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CONTRACTING PARTIES

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DEFINITION OF ORIGIN

Report of the Technical Group on Customs Administration

At their Eighth Session in October 1953 the CONTRACTING PARTIES submitted to governments for study and comment the following definition of origin (document G/61, Basic Instruments and Selected Documents, Second Supplement, page 53):

- "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 transforming them."

The full text of the replies which have been received have been distributed in document L/179, addenda 1 and 2. No replies have been received from Burma, Cuba, Dominican Republic, Haiti, Indonesia, Nicaragua, Peru and Uruguay.

The following is an analysis of the above-mentioned comments, taking into account the oral statements made in the Technical Group.

Countries which favour the proposed common definition without reservation

Part A of the common definition states that goods harvested, extracted from the soil, manufactured or otherwise brought into being in one country shall be

considered as the product of that country. No country made a serious reservation regarding this part of the definition. The United Kingdom, however, called it in their reply an "uncontroversial affirmation" which makes no significant contribution to the search for uniformity over the whole field covered by the definition.

Of the countries from which replies have been received, the following were in favour of the rest of the proposed common definition and have expressed their views in the following terms:

- Austria - corresponds to the view of the Austrian Government.
- Belgium - in favour of the common definition.
- Brazil - in favour of the application of a definition which is in accordance with the Brazilian laws.
- Chile - in favour of the definition.
- Czechoslovakia - generally acceptable.
- Finland - in conformity with existing regulations.
- Germany - agreed to the proposed definition.
- Greece - considered acceptable the proposed definition.
- Luxemburg - in favour of the common definition.
- Netherlands - in favour of the common definition.

Countries which consider that the proposed definition cannot be accepted without modification

- Australia - the list envisaged in the explanatory notes should be expressed in the negative (excluding processes which do not lead to a transformation) for the sake of convenience.
- Denmark - an additional clause should be provided for goods whose origin is very difficult to ascertain in practice, e.g. casings, waste, chemical compounds, etc. Furthermore, Denmark draws attention to the fact that its regulations provide that repacking, sorting and blending are not to be regarded as constituting transformation.
- France - the definition shall not be applied to preferential trade.
- India - if finally accepted, the definition shall not be applied to preferential trade.

- Italy - the term "substantial transformation" might give rise to doubts and should therefore be replaced by "industrial transformation" or "substantial processing". Further, an additional regulation should be added that "processing operations intended to confer a specific origin upon the goods for the sole purpose of evading the import regulations in force in the country of destination shall, in no case, be taken into account." Italy also proposes the deletion of paragraph C and the explanatory note.
- Japan - A. No objection.
B. No objection.
C. No objection in principle. The expressions of "substantial transformation" are not explicit enough so as to prevent contracting parties from holding different interpretations as to whether certain processing would fall under the scope of "substantial transformation". It is suggested therefore that contracting parties would reach an agreement, if possible, as to the interpretation of such definition and a uniform interpretation be established accordingly.
- Pakistan - the definition shall not be applied to preferential trade.
- Sweden - a clause should be added for the purpose of preventing transformations carried out for the sole purpose of evading payment of higher rates.
- Turkey - terms such as "substantial transformation" and "new individuality" are not precise enough for practical application and suggests that the only possible solution would be the acceptance of a rule based on the percentage by which the value of the goods is increased through transformation.
- United States - on the understanding that the common definition of origin shall not be valid for determining country of origin for national security purposes, nor in any field for which the General Agreement provides a general exception.

Countries which are opposed, in principle, to the proposed definition

- Canada - felt that although its system (based on the percentage of value) should lead to similar results, it would be difficult if not impossible to apply the proposed standard definition.

- Ceylon - objected on the ground that the lists would give rise to great complications. In their view a much more simplified definition of origin would be necessary.
- New Zealand - the terms "substantial transformation" and "new individuality" thought to be valueless criteria.
- Norway - the Norwegian Government find it necessary to continue the application of the definition used at the present time by the Norwegian Administration.
- Federation of Rhodesia and Nyasaland - does not consider that the proposed definition serves a useful purpose.
- Union of South Africa - finds itself in agreement with the views of the minority of the Working Party (BISD, Second Supplement, page 56, paragraph 7 - second half) and will not therefore be able to accept the proposed definition of origin which is not in accord with its national legislation.
- United Kingdom - cannot accept the common definition because of the strict rules of application of its preferential rates and because the definition would be of no utility in the application of quantitative restrictions. This country considers that the definition is so vague and subjective that it would do no more than set up a facade of general agreement behind which there would be fundamental disuniformity in application.

The views of the International Chamber of Commerce are set out in a letter, the terms of which are annexed to this Report.

Conclusions

The replies summarized above may be tabled as follows:

Countries which favour the proposed definition without reservation	10
Countries which consider that the proposed definition cannot be accepted without modification	10
Countries which are opposed in principle	7
Countries which have not replied	8

While some of the amendments proposed were of a minor nature which could probably be disposed of by agreement, some of the reservations made are of such importance as to restrict severely the scope of the definition.

The Technical Group's terms of reference did not require it to examine the possibility of embodying any of the proposed amendments into the definition of origin or to take a decision with regard to the desirability of adopting a common definition, a question which is one for Working Party II and the CONTRACTING PARTIES.

ANNEX

Resolution
adopted by the Council of the International Chamber of Commerce

The International Chamber of Commerce greatly appreciates the efforts made by the CONTRACTING PARTIES to GATT, in response to the recommendations of its Lisbon Congress, to arrive at an internationally agreed definition of the origin of goods for Customs purposes. The investigations and discussions to which the GATT initiative has led have thrown valuable light on the many complex problems involved and constitute a useful starting point for an advance towards greater simplicity and uniformity in this field.

It has become clear, however, that the time is not yet ripe for attempting to obtain general acceptance by governments of a standard definition of origin. The International Chamber of Commerce's own successive enquiries among its members, including a recent consultation on the text of the definition under consideration by the CONTRACTING PARTIES have, in fact, revealed differences of opinion similar to those already existing among the CONTRACTING PARTIES.

If a definition of origin is to be applicable to all types of goods, it must necessarily be couched in extremely general terms. But this means that its introduction would have very little effect on existing practice. Where difficulties are experienced by trade and industry, they are mainly concerned with matters of detail relating to specific products or even sub-products of a given industry, and these would be left untouched by a general definition. A more explicit definition, on the other hand, would no longer be universally applicable. If, for instance, the definition were made sufficiently explicit to establish uniform treatment for products of the chemical or engineering industries, it would probably cease to meet the requirements of the textile industry or of seed growers. There appears therefore to be a conflict between the requirement of universality and the definition's effectiveness as an instrument of simplification and unification.

In expressing these doubts as to the possibility of establishing a standard definition of origin at the present time, the International Chamber of Commerce in no way intends to suggest that the CONTRACTING PARTIES should let the matter drop. A number of practical problems do exist for specific industries and products and these may be capable of solution by international agreement. The CONTRACTING PARTIES would therefore render a useful service to international trade if they were to continue their study of present regulations and practices with a view to establishing certain practical criteria applicable to these special problems.