

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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Group of Negotiations on Goods (GATT)
Negotiating Group on Rule Making and
Trade-Related Investment Measures

RULES OF ORIGIN

Note by the Secretariat

The draft text of an agreement on rules of origin drawn up prior to the Ministerial Meeting of the TNC held in Brussels from 3 to 7 December 1990, is contained on pages 13 to 29 of MTN.TNC/W/35/Rev.1. As explained in the commentary to that text, reproduced on page 12 of the document, an overall compromise remained to be found on a number of issues reflected by square brackets in the text of the draft agreement.

Consultations held in Brussels have led to a compromise on all of these issues. The resulting text, dated 6 December 1990, attached hereto, was accepted on an ad referendum basis by participants in the Green Room meeting convened by Minister van Rooy.

It was agreed at that time that the legal form of the agreement and legal questions relating to the participation of the European Communities in the Customs Co-operation Council would be examined at a later stage.

AGREEMENT ON RULES OF ORIGIN

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AGREEMENT ON RULES OF ORIGIN

PREAMBLE

The CONTRACTING PARTIES,

NOTING that Ministers on 20 September 1986 agreed that the Uruguay Round of Multilateral Trade Negotiations shall aim to bring about further liberalization and expansion of world trade, strengthen the role of the GATT and increase the responsiveness of the GATT system to the evolving international economic environment;

DESIRING to further the objectives of the GATT;

RECOGNIZING that clear and predictable rules of origin and their application facilitate the flow of international trade;

DESIRING to ensure that rules of origin themselves do not create unnecessary obstacles to trade;

DESIRING to ensure that rules of origin do not nullify or impair the rights of contracting parties under the GATT;

RECOGNIZING that it is desirable to provide transparency of laws, regulations, and practices regarding rules of origin;

DESIRING to ensure that rules of origin are prepared and applied in an impartial, transparent, predictable, consistent and neutral manner;

RECOGNIZING the availability of a consultation mechanism and procedures for the speedy, effective and equitable resolution of disputes arising under this agreement;

DESIRING to harmonize and clarify rules of origin;

hereby agree as follows:

PART I

DEFINITIONS AND COVERAGE

Article 1

Rules of Origin

1. For the purposes of Parts I to IV of this agreement, rules of origin shall be defined as those laws, regulations and administrative determinations of general application applied by any contracting party to determine the country¹ of origin of goods provided such rules of origin are not related to contractual or autonomous trade regimes leading to the granting of tariff preferences going beyond the application of Article I:1 of the General Agreement.

2. Rules of origin referred to in paragraph 1 shall include, all rules of origin used in non-preferential commercial policy instruments, such as the application of: most-favoured-nation treatment under Articles I, II, III, XI and XIII of the General Agreement; anti-dumping and countervailing duties under Article VI of the General Agreement; safeguard measures under Article XIX of the General Agreement; origin marking requirements under Article IX of the General Agreement; and any discriminatory quantitative restrictions or tariff quotas. They shall also include rules of origin used for public procurement and trade statistics.

¹The word "country", wherever it appears in this agreement, includes the territory of each of the contracting parties. For the purposes of this agreement, the European Communities shall be considered as a contracting party.

²It is understood that this provision is without prejudice to those determinations made for purposes of defining "domestic industry" or "like products of domestic industry" or similar terms wherever they apply.

PART II

DISCIPLINES TO GOVERN THE APPLICATION OF RULES OF ORIGIN

Article 2

Disciplines during the transitional period

Until the work programme for the harmonization of rules of origin set out in Part IV below is completed, contracting parties shall ensure that:

- (a) when they issue administrative determinations of general application, the requirements to be fulfilled are clearly defined. In particular:
 - in cases where the criterion of change of tariff classification is applied, such a rule of origin, and any exceptions to the rule, must clearly specify the sub-headings or headings within the tariff nomenclature which are addressed by the rule;
 - in cases where the ad valorem percentage criterion is applied, the method for calculating this percentage shall also be indicated in the rules of origin;
 - in cases where the criterion of manufacturing or processing operation is prescribed, the operation which confers origin on the good concerned shall be precisely specified;
- (b) notwithstanding the measure or instrument of commercial policy to which they are linked, their rules of origin are not used as instruments to pursue trade objectives directly or indirectly;
- (c) Rules of origin shall not themselves create restrictive, distorting, or disruptive effects on international trade. They shall not pose unduly strict requirements or require the fulfilment of a certain condition not related to manufacturing or processing, as a prerequisite for the determination of the country of origin. However, costs not directly related to manufacturing or processing may be included for the purposes of the application of an ad valorem percentage criterion consistent with sub-paragraph (a) above;
- (d) the rules of origin which they apply to imports and exports are not more stringent than the rules of origin they apply to determine whether or not a good is domestic and shall not discriminate between other contracting parties, irrespective of the affiliation of the manufacturers of the good concerned;

¹With respect to rules of origin applied for the purposes of government procurement, this provision shall not create obligations additional to those already assumed by contracting parties under the GATT.

- (e) their rules of origin are administered in a consistent, uniform, impartial and reasonable manner;
- (f) their rules of origin are based on a positive standard. Rules of origin which state what does not confer origin (negative standard) are permissible as part of a clarification of a positive standard or in individual cases where a positive determination of origin is not necessary.
- (g) their laws, regulations, judicial and administrative rulings of general application relating to rules of origin are published as if they were subject to, and in accordance with, the provisions of Article X:1 of the General Agreement;
- (h) upon the request of an exporter, importer or any person with a justifiable cause, assessments of the origin they would accord to a good are issued as soon as possible but no later than 150 days¹ of a request for such an assessment provided that all necessary elements have been submitted. Requests for such assessments shall be accepted before trade in the good concerned begins and may be accepted at any later point of time. Such assessments shall remain valid for three years provided that the facts and conditions, including the rules of origin, under which they have been made remain comparable. Provided that the parties concerned are informed in advance, such assessments will no longer be valid when a decision contrary to the assessment is made in a review as referred to in sub-paragraph (j) below. Such assessments shall be made publicly available subject to the provisions of sub-paragraph (k) below;
- (i) when introducing changes to their rules of origin or new rules of origin, they shall not apply such changes retroactively as defined in, and without prejudice to, their laws or regulations;
- (j) any administrative action which they take in relation to the determination of origin is reviewable promptly by judicial, arbitral or administrative tribunals or procedures, independent of the authority issuing the determination, which can effect the modification or reversal of the determination;
- (k) 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 is treated as strictly confidential by the authorities concerned which 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.

¹In respect of requests made during the first year from entry into force of this agreement, contracting parties shall only be required to issue these assessments as soon as possible.

Article 3

Disciplines after the transitional period

Taking into account the aim of all contracting parties to achieve as a result of the harmonization work program set out in Part IV below, the establishment of harmonized rules of origin, the contracting parties shall ensure, upon the implementation of the results of the harmonization work programme that:

- (a) they apply rules of origin equally for all purposes as set out in Article 1 above;
- (b) under their rules of origin, the country to be determined as the origin of a particular good is either the country where the good has been wholly obtained or when more than one country is concerned in the production of the good, the country where the last substantial transformation has been carried out;
- (c) the rules of origin which they apply to imports and exports are not more stringent than the rules of origin they apply to determine whether or not a good is domestic and shall not discriminate between other contracting parties, irrespective of the affiliation of the manufacturers of the good concerned;
- (d) the rules of origin are administered in a consistent, uniform, impartial and reasonable manner;
- (e) their laws, regulations, judicial and administrative rulings of general application relating to rules of origin are published as if they were subject to, and in accordance with, the provisions of Article X:1 of the General Agreement;
- (f) upon the request of an exporter, importer or any person with a justifiable cause, assessments of the origin they would accord to a good are issued as soon as possible but no later than 150 days of a request for such an assessment provided that all necessary elements have been submitted. Requests for such assessments shall be accepted before trade in the good concerned begins and may be accepted at any later point of time. Such assessments shall remain valid for three years provided that the facts and conditions, including the rules of origin, under which they have been made remain comparable. Provided that the parties concerned are informed in advance, such assessments will no longer be valid when a decision contrary to the assessment is made in a review as referred to in sub-paragraph (h) below. Such assessments shall be made publicly available subject to the provisions of sub-paragraph (i) below;

