 84 details the first of the two exceptions that have been made to the above rule. The rule of donor country content (or bilateral cumulation) dictates that materials which originate within the EU, as defined by the EU general system of preferences

rules of origin, and where further work or processing is performed in a beneficiary country, are deemed to originate in that beneficiary country. It must be noted that the work performed in the beneficiary country must equate to 'sufficient work or processing'.

- *Article 86*

  Article 86 provides the second exception, which is regional cumulation. This rule is only in one of the regional groups, as dictated by the EU. None of the countries included in the study are eligible for this exception. The exception states that materials which originate in one country of the same group and are further worked on or processed in another country are deemed to originate in the second country.

3.3.3 Poultry industry

The EU is a vital player in the international poultry trade. During 2012, the poultry industry of the EU produced approximately 12 900 000 tonnes of poultry meat, of which 76% was made up of broiler chicken production, amounting to 9 923 000 tonnes (Van Horne & Bondt, 2013). The UK is the leading producer of broiler meat in the EU, with a total broiler production of 1 400 000 tonnes in 2012. The EU imports a sizable amount of poultry meat. These imports stem from countries such as Thailand and Brazil. The import is designed to meet the high demand for breast fillets, for which there is a preference among EU consumers (Van Horne & Bondt, 2013).

3.3.4 Tariff structure

The tariff structure set out inTable 6 (overleaf) provides guidance as to the correct tariff code to be used. IQF products would be classified under tariff headings 0207.14.10 and 0207.14.90, depending on whether or not the IQF goods are boneless or still contain bone.

Table 6: Tariff structure for chicken meat in the UK

Heading/ Subheading	CD	Description	Statistical unit	Rate of duty
0207.12.20	1	Carcasses (excluding necks and offal) with all cuts (e.g. thighs, wings, legs and breasts) removed	kg	31%
0207.12.90	2	Other	kg	82%
0207.14.10	7	Boneless cuts	kg	12%
0207.14.20	4	Offal	kg	30%
0207.14.90	5	Other	kg	37%

Source: Adapted from the AVEC (2013:44).

3.3.5 Statistics

Research has shown that the average offer price of broiler breast fillets in the EU during 2011 was lower than in some EU member countries. Table 7 demonstrates the growth in EU export volumes of IQF products, and the minor increase in import volumes into the EU. The UK per capita consumption of chicken meat in 2012 was 22.2 kg (AVEC, 2013:38).

Table 7: EU import/export statistics for IQF chicken (2011-2013)

Year	Value of imports (USD)	Import volumes (tonnes)	Value of exports (USD)	Export volumes (tonnes)
2011	538 069	133 220	240 571	154 706
2012	449 779	117 141	213 370	133 470
2013	471 862	118 865	234 060	137 170
Total	**1 459 710**	**369 226**	**688 001**	**425 346**

Source: Adapted from International Trade Centre (2014)

3.3.6 Trade initiatives

Currently South Africa and the EU have a bilateral Trade Development and Co-operation Agreement which establishes free trade between South Africa and all EU member countries (including the UK). This trade relationship has been in effect from 2000 and has been ratified by both parties (EC, 2014a). This agreement

includes a clause for minimal operations which lists operations that are considered as insufficient working or processing to grant the status of originating products. A value tolerance rule has also been included which states that non-originating materials that have been explicitly excluded from use in manufactured goods can be used in manufacture if the total value of the non-originating goods does not exceed stipulated values. The stipulated value varies from 10% to 15% of the ex-works price, depending on the manufactured product (EC, 2014a).

The EC also has a general system of preference which allows for non-reciprocal preferential tariff treatment on a number of products granted to developing countries (such as South Africa and Brazil). These preferential tariffs can be applied parallel to the above agreement in place, and exporters have a choice of using whichever tariff is most beneficial to them (EC, 2014a).

