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What Makes It Difficult for Free Trade Agreements to Apply in Indonesia?

Shinta Ayu Sri Yunindhar[1], Siti Nuryanah[2]

University of Indonesia, Jl. Salemba Raya No.4, DKI Jakarta, 10430, Indonesia

ABSTRACT

This study aims to analyze the reasons why free-trade agreements are difficult to apply in Indonesia by analyzing tax disputes over certificates of origin (CoO). The fulfillment of the CoO requirements determines whether import duty reduction in the free trade agreement can be granted. This research is a case study of customs audits and re-examinations using descriptive qualitative methods. The research instruments used were content analysis and semi-structured interviews. Primary data will be obtained through semi-structured interviews conducted with the Auditor's Representative, Audit Quality Supervisor, and Audit Results Evaluator. The secondary data used were from 150 tax court decisions. The results showed that there are still evidentiary problems, unclear procedures, differences in understanding of the rules, and rationalization from importers on the use of CoO. This condition is supported by differences in judges' beliefs in deciding disputes. This research contributes to the consideration of auditors and importers in handling CoO examinations, regulators in making and updating policies, and judges in deciding disputes.

Keywords: audit; certificate of origin; free trade agreement; tax disputes.

INTRODUCTION

Increased international trade is inevitable in this era of globalization. Each country seeks to cooperate with others to facilitate the movement of goods. One of these partnerships was formalized by the establishment of a free-trade agreement. Free-trade agreements facilitate trade between countries because they reduce tariff barriers. Based on information obtained on the page https://fta.beacukai.go.id/, as of 2022, Indonesia has implemented 15 free trade agreements. To facilitate these agreements, a certificate of origin was established. Importers who want to take advantage of these facilities must have a Certificate of Origin (CoO). According to the World Customs Organization (2018a), a certificate of origin refers to a document used to prove the origin of the imported goods. This document is usually used as a requirement to obtain preferential tariffs when processing customs clearances. However, the CoO must first fulfill all the requirements of the Rules of Origin: origin criteria, consignment criteria, and procedural provision. Therefore, it is necessary to check the fulfillment of the Rules of Origin so that customs officers can determine whether a facility can be granted.

✉ *Corresponding author:* **Shinta Ayu Sri Yunindhar[1], Siti Nuryanah[2]:**
E-mail: * shinta.ayu13@ui.ac.id[1]; siti.nuryanah@ui.ac.id[2]

Yi (2015) stated that Rules of Origin (RoO) have three characteristics: restrictiveness, complexity, and uncertainty. Restrictiveness relates to the strict requirements that must be met to obtain a preferential tariff. The larger the margin of preference, the stricter the requirements that must be met (Estevadeordal, 1999). Medalla & Balboa (2009) described the complexity of CoO processing to comply with government regulations, which is costly and burdensome in terms of administration. Cantin & Lowenfeld (1993) stated that unclear RoO and inconsistent interpretations cause uncertainty for importers. Therefore, RoO can act as a barrier to trade (Augier et al., 2005; Brenton & Manchin, 2003). These characteristics often lead to disputes over the use of CoOs. Such disputes can occur due to differences in opinions between customs officers and importers during the examination (Yi, 2016).

CoO examinations in Indonesia are conducted in two stages: clearance (inspection of goods at the port, airport, or other places of entry) and post-clearance (inspection carried out after the goods leave the port, airport, or other places of entry called audit or re-examination). This research will focus more on the post-clearance examination because post-clearance has more time so that more complete and detailed evidence can be collected. Therefore, the examination results will be more varied compared with the clearance stage, which is required to complete the examination immediately.

Table 1. Tax Dispute Decision on Certificate of Origin

Year	CoO Tax Court Decision	Disputed Value of CoO	CoO Tax Court Decision (Post-Clearance Stage)	Disputed Value of CoO (Post-Clearance Stage)
2020	463	97.684.059.434	59	25.772.785.000
2021	384	222.324.619.700	70	175.737.758.000
2022	285	119.231.702.000	100	84.305.261.000
Total	**1132**	**439.240.381.134**	**229**	**285.815.804.000**

Source: Directorate General of Customs and Excise Appeal Data (2023)

Data obtained from the Directorate of Objections, Appeals, and Regulations, Directorate General of Customs and Excise (DGCE) (Table 2) show that tax court decisions on CoO disputes are increasing specifically for the post-clearance stage. Although the number of tax court decisions was only 20,22%, the disputed value reached 65,07% compared to the clearance stage.

From the tax dispute on CoO at the post-clearance stage (Figure 2), it is known that the judges' decision tends to result in a defeat for DGCE (Figure 1). Therefore, it is important to know that the causes of the dispute over the CoO have not recurred.

