

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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RULES OF ORIGIN

Communication from Hong Kong

The following communication has been received from the delegation of Hong Kong with the request that it be circulated to the members of the Group.

Hong Kong submits the following proposal for inclusion in a multilateral rule-making approach on the application of rules of origin as a contribution to the future work of the Non-Tariff Measures Negotiating Group.

I. Introduction

Problem areas

1. In Hong Kong's view, the main problems arising from the application of rules of origin are as follows:

- (a) With the increase in specialization of processes and in multi-country processing and manufacture of goods, the determination of origin has become more complicated. It is increasingly difficult for exporting contracting parties to be certain of the rules being applied. This difficulty is compounded by the fact that the criteria used by different contracting parties, and the interpretation of these criteria, vary widely.
- (b) In the absence of uniform international rules of origin, importing contracting parties exercise a high degree of discretion in the determination and application of origin rules. This situation is undesirable as exporting contracting parties could as a result be arbitrarily deprived of benefits to which they are entitled under the General Agreement.

- (c) Rules of origin can be modified and new rules introduced to suit the needs of importing contracting parties, particularly their customs authorities, without regard to trade policy implications. In such circumstances, rules of origin risk becoming a barrier to trade.
- (d) Rules of origin can be used to create an additional impact on international trade when they feature in the administration of trade measures taken either for trade policy objectives (e.g. quantitative restrictions) or for particular reasons (e.g. anti-dumping).

Consideration

2. The main consideration that arises from these problem areas is that it is necessary to introduce regulations covering the application of rules of origin to address the following:

- (a) rules of origin covering most-favoured-nation trade should be applied in a non-discriminatory manner to all contracting parties;
- (b) rules of origin should be objective and predictable;
- (c) rules of origin should not have a trade-distorting, restrictive, or disruptive effect;
- (d) rules of origin should not nullify or impair contracting parties' rights under the General Agreement;
- (e) rules of origin should be implemented in an impartial and transparent manner.

3. A complementary approach would be to harmonize rules of origin, but, given the difficulties that have been encountered in the past in trying to formulate a common definition of origin, it would not be realistic to expect that such an approach could yield results within the time-frame of the Uruguay Round; rather harmonization, if it is considered feasible, would be better pursued as a longer term objective.

II. Proposal

Definition

1. For the purpose of this [multilateral rule-making approach], rules of origin shall be defined as those laws, regulations, and administrative

practices applied by any contracting party to determine in which¹ territories of the contracting parties their products originate. Also, a set of rules of origin shall be defined as all the rules of origin applied by any² contracting party in the administration of a particular trade régime.

Non-discrimination

2. The set of rules of origin applied by each contracting party to trade conducted under Article I of the General Agreement shall not be more stringent than the rules of origin it applies to its domestic products, and shall not discriminate between other contracting parties.

Avoidance of trade-distorting, restrictive and disruptive effects

3. Contracting parties shall ensure that their sets of rules of origin applicable to trade conducted under Article I of the General Agreement are not prepared, adopted or applied in such a manner as to create trade-distorting, restrictive or disruptive effects on international trade.

4. Contracting parties which are parties to an agreement in conformity with Article XXIV of the General Agreement shall ensure that their sets of rules of origin applicable to such an agreement are not prepared, adopted or applied in such a manner as to create any restrictive or disruptive effects on international trade nor to create any greater trade-distorting effect on international trade than is consistent with Article XXIV of the General Agreement.

5. Contracting parties proposing to introduce substantive modifications of their rules of origin, including any change in the schedule of products to which particular rules of origin apply, or to introduce rules of origin for new products shall:

- (a) notify other contracting parties through the secretariat of the proposed modifications, changes or new rules at an early appropriate stage;

¹The usual expression is "country of origin", but the General Agreement typically refers, e.g. in Article II:1(b), to "the products of territories of other contracting parties".

²The expression "particular trade régime" is used to mean the tariff treatment and non-tariff treatment, including rules of origin, etc., corresponding to a particular column in a contracting party's tariff schedule.

- (b) allow reasonable time for other contracting parties to make comments in writing, afford reasonable opportunity for discussion of these comments with other contracting parties upon request, and take these written comments and the results of such discussions into account before finalizing the proposed modifications, changes or new rules.

6. Contracting parties shall not introduce substantive modifications of their rules of origin, including any changes in the schedule of products to which particular rules of origin apply, nor introduce rules of origin for new products except in accordance with the provisions established in paragraph 5 above.

Tariff bindings

7. Rules of origin applying to any product that is described in Part I of the Schedule relating to a contracting party, as provided for in Article II of the General Agreement, shall be treated as if they were a substantive part of such product description, and accordingly shall not be altered so as to impair the value of the relevant concession provided for in such Schedule.

8. Substantive modifications of rules of origin relating to products described in Part I of Schedules annexed to the General Agreement shall be subject to the procedures established under Article XXVIII of the General Agreement.

Objectivity, predictability, impartiality and transparency

9. Laws, regulations, judicial decisions and administrative rulings of general application to rules of origin shall be treated as if they were a requirement on imports and a customs matter within the meaning of Article X of the General Agreement.

10. All information which is by nature confidential or which is provided on a confidential basis for the purpose of the application of rules of origin shall be treated as strictly confidential by the authorities concerned who shall not disclose it without the specific permission of the person or government providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings.³

³The purpose of this provision is to protect commercially-sensitive information which traders might be required to provide, e.g. to demonstrate that a value added criterion was satisfied. The same provision is at Article 10 of the Customs Valuation Code.

Establishment of a base

11. Upon entry into force of this [multilateral rule-making approach] each contracting party shall notify promptly to the secretariat its rules of origin applying on that date. Subject to the rights and obligations of contracting parties applicable before that date, the rules of origin so notified shall be considered as those to which the rights and obligations established under this [multilateral rule-making approach] apply.

Administration, consultation and dispute settlement

12. There shall be established a Committee on Rules of Origin composed of representatives from each contracting party. The Committee shall elect its own Chairman and shall meet not less than once a year and otherwise as envisaged by the relevant provisions of this [multilateral rule-making approach] at the request of any contracting party.

13. The GATT secretariat shall act as the secretariat to the Committee.

14. Each contracting party shall afford sympathetic consideration to, and adequate opportunity for prompt consultation regarding, representations made by other contracting parties with respect to any matter relating to the operation of this [multilateral rule-making approach].

15. If any contracting party considers that any benefit accruing to it, directly or indirectly, under this [multilateral rule-making approach] is being nullified or impaired, or that the achievement of any objective of the [multilateral rule-making approach] is being impeded, by another contracting party or parties, it may, with a view to reaching a mutually satisfactory resolution of the matter, request in writing consultations with the contracting party or parties in question. Each contracting party shall afford sympathetic consideration to any request from another contracting party for consultation. The contracting parties concerned shall initiate consultation promptly.

16. If no mutually satisfactory solution has been reached between the contracting parties concerned in such consultations, the Committee shall meet at the request of any contracting party to the dispute, within 30 days of receipt of such request, to investigate the matter, with a view to facilitating a mutually satisfactory solution.

17. Should the matter remain unresolved three months after the Committee first meets in response to such a request, the settlement of the dispute may be subject to the procedures of Articles XXII and XXIII of the General Agreement, the consultations under paragraph 15 above constituting the consultations provided for in the respective paragraphs 1 of those Articles.