The EBA initiative was enacted in 2001 in order to bring economic benefits to the least developed countries around the world and its inhabitants. The aim was to provide more lenient access to the EU market. South Africa has currently entered into an agreement with the EU to provide mutually beneficial preferential treatment for EU exports to South Africa; however, this agreement is limited to a specific range of products (Williams, 2013). Therefore the Everything But Arms initiative could provide South Africa with more leniency in the range of exports and greater access to a wider spread of the EU. The UK will also be a contracting party to the Everything But Arms initiative, which is relevant if the initiative is ratified by South Africa during 2014. However, the Everything But Arms is in conflict with the possible renewal of *AGOA* in 2015, therefore South Africa as one of the main beneficiaries on both trade instruments will need to consider its options carefully and negotiate accordingly. The Everything But Arms places USA companies at a competitive disadvantage in comparison to EU companies in some industry sectors (Cernat *et al.*, 2003).

There is a free trade agreement between the European Free Trade Association states and the SACU states, of which the UK and South Africa are respective members, and which intends to increase investment prospects between the

member states, as well as to enhance harmonious development of world trade. This free trade agreement agrees to domestic duty rates as illustrated in Table 1. Article 14 of the free trade agreement describes specific sanitary and phytosanitary measures which all members must adhere to in order for trade to occur in terms of this free trade agreement. These measures are currently absent from South African domestic legislation.

3.3.7 Case law

Article 76 has been the cause of subsequent case law due to the four substantive criteria it stipulates. In a German case, *Überseehandel*, a raw material, casein, which was imported from the Soviet Union and Poland, but was cleaned, grinded, graded and packaged in Germany, had acquired EU origin. The origin committee concluded that the processes were insufficient to confer origin. On close scrutiny by the court, it was held that the determination of origin of goods must be based on a 'real and objective distinction between raw material and processed product depending fundamentally on the specific material qualities of each of those products' (Bourgeois *et al*., 1994). The court ruled that the grinding and grading did not constitute a substantial process or operation as intended by Article 76.

3.4 UNITED STATES OF AMERICA

3.4.1 Legislation

The USA's cross border transactions are regulated by the *Tariff Act of 1930,* which provides that 'every article of foreign origin' or its packaging must be marked in a manner that will inform the ultimate purchaser of its country of origin (cited in Bourgeois *et al*., 1994). The term 'ultimate purchaser' is not defined in the *Tariff Act of 1930* and therefore the courts have been left to rule on the true meaning of this term.

3.4.2 Customs and excise rules of origin

The rules of origin are administered by the U.S. Bureau of Customs and Border Protection of the U.S Department of Homeland Security (U.S. Customs and Border Protection, 2004).

Customs legislation in the USA has a critical 'substantial transformation' test to determine the origin of goods. This test makes up the one non-preferential rule of origin in the USA. To perform the test, one must focus clearly on the definition of manufacture. Manufacture is a term which indicates change, although every change is not necessarily manufacture. For a change to be manufacture, it must contain a transformation element, and a new and distinctively different article must emerge after manufacture (U.S. Customs and Border Protection, 2004).

There is a rule of origin scheme that is used to establish the country of origin of a product for the purpose of a 'most-favoured-nation' duty application. It relies on the 'wholly obtained' criteria that refer to goods' being wholly the growth, product or manufacture of a specific country (U.S. Customs and Border Protection, 2004).

At face value, the USA has no preferential rules of origin, because the substantial transformation test is used to determine origin for all purposes (Bourgeois *et al*., 1994). However, the statutory purpose of the goods is also considered. The USA maintains preferential programmes that contain additional criteria that need to be met in order to obtain the preference (U.S. Customs and Border Protection, 2004).

3.4.3 Poultry industry

The USA is the second largest poultry exporter worldwide and is considered to be one of the most efficient producers internationally (Office of Industries, 2014). In the USA, the national chicken council has set out requirements for broiler chicken end products to promote the production of quality products. Chicken is the most universally consumed meat in the USA, and accounted for 38% of all meat consumed in the USA during 2012. Consumers in the USA show a preference for

wings, which made up 42% of all chicken consumed in 2011 (Office of Industries, 2014).

3.4.4 Tariff structure

The tariff structure set out in Table 8 provides guidance on the correct tariff code to be used. IQF products would be classified under tariff heading 0207.14.00. It is interesting to note that the USA does not differentiate between boneless IQF products and IQF products that contain bone. Therefore, irrespective of whether or not the IQF product contains bone, it would attract the same rate of duty as set out in Table 8 below.