The increasing number of disputes can indicate that the quality of the information from the CoO is not sufficient, resulting in differences in opinion between auditors and importers. In 2013,

the WCO conducted a study on the irregular use of CoO. This research was conducted among WCO members, but Indonesia did not participate in the research. The study revealed that issues with the use of CoO relate to the completeness of the information provided, consistency with commercial documents, signatures and seals, format conformity, and compliance with procedures (World Customs Organization, 2013). This research proves that errors often occur in CoOs because the information quality does not meet the requirements. Therefore, information quality is important for examination. The higher the information quality provided by the importer, the more accurate are the audit results.

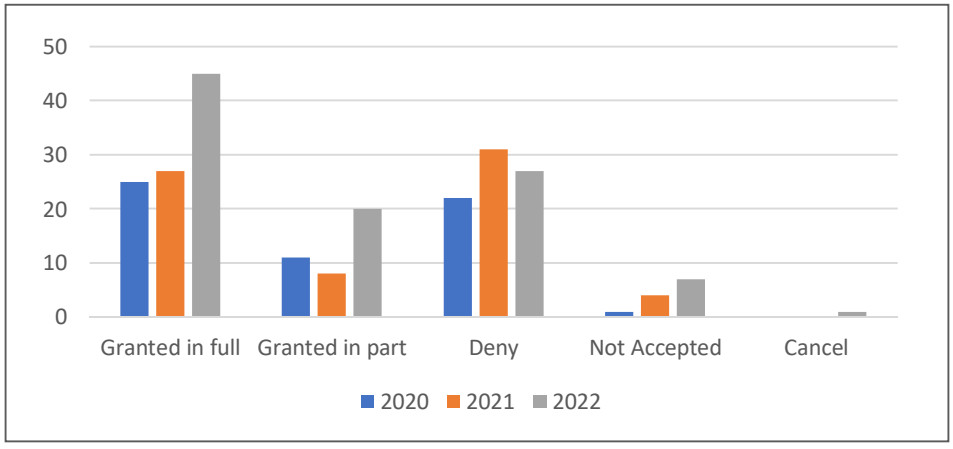

Figure 1. Verdict of the Tax Court
Source: Directorate General of Customs and Excise Appeal Data (2023)

Director General of Customs and Excise Regulation No. 31/BC/2017 regulates information quality in the form of evidence that must be obtained during the audit. The audit findings must be based on competent and sufficient evidence from measurable data and the Customs and Excise Law. Competent evidence provides valid and relevant evidence. Sufficient evidence is sufficient to support the audit findings. In the CoO examination, information quality is an important factor in determining whether the CoO can be used to obtain a preferential tariff. Therefore, insufficient information quality can lead to disputes between auditors and importers.

The emergence of tax disputes over CoO is an event caused by various factors. One theory that can be used to analyze the cause of an event is attribution theory. Weiner & Craighead (2009) states that the purpose of using attribution theory is to identify determining factors of both personal and situational sources. Heider (1958) argues that causal relationships are assigned to the actor and the environment according to their respective perceptions of effective power. Auditors and their audit environment are causal agents (Arrington, et al., 1985). Based on our observation, research related to the causes of tax disputes has been carried out, but the objects studied are different, such as income tax, value-added tax, tax for promotional costs, and royalties (Komarasari et al.,

2023; Perdana, 2020; Purnomo, 2005; Rohman, 2016; Saptono et al., 2021; Yulianto, 2022). Previous researches have identified several causes of tax disputes, such as fulfillment of procedures, rationalization, evidentiary problems, and differences in rule interpretation. Based on attribution theory, the causes of disputes can be grouped into two factors: internal factors that come from a person's personality and external factors that come from the environment (the surrounding situation). However, the causes of tax disputes based on previous research are all influenced by external factors, such as importer opinions and the rules used. This is because disputes can occur when at least two parties have their own opinions.

Purnomo (2005) and Firmantoro (2022) state that inadequate audit procedures are one of the causes of disputes. Therefore, audit procedures must be fulfilled by auditors to improve audit quality is getting better and ultimately have a significant effect on tax dispute decisions (Kusuma, 2019; Roem H et al., 2020). Another cause is rationalization, which encourages each party to seek justification for actions to meet their interests (Roem H et al., 2020; Zakaria et al., 2013). Examiners seek to increase state revenue, but taxpayers attempt to reduce costs (Pratiwi, 2017). Taxpayers feel that they have the right to reduce their tax payments because the state has collected large amounts (Zakaria et al., 2013). In disputes between taxpayers and auditors, a bargaining process inevitably occurs, in which each party prioritizes its interests (Smith & Stalans, 1994). Excessive rationalization will contradict the principle of tax morale, where taxpayers with high compliance will not attempt to avoid taxes (Laksito, 2022).

