

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

G/61

22 October 1953

General Distribution

WORKING PARTY 5 ON VALUATION, NATIONALITY OF GOODS AND CONSULAR FORMALITIES

Report to the CONTRACTING PARTIES on Nationality of Goods

1. At their Seventh Session, the CONTRACTING PARTIES considered a resolution submitted by the International Chamber of Commerce urging the adoption of uniform rules for determining the nationality of imported goods. It was decided to request contracting parties to furnish particulars of their existing rules and also to submit proposals for international action. The replies furnished were circulated in document L/71, Addenda 1, 2 and 3. They are summarised in document W.8/3.

2. Almost all countries require origin to be determined for one purpose or another; the main purposes are to determine admission at differential rates of duty, to govern admission under quantitative import restrictions, to compile trade statistics, and for special purposes such as the protection of merchandise marks, and administration of sanitary, veterinary and similar regulations. The information furnished constitutes a useful fund of information regarding countries' procedures.

3. The following countries have not yet furnished statements in response to the request in document L/71:

Brazil	Cuba
Burma	Nicaragua
Chile	Peru

The Working Party recommends that these countries should be requested to furnish reports at the earliest possible date, and that the Executive Secretary should be invited to circulate the replies to all Contracting Parties. In view of the importance of questions of nationality to other international bodies and to trade and commercial interests, the Working Party recommends that document L/71 and its addenda, together with this report, should be derestricted after the close of the Session.

I. DEFINITION OF ORIGIN

4. Governments were invited to furnish with their replies any proposals they had to make regarding international action on the subject of origin of goods. The Governments of France, Germany and Italy replied proposing that definite steps should be taken with a view to establishing a standard

¹ See corrigenda.

international definition of origin, together with a number of additional features such as the establishment of uniform rules for determining the nationality of imported goods, the compilation of a list of goods for which proof of origin should not be required, the preparation of a standard form of certificate of origin, agreement regarding the authorities competent to issue such certificates and provisions for verification of such certificates. A number of other governments advocated generally the simplification of procedures regarding the determination of origin of imported goods. On the other hand, the United Kingdom and New Zealand Governments indicated that they thought that any attempt to secure international agreement on a standard definition of origin was bound to be fruitless as the question of origin is inescapably bound up with national economic policies, which are unavoidably different in different countries. Most of the other countries who replied made no comment on this question.

5. During the course of the Working Party's discussion of this subject the discussion reflected the differing views which had been expressed in the national replies. Certain delegations continued to express the view that the inherent features of national tariffs and economic systems would inevitably preclude the preparation of a common definition of origin even should it be possible to solve the technical difficulties of drafting a workable definition. They considered that these technical difficulties were evident from the repeated failures of the numerous attempts made in the past to draft a universally acceptable definition of origin. On the other hand, a number of delegations considered that the definitions of origin applied by various countries were very different from one another and created a great confusion in international trade, and that it would be useful in this respect to harmonize the existing regulations. These delegations felt, therefore, that under the circumstances, it was worthwhile and feasible to attempt to draw up a definition of origin which would be satisfactory in at least a majority of cases. The Working Party therefore proceeded to examine a text proposed by the French delegation, in which the basic element of the definition of nationality is the notion of "substantial transformation", one of the forms of which would be conferring a "new individuality".

6. This text was examined in detail by a small drafting group and the resultant text is as follows:

- A. The nationality of goods resulting exclusively from materials and labour of a single country shall be that of the country where the goods were harvested, extracted from the soil, manufactured or otherwise brought into being.
- B. The nationality of goods resulting from materials and labour of two or more countries shall be that of the country in which such goods have last undergone a substantial transformation.
- C. A substantial transformation shall - inter alia - be considered to have occurred when the processing results in a new individuality being conferred on the goods.

Explanatory Note: Each contracting party, on the basis of the above definition, may establish a list of processes which are regarded as conferring on the goods a new individuality, or as otherwise substantially transferring them.

7. Eight members of the Working Party were in favour of recommending this text to the CONTRACTING PARTIES as a draft definition of origin for customs purposes (other than statistics) with the suggestion that the CONTRACTING PARTIES should transmit the text to governments for study and comment prior to the Ninth Session of the CONTRACTING PARTIES. The proposal was submitted for consideration as a future Recommendation of the CONTRACTING PARTIES and not as a proposal for a Convention on the origin of goods. These eight members believed that the proposed definition while retaining a certain flexibility in application, would constitute a significant step forward even if it contributed only in a small way to reduce the objectionable diversity of practice in this very complex area of nationality of goods. They remarked that the General Agreement recommends a simplification of customs formalities and considered that by making the application as uniform as possible, in as great a number of countries as possible, this would simplify customs regulations to a large extent. The other four members of the Working Party considered that the definition proposed only gave the illusion of assuring uniformity between those countries which might adopt it and that in reality no uniformity would result, since countries would be free to put whatever interpretation they pleased upon the essentially subjective criterion of "substantial transformation". Accordingly, they felt that the definition would do more harm than good. They could not, moreover, fail to note that one country associated with the formulation of the definition had found it necessary to envisage a reservation of its position in relation to one of the fields in which the definition would otherwise apply. Having regard to the fact that the definition was unacceptable to several countries to whom the question of origin was of major importance and would not produce uniformity in those who found it possible to subscribe to it, the minority felt that the transmission of the definition to the CONTRACTING PARTIES was a valueless undertaking.