Table 8: Tariff structure for chicken meat in the USA

Heading/ Subheading	Description	Statistical unit	Rate of duty: general
0207	Meat and edible offal, of the poultry of heading 0105, fresh, chilled or frozen		
	Of chickens:		
0207.14.00	Cuts and offal, frozen		NTR – 17.6c/kg
0207.14.00.20	Livers	Kg	
0207.14.00.40	Other	Kg	

Source: Adapted from Mackay (2014)

3.4.5 Statistics

Because the USA is one of the largest producers of poultry, its import volumes are minimal and represent only approximately 0.3% of domestic consumption.Table 9 below illustrates the significant differences between import and export volumes in the USA. The US per capita consumption of chicken meat in 2012 was 42.2 kg (AVEC, 2013:38).

Table 9: USA's import/export statistics for IQF chicken (2011-2013)

Year	Value of imports (USD)	Import volumes (tonnes)	Value of exports (USD)	Export volumes (tonnes)
2011	113 181	41 706	3 332 192	2 932 004
2012	120 509	39 628	3 639 300	3 057 282
2013	139 122	43 643	3 493 337	2 945 032
Total	**372 812**	**124 977**	**10 464 829**	**8 934 318**

Source: Adapted from International Trade Centre (2014:)

3.4.6 Trade initiatives

The USA's *AGOA* is a trade initiative that came into effect in 2000. The *AGOA* provides preferential access to goods of African origin in the USA's markets. *AGOA* was created with the intention of increasing Africa's exports to the USA and improving economic relations with participating African countries. South Africa is one of the participating African countries to this trade initiative by the USA. South Africa dominates other participating African countries in certain trade sectors (Williams, 2013:2) in using this initiative. *AGOA's* current expiration date is 30 September 2015, and its renewal will prove important to South Africa's global economic status. South Africa, as the most economically advanced *AGOA* country (Williams, 2013:2), and the one that makes the most significant use of the current provisions of *AGOA*, stands to gain the most from the renewal of this Act, or the possible creation of a separate but similar trade initiative with the USA. South Africa, as a leading African country, needs to engage developed economies in order to attract advantageous comprehensive trade initiatives, such as *AGOA*, to the African continent.

3.4.7 Case law

As formulated in *Anheuser-Busch Brewing Assn. v. United States*, the test of substantial transformation is the most crucial rule of origin in the USA. It was held that the outcome of the test determines the 'most-favoured-nation' tariff rates that can be used (Bourgeois *et al*., 1994).

3.5 CONCLUSION

Brazil and the USA are dominant competitors in the poultry industry, leaving limited room for new competitors. The UK is also competitive in this industry, but is also a noteworthy importer of chicken breast portions, due to consumer preferences. The UK's customs and excise rules of origin are very detailed and contain many conditional requirements in order for EU origin to be conferred upon goods. The USA's rules of origin are evidently highly regulated, which creates barriers to trade that are now being counteracted by various trade initiatives.

CHAPTER 4:
COMPARISON OF COUNTRIES

4.1 INTRODUCTION

In this chapter the South African rules of origin and the related customs and excise legislation are evaluated against those of the three countries chosen for comparison (Brazil, the UK and the USA). The focal industry of this study, the poultry industry, is also compared for all four countries included in this study.

4.2 COMPARISON

The comparison follows the same structure and uses the same set of sub-headings already used in Chapters 2 and 3.

4.2.1 Legislation

From a legislative perspective, South Africa is very similar to the UK, in that its law provides a good foundation for the rules of origin. Brazil's legislation is somewhat simplistic, providing stakeholders only with a very loose legislative framework. By comparison, South African legislation is very firm and is substantiated by case law, interpretations and guides. The USA's legislation is very specific, and South Africa, although it also has well-implemented legislation, could learn from the USA and seek to include more definitions in its customs and excise legislation.

4.2.2 Customs and excise rules of origin

The UK's rules of origin include sufficient detail for practical application in the industry. These rules contain very inclusive conditions and requirements. South Africa should endeavour to improve the clarity of its rules of origin to align them with those of the UK, especially given the existing trade relationship with the UK, which can be developed. If the UK recognises South Africa's efforts to align its rules of origin with those of the UK, trade between these countries is likely to increase.