Disputes between auditors and importers are often based on evidence (Komarasari et al., 2023; Kusuma, 2019; Nasution & Verico, 2019; Perdana, 2020; Purnomo, 2005; Rohman, 2016; Saptono et al., 2021; Yulianto, 2022). Evidentiary problems occur when evidence is not submitted at all, evidence is submitted but doubted by the auditor, and there are differences in the interpretation of the evidence (Ardiansyah, 2022; Elisabeth, 2016; Komarasari et al., 2023; Mayanja et al., 2020; Purnomo, 2005; Saptono et al., 2021). Differences in the interpretation of a rule as a cause of disputes have also been reported by (Khoiry & Rahayu, 2020; Nasution & Verico, 2019; Perdana, 2020; Pratiwi, 2017; Rohman, 2016; Smith & Stalans, 1994; Yulianto, 2022). Differences in the interpretation of a rule can be caused by two factors: an unclear legal description or legal actors who do not understand the regulations (Elisabeth, 2016). Research related to CoO disputes has been conducted, but it is only related to the use of one form of CoO, the ASEAN Trade in Goods Agreement (ATIGA) (Fahri et al., 2022). In that study, the discussion was limited to the fulfillment of procedural provisions, in which case studies were taken from the examination results at the clearance stage in 2021.

This study fills the gap in previous research because it has a different object. Most previous studies are related to the causes of tax disputes under the supervision of the Directorate General of Taxation (income tax, value-added tax, and tax for promotional costs). However, this study discusses taxes under the supervision of the Directorate General of Customs and Excise. In addition,

this research discusses tax court decisions without focusing on the type of CoO and certain criteria, such as those conducted by Fahri et al. (2022). This study focuses on the examination results at the post-clearance stage appealed to by importers. This study will contribute to auditors conducting CoO examinations to minimize disputes, provide information for regulators to improve CoO regulations, and provide information for importers regarding actions that can be taken so that the CoO can be approved. In addition, this study extends Yi (2015) by further examining the implementation of RoO that focuses on tax compliance and completes the World Customs Organization's research related to the origin irregularity typology study on the use of CoO.

The structure of the paper is as follows. Following the introduction, the research method is presented. Then, the third section presents the results of the study and discussions. The last section presents the conclusion, suggestions, and implications of the study.

METHOD, DATA, AND ANALYSIS

This research was a case study of customs audits and re-examinations using descriptive qualitative method. The data-collection techniques used were content analysis and semi-structured interviews. Content analysis was conducted by analyzing 150 tax court decisions for the period 2020-2022 and semi-structured interviews were conducted to confirm the results of the content analysis with the Auditor's Representative, Audit Quality Supervisor, and Audit Result Evaluator (Evaluator).

Tax court decisions for the period 2020-2022 were chosen because in that period the tax court decisions on CoO disputes for the post-clearance stage increased (as illustrated in Table 1). The population of tax court decisions for 2020-2022 was 229. In this study, samples were obtained using proportionate stratified random sampling, in which the total sample was distributed proportionally each year (Schindler, 2022). The number of samples was determined using the Slovin formula:

$$n = \frac{N}{1 + Ne^2}$$

n = the number of samples
N = total population
e = percentage of sampling error

The value of e was determined to be 5%, because the desired confidence level for sample selection was 95%. The 95% confidence level is generally accepted confidence level for most studies (Sekaran & Bougie, 2017). Based on the calculation, the total sample size was 150 consisting of 38 decisions for 2020, 46 decisions for 2021, and 66 decisions for 2022. The sampling process for tax court decisions is as follows:

1. Requesting tax court decisions number data from the Directorate of Appeals and Regulations to facilitate the search for decisions on the Tax Court Secretariat website at https://setpp.kemenkeu.go.id/risalah/IndexPutusan.
2. Based on data from the Directorate of Objections, Appeals, and Regulations, DGCE, there is information on the type of dispute over the CoO, therefore, sample selection is carried out based on different types of disputes (origin criteria, consignment criteria, or procedural provisions). The purpose was to obtain more varied research results.
3. In addition, the sample was taken by considering the different dispute subjects for each type of dispute.

The sampling technique that will be used for interviews is nonprobability sampling, because this technique does not provide equal opportunities for each member of the population to be selected as a sample. The type of nonprobability sampling used is purposive sampling. Purposive sampling was used to ensure that the sample selection was within the objectives of this study (Schindler, 2022; Sinambela, 2022). Therefore, the interviewees chosen were Auditor's Representatives as the party conducting the CoO examination, Audit Quality Supervisor as part of the audit team who have the task of evaluating the implementation of the audit under the audit program, and Evaluator who evaluate the audit report.

To answer the type of dispute will be divided into 3: origin criteria, consignment criteria, and procedural provisions.

Table 2. The Type of CoO Disputes

Type of Dispute	Description	References
Origin Criteria	Disputes arising from doubts that imported goods originated in a contracting state	Rules of Origin
Consignment Criteria	Disputes over the criteria for the shipment of imported goods: imported goods are not shipped directly but through transit/ transshipment. However, the importer is unable to submit the required documents.	Rules of Origin and Operational Certification Procedure
Procedural Provision	Disputes related to procedural provisions that must be fulfilled include the format of the CoO, the fulfillment of signatures and seals from the issuing authority and exporter, the period of issuance, the accuracy of filling in the columns of the CoO, the submission of CoO to the customs officer, and the correctness of filling in the import declaration	Rules of Origin and Operational Certification Procedure

Source: World Customs Organization (2018b)

Data will be analyzed using the Miles and Huberman model, which includes data condensation, data display, and conclusion drawing/verifying (Miles et al., 2014). Data collected through content analysis and semi-structured interviews were selected, focused, simplified, or transformed according to the research objectives. The aim is for the data to be more concise and provide an overview, so that the research is more focused. The data will then be presented in the form of brief descriptions, charts, flowcharts, or something similar (Sugiyono, 2013).