8. The definition is put forward for use in the application of import duties and quantitative restrictions on imports. It is not put forward for statistical purposes, for which most countries use the basis of provenance, and this basis has in fact been proposed by a committee of the United Nations Statistical Commission. In this proposal, the country of consignment is defined as the first country from which the goods were shipped (by any form of transport) to the importing country without any commercial transaction intervening between that country and the country of import.

9. The delegate of the United States stressed the point that if the CONTRACTING PARTIES should decide to adopt this definition of nationality or a similar one, the United States will desire to submit for their consideration in connection therewith an appropriately worded proposal designed to permit contracting parties to take such action in the application of the definition as they deem necessary for the protection of their essential security interests in time of war or other emergency in international relations.

II. PROOF OF ORIGIN

10. The Working Party, after considering the facts reported by the various countries regarding the proof of origin, decided to make the following recommendations:

- (a) Certificates of origin should only be required in cases where they are strictly indispensable.
- (b) The largest number of offices of competent bodies should be authorized to issue certificates of origin, in order to minimize the time taken by traders to obtain certificates.
- (c) Differences between the goods accompanied by a certificate of origin and this certificate should not normally lead to refusal of the importation of goods, when the differences are due to minor clerical errors, differences in the numbering of sacks, etc.
- (d) When, for any sufficient reason, the importer is unable to produce a certificate of origin when he imports his goods, the customs authorities may grant him the period of grace necessary for the production of this document, subject to such conditions as they may judge necessary to guarantee the charges which may eventually be payable. Upon the certificate being subsequently produced, the charges which may have been paid, or the amount paid in excess, shall be refunded at the earliest possible moment.

The Working Party also draws the attention of the CONTRACTING PARTIES to the other principles contained in Article XI of the International Convention relating to the Simplification of Customs Formalities (Geneva, 1923).¹

11. As in previous years, representatives of the International Chamber of Commerce were invited to take part in the Working Party's examination of this question and gave their views.

¹ see Annex

A N N E X

INTERNATIONAL CONVENTION RELATING TO THE SIMPLIFICATION
OF CUSTOMS FORMALITIES

Geneva, 3 November 1953

ARTICLE 11

The contracting States shall reduce as far as possible the number of cases in which certificates of origin are required.

In accordance with this principle, and subject to the understanding that the customs administrations will retain fully the right of verifying the real origin of goods and consequently also the power to demand, in spite of the production of certificates, any other proof they may deem necessary, the contracting States agree to comply with the following provisions:

1. The contracting States shall take steps to render as simple and equitable as possible the procedure and formalities connected with the issue and acceptance of certificates of origin, and they shall bring to the notice of the public the cases in which such certificates are required and the conditions on which they are issued.
2. Certificates of origin may be issued not only by the official authorities of the contracting States, but also by any other organisations which possess the necessary authority and offer the necessary guarantees and are previously approved for this purpose by each of the States concerned. Each contracting State shall communicate as soon as possible to the Secretariat of the League of Nations a list of organisations which it has designated for the purpose of delivering certificates of origin. Each State retains the right of withdrawing its approval from any organisation which has been so notified to it, if it is shown that such organisation has issued certificates in an improper manner.
3. In cases where goods are not imported direct from the country of origin, but are forwarded through the territory of a third contracting country, the customs administrations shall accept the certificates of origin drawn up by the approved organisations of the third contracting country, retaining, however, the right to satisfy themselves that such certificates are in order in the same manner as in the case of certificates issued by the country of origin.
4. The customs administrations shall not require the production of a certificate of origin -
 - (a) In cases where the person concerned renounces all claim to the benefit of a régime which depends for application upon the production of such a certificate.

- (b) When the nature of the goods clearly establishes their origin, and an agreement on this subject has been previously concluded between the States concerned.
- (c) When the goods are accompanied by a certificate to the effect that they are entitled to a regional appellation, provided that this certificate has been issued by an organisation designated for this purpose and approved by the importing State.

5. If the law of their respective countries permits, and subject to reciprocity, customs administrations shall -

- (a) Except in cases where abuse is suspected, dispense with proof of origin in regard to imports which are manifestly not of a commercial nature, or which, although of a commercial nature, are of small value.
- (b) Accept certificates of origin issued in respect of goods which are not exported immediately, provided that such goods are despatched within a period of either one month or two months, according to whether the exporting country and the country of destination are or are not contiguous; this period may be extended, provided that the reasons given for the delay in completing the transport of the goods appear satisfactory.

6. When, for any sufficient reason, the importer is unable to produce a certificate of origin when he imports his goods, the customs authorities may grant him the period of grace necessary for the production of this document, subject to such conditions as they may judge necessary to guarantee the charges which may eventually be payable. Upon the certificate being subsequently produced, the charges which may have been paid, or the amount paid in excess, shall be refunded at the earliest possible moment.

In applying the above provision, such conditions as may result from the exhaustion of the quantities which may be imported under a rationing system shall be taken into account.

7. Certificates may be in either the language of the importing country or the language of the exporting country, the customs authorities of the importing country retaining the right to demand a translation in case of doubt as to the effect of the document.

8. Certificates of origin shall not in principle require a consular visa, particularly when they originate from the customs administrations. If, in exceptional cases, a consular visa is required, the persons concerned

may at their discretion submit their certificates of origin either to the consul of their district or to the consul of a neighbouring district for a visa. The cost of the visa must be as low as possible, and must not exceed the cost of issue, especially in the case of consignments of small value.

9. The provisions of the present article shall apply to all documents used as certificates of origin.