Brazil's and the USA's rules of origin are very straightforward in comparison to those used in South Africa. The rules of origin in Brazil and the USA are limited, and are fewer than those used in South Africa, but also extremely specific. South Africa could learn from this, and minimise the number of rules, possibly even negotiating similar rules of origin rates and terms for more than one country to reduce the number of different rules of origin per country.

4.2.3 Poultry industry

Brazil's exports to South Africa have increased by over 40%, year on year (Bricpartner.com, n.d.), which has put domestic producers in South Africa under strain. To place the Brazilian poultry industry in context, compared to South Africa, it employs, both directly and indirectly, approximately 45 times the number of labourers that are employed in South Africa (Bricpartner.com, n.d.).

It is difficult for the South African poultry industry to compete with the massive, inexorable force of Brazil in the poultry industry (Bricpartner.com, n.d.). However, South Africa can learn from the strengths of its fellow BRICS member country. South Africa has much to absorb in respect of production efficiencies and technology in relation to broiler production. South Africa should consider importing cheaper feed to reduce input costs and should ensure that broiler production plants are ideally located close to all necessary resources to reduce transport costs and reduce labour time. South Africa has the potential to become a force to be reckoned with in the poultry industry, like Brazil.

South Africa can seize the opportunity created by the Trade, Development and Cooperation Agreement with the EU. The EU is a large market that could provide South African producers with a significant increase in demand and market availability. The EU poultry market has the potential for consumption to grow, and South African producers should use that growth to improve their export volumes. UK consumers have a definite preference for breast fillets, and since South African consumers have a preference for leg quarters, there is an opportunity for both countries to benefit from their consumers' preferences.

The EU slaughter cycle is stipulated at the international industry norm of 56 days. Therefore South Africa is slaughtering broiler chickens 21 days earlier than stipulated in international standards. Hence South Africa is losing out on approximately 21 days of growth, resulting in lower IQF chicken volumes and poor production recoveries. If South Africa were to change its slaughter cycle to 56 days (Van Horne & Bondt, 2013), the broiler chickens would produce more breast fillet portions, which would meet the increasing demand of the EU consumers and the breast fillets could be sold at a premium to the EU consumers.

4.2.4 Tariff structure

The assessment of the tariff structure of IQF tariff codes between South Africa and the three countries chosen for comparison has identified a number of similarities and differences. The UK and the South Africa are similar, because the tariff codes in respect of the IQF products are split into two categories, boneless chicken, and meat with bone (‘bone-in’). This type of tariff structure can be useful, considering the preferences of UK consumers for breast fillet portions, which are boneless.

In comparison to the tariff structures in Brazil and the USA, the South African tariff structure appears to be more complicated. Neither Brazil nor the USA differentiates between boneless IQF products and ones without bone. Perhaps South Africa should weigh up whether having two categories is worthwhile. If South Africa does not gain much advantage from having two categories rather than one, then it should consider reducing the IQF tariff structure to one category. If only the poultry IQF industry is considered, this is irrelevant, as South Africa does not export chicken to Brazil or the USA (see Table 11).

4.2.5 Statistics

On the basis of the research on each country’s import and export volumes and values, Table 10 and Table 11 (overleaf) summarise past patterns in the South African poultry industry. It is clear from the tables below that the three countries selected for the study are key competitors to South Africa. The sum of their import

volumes of IQF products into South Africa equate to 45% of total South African imports of IQF products, which is a substantial amount in both volume (tonnes) and value (USD). The figures provide insight into the strength of the UK's poultry industry, which should not be underestimated, because although the UK's export volumes are significantly lower than Brazil's and the USA's export volumes, the UK has been able to gain market share from both countries.

Table 10: South African import volumes and values per source country

Year	**Value of imports (USD)**			**Import volumes (tonnes)**		
Country	**Brazil**	**UK**	**USA**	**Brazil**	**UK**	**USA**
2011	111 480	19 263	7 423	69 523	14 496	6 063
2012	89 156	33 924	10 289	61 874	23 662	7 299
2013	67 473	50 035	2 729	44 556	34 885	2 936
Total	**268 109**	**103 222**	**20 441**	**175 953**	**73 043**	**16 298**
Total South African import volumes from the three countries compared:			391,772			265,294
As a percentage of total South African import volumes:			48%			45%

Source: Adapted from International Trade Centre (2014)

Based on South African export volumes, and taking into consideration that Brazil and the USA are two of the top three IQF producers, it is clear that in order for South Africa to become a quality competitor, it should learn from the industry insight gained from Brazil and the USA, and improve its own poultry industry. Increased exports into large economies would open a window for South African producers. At present, South African export volumes cannot compare with those of countries such as Brazil, the UK and the USA in respect of the poultry industry.