RESULT AND DISCUSSION

Descriptive Statistic

Based on the content analysis of 150 tax court decisions presented in Figure 2, there are 77 decisions with the ruling "Granted in Full", 23 decisions with the ruling "Granted in Part", and 50 decisions with the ruling " Deny". Based on this information, it is known that DGCE often experiences a defeat in tax disputes over CoOs.

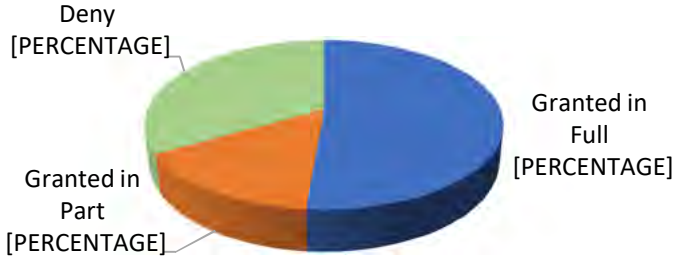

Figure 2. Overall Result of Content Analysis

One decision does not always discuss one type of dispute, therefore, one decision may discuss two or more types of tax disputes over certificates of origin. Based on the content analysis that has been carried out, it is known that there are 11 decisions related to origin criteria, 23 decisions related to consignment criteria, and 133 decisions related to procedural provisions as shown in Figure 3. Procedural Provision was the most frequent dispute (80%) compared to other types of disputes.

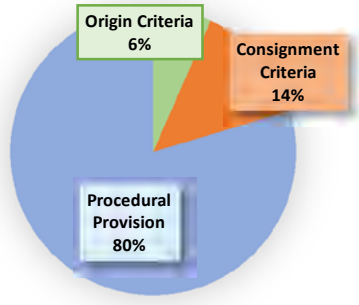

Figure 3. Content Analysis Results Based on Rules of Origin

In addition, content analysis provides an overview of the quantity of each type of CoO form. This overview is obtained from Tax Court Decisions, where one decision may contain more than one disputed CoO form. There are eight CoO forms have been appealed, namely, IC-CEPA, AJCEP, AANZFTA, AKFTA, ATIGA, AIFTA, ACFTA, and JIEPA. The ACFTA form was appealed the most, at 42.39% (78 decisions), while the IC-CEPA and AJCEP forms were only 0.54% (one decision) each. For more details, please refer to Figure 4.

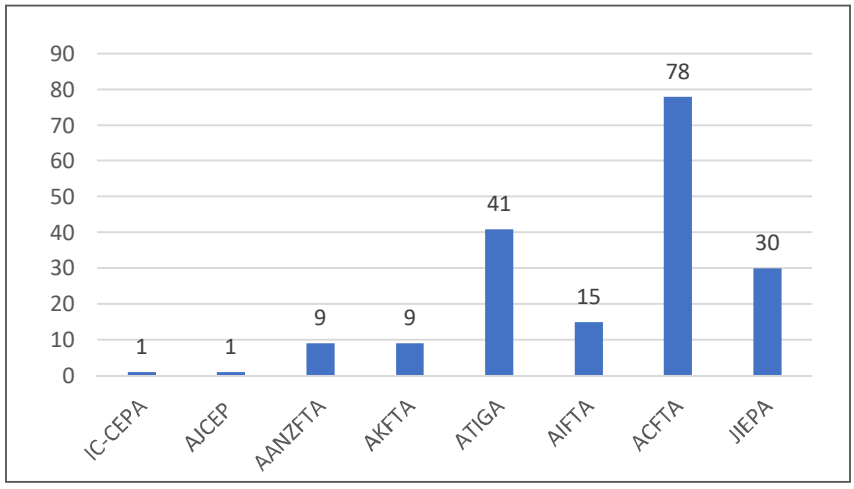

Figure 4. Content Analysis Results Based on CoO Form

Causes of Tax Dispute Based on Rules of Origin

Origin Criteria

Disputes related to the origin criteria are due to doubts about the origin of goods imported by the importer. The auditor questioned the origin of the imported goods because they were deemed to not meet the provisions. There were five decisions with the ruling "Grant in Full", five decisions with the ruling "Grant in Part", and one decision with the ruling "Deny". This proves that disputes related to origin criteria are almost won by importers. The origin criteria include whether a good is wholly obtained/produced or not wholly obtained/produced in a member state of agreement. The disputes that arise are due to evidentiary problem (Anta Kusuma, 2019; Avianti et al., 2023; Nasution & Verico, 2019; Perdana, 2020; Rohman, 2016; Saptono et al., 2021; Yulianto, 2022). Evidentiary problems arise when the evidence submitted by the importer cannot convince the auditor or when there are differences in interpretation between the importer and the auditor in reading the evidence submitted (Smith & Stalans, 1994). The auditor cannot be sure that the goods imported by the importer meet the origin criteria of the free trade agreement scheme. This is because the importer cannot provide evidence to convince the auditor that the goods comply with declared origin criteria. There are several reasons why auditors doubt the fulfillment of the origin criteria:

a. Based on the results of the website check conducted by the auditor, bulk goods from certain types of mineral mines are produced in Australia, which is the largest producer of these goods. However, the importer reported that the goods originated from China, so the importer used form E/ ACFTA form to obtain a preferential tariff.
b. Imported goods do not meet the criteria of wholly obtained and product-specific rules listed in PMK-229/PMK.04/2017.

c. Based on physical inspection, it is known that imported goods are labeled "Made in Korea", but the CoO used is the ACFTA form instead of the AKFTA form.
d. There is a difference in the value of goods between a CoO and an import declaration along with the invoice, which causes the auditor to doubt the origin of the goods.
e. The CoO states that imported goods have origin criteria of "Product Exclusively". However, the brand name of imported goods is owned by a country outside the treaty members, so there is a concern that non-originating materials are used in the production of goods.
f. The supplier of goods is from Vietnam, but production uses materials from China. The importer uses the ACFTA form instead of the ATIGA.

Based on the content analysis, importers do not provide documents as evidence, but importers explain that before the CoO is issued in the exporting country, it must have undergone an inspection (PUT-003743.47/2020/PP/MIXA 2021). If discrepancies arise, the CoO should not be issued. In addition, the importers provided a cost structure from the manufacturer, however, the evidence could not unable to convince the auditors (PUT -007627.47/2021/PP/MIXA Year 2022). In the regulations related to CoOs, the evidence that should be submitted by importers is not explained to prove the origin criteria. The Auditor's Representative states that in conducting examinations, auditors tend to use their professional judgment because there is no detailed procedure for examining CoOs and documents that can be used to prove origin criteria. The Evaluator and Audit Quality Supervisor suggest that, if there is any doubt about the origin criteria, a retroactive check is a procedure that should be performed. The Evaluator said "Evidence related to origin criteria, for example, the cost structure, cannot be provided by the importer because it is a confidential document from the manufacturer of the goods. Requests for such evidence should be made on a G2G basis. Therefore, if there is any doubt, do a retroactive check." A retroactive check is one of the procedures that must be performed when there are doubts about the CoO. A retroactive check is sent to the issuing authority of the CoO to determine whether the origin criteria of the goods conform to those stated in the CoO. Based on the responsibilities of the issuing authority should have, the issuing authority should be able to send the required evidence to the customs authority of the importing country. However, the Judge took issue with the fact that no retroactive check was conducted by the auditor, and the retroactive check had not been answered by the issuing authority.

The Audit Quality Supervisor states that when the auditor checks the origin criteria, the auditor will ask the manufacturer or issuing authority for evidence, such as cost structure. However, not all auditors do this. This means, that the examination procedure is not fully carried out (Firmantoro, 2022; Purnomo, 2005). A similar statement was also conveyed by the Evaluator, that the reality is that retroactive checks are rarely performed, or if they are, the questions are not specific to the origin criteria. "The weakness of retroactive checks is that auditors usually only

ask for valid or not. It should not be like that. Therefore, this request must be clear. For example, how the cost structure is, how the production process is, or where the raw materials are from." The statement follows the statement in the Guidelines on Preferential Origin Verification that the letter sent to the issuing authority must contain (1) a reference to the legal basis for the verification request, (2) specific reasons for verification, (3) consequences of failure to respond or provision of inadequate information, and (4) a request that the answer be provided within the time limit. Evalutor said "The lack of implementation of retroactive checks since origin criteria examination is still rarely carried out. Meanwhile, the urgency to conduct retroactive checks is due to doubts about the origin criteria". The Auditor's Representative made a similar statement "The absence of clear procedures and evidence that can be used, makes the examination of origin criteria only limited to procedural provisions, for example whether the goods in the CoO have entered the kind of origin and if the CoO includes "Product-Specific Rules" in the origin criteria column, whether it is included in the list, without any examination of the accuracy of the origin of the goods". However, this statement is different from the statement of the Audit Quality Supervisor "Origin criteria examinations have been implemented by the auditors in a sequential manner, both rules and also carefully and comprehensively."