Table 11: South African export volumes and values per destination country

Year	Value of exports (USD)			Export volumes (tonnes)		
Country	**Brazil**	**UK**	**USA**	**Brazil**	**UK**	**USA**
2011	0	9	0	0	3	0
2012	0	0	0	0	0	0
2013	0	95	0	0	75	0
Total	**0**	**104**	**0**	**0**	**78**	**0**
Total South African export volumes from the three countries compared:			104			78
As a percentage of total South African export volumes:			0.14%			0.17%

Source: Adapted from International Trade Centre (2014).

4.2.6 Trade initiatives

Thus far, SACU has not implemented an agreement with Mercosur to provide preferential tariff rates to South Africa in respect of import and export transactions. This unimplemented agreement with Mercosur should be a focal point for South Africa's export endeavours. South Africa, as a pivotal member of SACU, should ensure that any rules of origin obstacles are cleared in order for this agreement to be implemented and ratified into law.

Both South Africa and the UK belong to customs unions, and they have trade agreements with each other. South Africa does not yet fully use the duty free access provided to it by the EU trade agreement. Some of the barriers experienced by South African broiler exporters are non-tariff related, and these should therefore be resolved in order for the South African broiler industry to broaden its export volumes to the UK. For example, Article 14 of the European Free Trade Association details phytosanitary measures that are obligatory, but due to a loophole in South African legislation that allows domestic producers to bypass this requirement for domestic production purposes, all domestic producers are preventing from entering the EU poultry market as South African exporters. Phytosanitary measures should not be the reason for lost profits and unearned tax revenue. The phytosanitary measures in question are the brining solution that

South African producers insert into IQF products. The quantity of water that is inserted into the chicken meat falsely increases the volume of the chicken meat. Therefore water is effectively being sold at the price of frozen chicken. Theoretically, if chicken is sold at a price of ZAR 39.99 per kg, and a bottle of water costs ZAR 16 per litre, an IQF consumer would effectively be paying ZAR 13.99 more per kg simply for water.

In addition, the duty free access provided to South Africa in terms of the EU in Table 1 is trumped by new anti-dumping legislation being introduced by the EU. If a South African broiler producer exports chicken breast fillets into the EU, under duty free rates, the imported IQF products could be levied with anti-dumping duties. The anti-dumping duties could add up to an amount in excess of the original duties payable on the IQF products had there been no rate reduction.

The *AGOA* legislation enacted by the USA has not been effectively used by South Africa either, and therefore as the *AGOA* renewal discussions commence (due to the eminent expiration of the agreement), South Africa needs to re-evaluate how it can best change its past behaviour. South Africa needs to reconsider how it can best use the preferential tariffs allowed in terms of *AGOA* and make some changes to avoid being excluded from the renewed version of *AGOA* in 2015. The current failure to use the provisions of *AGOA* to South Africa's benefit may reflect a scarcity of skilled labour in the Department of Trade and Industry who can understand and interpret international legislation and trade agreements effectively.

4.3 CONCLUSION

From a comparison of the rules of origin of South Africa with those of Brazil, the UK and the USA, it can be deduced that South Africa can make some improvements to its rules of origin. The quality of the UK rules of origin can be emulated by South Africa to ensure that South Africa avoids losing benefits in terms of trade initiatives. Moreover, South African trade initiatives with Brazil and the USA need to be confirmed and properly used to South Africa's best advantage. The example of the poultry industry has also provided insight into some loopholes in the South African rules of origin that can be closed.

CHAPTER 5:
CONCLUSION

4.4 INTRODUCTION

This chapter provides an advisory conclusion in the light of the comparisons made between the selected countries. The rules of origin of Brazil, the UK and the USA have been researched and compared to those of South Africa.

4.5 REFLECTION ON ADDRESSING THE RESEARCH OBJECTIVES

The poultry industry, specifically IQF products, has provided a useful perspective on different rules of origin in four countries and has shown how the economics of taxation play an important role in generating improved trade and thus the steady growth of tax revenue. South Africa must be well prepared for rules of origin negotiations, and needs to leverage its unparalleled access to the African economic community to its advantage to ensure that it obtains the most beneficial rules of origin and related duty rates. This will increase trade and result in additional tax revenues. South Africa should apply the lessons learned from dealing with countries such as Brazil, the UK and the USA to tap into economies that the more developed countries have not yet negotiated with, for example, South Africa's best export customers of IQF chicken products are Lesotho and Mozambique. South Africa needs to increase its customer base by proactively approaching other African countries, and most especially other countries of similar stature, to enable South Africa to strengthen its bargaining power with the more developed countries.

Compared to Brazil, South Africa has much to learn about how best to operate in the broiler chicken industry regarding IQF products. Although it is a similar emerging market, Brazil is more advanced in terms of its production synergies, and it has managed to create a domestic consumption industry that is substantially a mirror image equivalent to its export industry. South Africa needs to identify its

own production gaps in the broiler chicken industry, and apply the lessons taught by Brazil to elevate South Africa onto the global trading platform for IQF products. Given that Brazil and South Africa are both members of BRICS, South Africa can accurately measure its progress against the Brazilian poultry industry to ensure that it sets and meets attainable targets to bring its poultry industry on par with that of a similar developing country such as Brazil.

4.6 CONCLUSION ON THE FINDINGS

The conclusions reached in assessing the USA's rules of origin are partly unexpected. Although the USA has the largest economy worldwide overall, in the poultry industry, it plays second fiddle to Brazil (albeit a formidable second fiddle). This provides some inspiration for South Africa in that even in developed countries there is always room for more development. The South African customs and excise legislation is extremely well executed administratively and is competitively on par with that in the USA, but the implementation and utilisation of all possible avenues in relation to rules of origin have been not completely and efficiently exhausted by South Africa.

The UK's and South Africa's rules of origin are fairly well matched in terms of equal and opposite complementing cuts of chicken. The various trade agreements and initiatives between the EU (of which the UK is a member) and South Africa, SACU and SADC testify to this synergy.

4.7 RECOMMENDATIONS

South Africa should review all EU-related trade agreements and initiatives and should possibly consolidate them to form a clear and concise trade route between the UK and South Africa, with particular focus on the rules of origin. South Africa should also ensure that any ambiguity or obligatory requirements in terms of these agreements are either clarified or can be reasonably met. Aside from revisiting the rules of origin, concentrated efforts should be made to comply with phytosanitary requirements in terms of Article 14 of the EU trade agreement with South Africa to meet EU requirements and gain access to the large IQF market that is available in

terms of the trade agreements signed. The EU's phytosanitary requirements have brought the loopholes present in South African legislation to the surface and attention should be given to addressing this oversight with legislators to ensure that appropriate amendments are made. Immediate attention must be focused on the preferential rules of origin to be included and agreed upon in the Everything But Arms initiative to be signed in 2014.

South Africa has already built good relationships with key players in the international poultry industry, and this provides a good foundation on which the South African broiler production industry can achieve greater success. The momentum of the pending *AGOA* renewal and Everything But Arms initiative are all taking the South African export industry to new heights. This will stimulate trade and shed a positive light on South Africa and its potential as a developing country in the customs and excise sector.

4.8 SUGGESTIONS FOR FURTHER RESEARCH

The WCO has an action plan on preferential rules of origin which commenced in 2007 and is steadily progressing (WCO, 2013a). This action plan aims to standardise preferential rules of origin across the world. It is questionable how marketable trade agreements will become once the preferential rules of origin become less preferential and more equal. Perhaps this will level the playing field for developing countries such as South Africa. In future, research could look at this action plan and its outcomes.

A harmonization of non-preferential rules of origin negotiation is also taking place at the World Trade Organization (WCO, 2013a). These negotiations have resulted in a draft text which has not yet been presented to the WCO's rules of origin committee for review. The draft texts are eagerly anticipated by countries such as South Africa that do not participate in many preferential rules of origin arrangements and should be considered carefully.

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