Problems related to retroactive checks that do not receive answers should be of special concern for each FTA member. The issuing authority is responsible for providing information to the customs authority of the importing country (World Customs Organization, 2018b). The Audit Quality Supervisor stated, "As the issuing authority, they have an obligation when there are questions from any country participating in the CoO. That is a mandatory duty." Retroactive checks that do not receive an answer and retroactive check answers that are received beyond a specified time are disadvantageous to the importer. The CoO is considered invalid, therefore, the importer must pay a certain amount of charge to the state. However, in the decision numbers PUT -007627.47/2021/PP/MIXA Year 2022 and PUT -007159.47/2021/PP/MIXA Year 2022, the judge used the unanswered retroactive check request as a criterion to decide the dispute. The judge decided in favor of the importer because the non-response to the retroactive check request prevented the judge from conducting further examination to confirm it. This led another Judge to give a dissenting opinion stating that the unanswered retroactive check beyond the specified time, should cause the use of preferential tariffs to be rejected, so the Dissenting Judge decided to reject the importer's appeal. From these decisions, it can be seen that there are still differences in the beliefs of Judges when deciding on disputes.

Based on the analysis above, it can be concluded that the problems related to the origin criteria are caused by the absence of clear procedures and evidentiary guidelines in examining origin criteria. This condition limits the examination of origin criteria to procedural provisions that are unrelated to the accuracy of the substance of the origin of the goods being examined. This affected the low demand for retroactive checks. This condition is caused by the auditor's actions as a form of the absence of clear rules and evidentiary guidelines and differences in understanding between auditors and importers. These problems arise due to external factors that cause disputes

in the use of CoO (Arrington, et al., 1985; Weiner & Craighead, 2009). These problems also occur due to differences in judges' beliefs in deciding disputes.

Consignment Criteria

Consignment criteria are not met when imported goods undergoing transit/transshipment are not due to geographical reasons or special considerations related to transportation requirements, indicating being traded or consumed, or undergoing a production process. To prove that transit/ transshipment does not violate the rules, importers are required to submit documents as evidence. The document required differed according to each regulation. Based on the content analysis, it appears that there are 23 decisions on disputes over CoOs related to consignment criteria. Eleven decisions with the ruling "Grant in Full", three decisions with the ruling "Grant in Part", and nine decisions with the ruling " Deny". Types of disputed CoOs: AANZFTA, ACFTA, AKFTA, ATIGA, JIEPA, and AJCEP. The information states that CoO disputes related to consignment criteria reflect the auditor's defeat in the results of his examination. Disputes over the consignment criteria occur because the importer cannot present the required evidence and the reliability of the evidence is doubtful because new evidence is created and submitted after audit findings. Evidentiary problems remain the cause of disputes (Anta Kusuma, 2019; Avianti et al., 2023; Nasution & Verico, 2019; Perdana, 2020; Rohman, 2016; Saptono et al., 2021; Yulianto, 2022).

The evidence that must be submitted by the importer to the auditor to prove the fulfillment of consigment criteria is clearly regulated in the Operational Certification Procedure of each FTA. Both Evaluator and Audit Quality Supervisor allow importers to submit any evidence, as long as it conforms to the evidence required under the rules of each FTA. Otherwise, it was rejected. The following documents must be fulfilled by importers when goods undergo transit/transshipment. These documents must be submitted to an auditor during examination.

Table 3. Documents to Prove Consignment Criteria

Type of FTA	Through Bill of Lading or other transportation documents issued in the exporting member country, including transit/transshipment activities, to the Customs Area	Certificate of Origin	Commercial Invoice	Supporting Document
AANZFTA	v	v	v	v
ACFTA	v	v	v	v
AKFTA	v	v	v	(if any)
ATIGA	v	v	(if any)	(if any)
JIEPA	copy through bill of lading/airway bill or documents from the customs authority of the transit country or relevant entity			
AJCEP	copy through bill of lading/airway bill or documents from the customs authority of the transit country or relevant entity			

Source: Operational Certification Procedure of Each FTA

However, Judges often have differing opinions. For example, in PUT -006673.47/2021/PP/ MVIIA Year 2022, the auditor stated that the ship transporting the importer's goods was proven to transit Taiwan and Singapore, but the importer could not show documentary evidence in the form of a Through Bill of Lading. The importer opined that, although transit was carried out, the goods did not go through the process of unloading and reloading containers. This condition can be proven by a certificate from the shipping party and photos of the seal that is still in place. The auditor has done the right thing according to the rules because a Through Bill of Lading is one of the requirements that must be submitted by the importer when the ship is in transit. However, the Judge had other beliefs and thus granted the importer's appeal. The reason is that the evidence submitted by the importer from the Shipping Party is acceptable because it is one of the main parties in the shipment of goods. By contrast, in PUT -015134.47/2020/PP/MIXB Year 2022, the Judge rejected the importer's appeal because the importer could not provide evidence that could refute the auditor's arguments. The disputed issue discussed was the same as in the previous case, in which the importer could not submit the Through Bill of Lading. The importer can submit only a certificate from the shipping party. This condition proves that there is still a difference in the belief of the Judge in deciding the dispute over the evidence that must be submitted by the importer to fulfill the consignment criteria.

Regarding the reliability of the evidence submitted after audit findings, The Auditor's Representatives stated that evidence that is only created after an audit finding may be doubtful and will cause problems for the auditor when the audit results are examined by other parties. This statement was further clarified by the Evaluator and Audit Quality Supervisor that the evidence should be accepted because it comes from the shipping lines. If the evidence meets the sufficiency of the evidence, it can be accepted. However, the reliability of this evidence must be verified. The evidence must be proven to ensure that the issuer is indeed a trusted party who knows the entire route and activities carried out during the transportation of goods. The Audit Quality Supervisor states "New evidence often appears, especially when importers appeal. In fact, evidence was not submitted during the inspection. This has been a concern and has been formulated in the audit procedure rules, so that new evidence submitted cannot be used for proof. However, this is contrary to the rules of the tax court, so it cannot be implemented. The solution is for the auditor to explain in detail the evidence submitted by the importer in the summary of the audit results during the closing conference. However, if an appeal is made, the decision is entirely in the hands of a Judge". This statement is proved by the Judge giving a decision to grant the importer's appeal without taking new evidence into consideration (PUT-010411.47/2020/PP/MXVIIB Year 2021).

Based on the analysis above, it can be concluded that the problems related to the consignment criteria are caused by evidentiary problems. Importers cannot provide evidence under the rules and there are doubts about the reliability of the evidence submitted. These conditions cause the auditors to be unable to convince themselves if the consignment criteria have been met. These

problems arise due to external factors that cause disputes in the use of CoO (Arrington, et al., 1985; Weiner & Craighead, 2009). These problems also occur due to differences in judges' beliefs in deciding disputes.

Procedural Provision

Procedural provisions relate to procedural requirements that must be met by importers in order to utilize preferential tariffs. Generally, procedural requirements are related to the format of the CoO, the fulfillment of signatures and seals from the issuing agency and exporter, the period of issuance, the accuracy of filling in the columns of the CoO, the submission of CoO to the customs officer, and the correctness of filling in the import declaration. Based on content analysis, it is known that there are 133 decisions on disputes over CoOs related to procedural provisions. Of these 133 decisions, there were 67 decisions with the ruling "Grant in Full", 23 decisions with the ruling "Grant in Part", and 43 decisions with the ruling "Deny". Disputes over procedural provisions are often won by importers. In one tax court decision, there is not only one type of dispute over the procedural provisions. Therefore, the results of the content analysis provided a larger total number than the number of decisions mentioned above. The errors related to the lack of compliance with the procedural provisions are shown in Table 4.

Table 4. Type of CoO Error

Type of Error	Description	Granted in Full	Granted in Part	Deny
The accuracy of filling in the columns of the CoO	Error filling in the origin criteria column related to multiple items	0,74%	1,48%	0,74%
	Incorrect invoice number and date	0,74%	2,22%	0,74%
	Difference in the name of the transaction party	0,00%	1,48%	1,48%
	Does not meet third party invoicing requirements	7,41%	0,74%	2,96%
The correctness of filling in the import declaration	Incorrect declaration of HS Code	0,74%	0,00%	0,00%
	Incorrect Reprocity Tariff	0,00%	0,00%	5,93%
	Incorrect CoO facility code	5,19%	0,74%	3,70%
	Incorrect CoO number and date	2,96%	1,48%	7,41%
	Recurring use of CoO	0,74%	0,74%	0,74%
	Difference in quantity and type of goods	1,48%	2,96%	0,00%
	CoO validity test on the website is not met	0,74%	0,00%	0,00%
The period of issuance	Does not meet the issued retroactively provisions	3,70%	4,44%	2,22%
The submission of CoO to the customs officer	CoO submission exceeding the specified period	26,67%	0,74%	5,93%
	Total	**51,11%**	**17,04%**	**31,85%**

Source: Compiled by the Author from Tax Court Decisions in 2020-2022 (2023)

The most disputed procedural errors are CoO submission exceeding the specified period (33%), while the least disputed errors are incorrect declaration of HS Code (0.74%) and CoO validity test on the website is not met (0.74%).

Procedural errors related to filling errors often occur because of different interpretations of the minor discrepancies stated in the rules. Importers consider the errors made to be minor discrepancies, while according to the auditor, they are not included in the minor discrepancies. The reason for minor discrepancies that are often used by importers is human error or input error. Due to these procedural errors, there are differences in the decisions issued by the Judges. Some decisions consider substance over form, so the fulfillment of procedural requirements does not determine the decision if the substance is fulfilled (Komarasari et al., 2023). However, some decisions consider procedural errors to be the cause of termination of CoO use. The Evaluator's statement is related to substance over form. "For me personally, as long as there is an error that can be proven by customs supporting documents, it is okay. When checking all invoices, BLs, and packing lists, it turns out that it was just a mistake, until the company's bookkeeping and correspondence were the same, it was acceptable. However, a check mark is mandatory because it is included in the rules. Some judges have conferred on the DGCE, and they know the essence of why the check mark is important. This is not a trivial matter." In the content analysis, the absence of this check mark relates to issued retroactively and third-party invoicing, thus, the absence of a check mark makes the auditor cancel the use of the preferential tariff. The issued retroactively column should be ticked when the CoO is issued beyond the specified time limit since the shipment or exportation date. A third-party column should be ticked when the trade mechanism involves a third party. For example, some parties act as importers, exporters, and manufacturers in trade. All information in the form is the result of bilateral or multilateral agreements, therefore, these rules must be applied. The Audit Quality Supervisor states "We do compliance audits, there must be rules. If there are rules, all of them must be followed, the stages are followed". Based on the Guidelines on Preferential Origin Verification, the customs authority should have a standard that can be used to determine which minor discrepancies can be ignored. This aims to reduce unequal treatment during the examination.

Errors related to the submission of CoOs exceeded the specified time occurred because the rules stipulated that CoOs must be submitted under the specified time. The time is divided based on the channeling and partnership facilities received by the importers. Importers should comply with these rules as it is a consequence that must be done to obtain preferential tariffs. In this case, the Judge's decision is also different. Some of the reasons underlying the judge's decision were that the validity period of the CoO was 12 months but customs gave its restrictions (for example, PUT-000716.47/2019/PP/MVIIA Year 2021), the CoO should have been submitted together with the import declaration (for example, PUT-000287.47/2020/PP/M.XVIIA Year 2021), and customs should have issued a data and document request note (for example, PUT-001260.47/2019/PP/M.

XVIIA Year 2020). However, there are still judges who believe that the submission of CoO must be under domestic regulations according to the channels and partnership facilities received by the importers (for example, PUT-006196.47/2020/PP/MVIIA Year 2021).

The importer should have known that he was in a mistake because auditors should explain their audit findings both in writing and verbally, based on the applicable legal basis. However, the importer has a different view of the matter as stated by Hidayah (2018) "Dispute is unavoidable in tax system". Both the Evaluator and Audit Quality Supervisor stated that importers still have rationalization (Roem H et al., 2020; Zakaria et al., 2013) that if they have used CoO for their importation, then the customs officer must grant preferential tariffs (for example, PUT -001967.47/2021/PP/MXVIIA Year 2022).

Based on the analysis above, it can be concluded that problems related to procedural provisions are caused by differences in rule interpretation and rationalizations arising from importers' thoughts on the use of CoOs. These problems occur because the auditor has a different opinion from the importer in the CoO examination. The auditor considers his opinion to be in accordance with the rules, whereas the importer has another opinion. This difference in opinions is an external factor that causes tax disputes in CoO examinations (Arrington, et al., 1985; Weiner & Craighead, 2009). This problem also occurs due to differences in judges' beliefs in deciding disputes.

Conclusion and suggestions

The objective of this study is to examine the causes of the difficulty in implementing FTAs in Indonesia due to disputes related to the use of CoO. Customs audit and re-examination (post-clearance stage) was chosen as a case study because the number of disputes is increasing and the amount of disputed value is significant when compared to the clearance stage. The results of this study indicate that the cause of disputes is the absence of clear procedures and guidelines related to evidence that can be used by auditors and importers in fulfilling origin criteria. This is the cause of the low level of origin criteria examination, so retroactive check procedures have not been widely implemented. In addition, the acceptance rate of retroactive check responses remains low and often exceeds the specified time. In fulfilling the consignment criteria, evidentiary documents remain a major problem. Problems related to procedural provisions relate to differences in rule interpretation and rationalizations arising from importers' thoughts on the use of CoOs. Problems over disputes have also not been resolved effectively through the tax court, because there are often differences in the beliefs of judges in deciding disputes.

This study suggests that auditors together with the regulators can create a more complete and detailed CoO audit program, including evidence that must be obtained. This aims to ensure equal treatment and facilitate the work of auditors. Importers can understand that preferential tariffs are facilities provided by the state, so importers must comply with all existing requirements, and

importers are responsible for providing the documents needed by the auditor. Regulators should assist auditors in liaisons by issuing authorities to ensure that requests for retroactive checks are answered as soon as possible. Overall, the study results bring implications to academic literature by providing information about the causes of dispute on the use of CoO. The study also brings practical contributions to the customs authority by providing evidence to improve regulations and implementation of audits and re-examinations, especially CoO examinations.

The limitation of this study is that it only used three interviewees, so the opinions obtained were not sufficient to describe the overall condition. Therefore, this study can be extended by examining auditors' perceptions of conducting CoO examinations in terms of procedural certainty and the quality of information available on CoOs to complement this research. Another limitation is that this study cannot illustrate the real conditions of how much difficulty in implementing FTAs in terms of total importation because there are differences in time from the use of CoO for importation until the appeal is decided by the tax court. Therefore, this study only shows the increase in the number of tax court decisions on CoO disputes to show that there is a problem there. Suggestions for further research include the use of research data with a higher level of comparability.

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