- (g) when introducing changes to their rules of origin or new rules of origin, they shall not apply such changes retroactively as defined in, and without prejudice to, their laws or regulations;
- (h) any administrative action which they take in relation to the determination of origin is reviewable promptly by judicial, arbitral or administrative tribunals or procedures, independent of the authority issuing the determination, which can effect the modification or reversal of the determination;
- (i) 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 is treated as strictly confidential by the authorities concerned which 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.

PART III

PROCEDURAL ARRANGEMENTS ON NOTIFICATION, REVIEW,
CONSULTATION AND DISPUTE SETTLEMENT

Article 4

Institutions

There shall be established under this agreement:

1. A Committee on Rules of Origin (hereinafter referred to as the Committee) composed of the representatives from each of the contracting parties. The Committee shall elect its own Chairman and shall meet as necessary but not less than once a year, for the purpose of affording contracting parties the opportunities to consult on matters relating to the operation of Parts I, II, III and IV of the agreement or the furtherance of the objectives set out in these Parts and to carry out such other responsibilities assigned to it under this agreement or by the CONTRACTING PARTIES. Where appropriate, the Committee shall request information and advice from the Technical Committee (referred to in paragraph 2 below) on matters related to this agreement. The Committee may also request such other work from the Technical Committee as it considers appropriate for the furtherance of the above-mentioned objectives of this agreement. The GATT secretariat shall act as the secretariat to the Committee.
2. A Technical Committee on Rules of Origin (hereinafter referred to as the Technical Committee) under the auspices of the Customs Co-operation Council as set out in Annex I of this agreement. The Technical Committee shall carry out the technical work called for in Part IV and prescribed in Annex I of this agreement. Where appropriate, the Technical Committee shall request information and advice from the Committee on matters related to this agreement. The Technical Committee may also request such other work from the Committee as it considers appropriate for the furtherance of the above-mentioned objectives of the agreement. The CCC secretariat shall act as the secretariat to the Technical Committee.

Article 5

Information and procedures for modification
and introduction of new rules of origin

1. Upon entry into force of this agreement, each contracting party shall provide the secretariat within 90 days its rules of origin, judicial decisions, and administrative rulings of general application relating to rules of origin in effect on that date. If by inadvertence a rule of origin has not been provided, the contracting party concerned shall provide it immediately this fact becomes known. Lists of information received and available with the secretariat shall be circulated to the contracting parties by the secretariat.

2. During the period referred to in Article 2 above, contracting parties introducing modifications other than de minimis modifications, to their rules of origin or introducing new rules of origin, which, for the purpose of this Article, shall include any rule of origin referred to in paragraph 1 above and not provided to the secretariat shall publish a notice to that effect at least 60 days before the entry into force of the modified or new rule in such a manner as to enable interested parties to become acquainted with the intention to modify a rule of origin or to introduce a new rule of origin, unless exceptional circumstances arise or threaten to arise for a contracting party. In these exceptional cases, the contracting party shall publish the modified or new rule as soon as possible.

Article 6

Review

1. The Committee shall review annually the implementation and operation of Parts II and III of this agreement having regard to its objectives. The Committee shall annually inform the CONTRACTING PARTIES of developments during the period covered by such reviews.

2. The Committee shall review the provisions of Parts I, II and III above and propose amendments as necessary to reflect the results of the harmonization work programme.

3. The Committee, in cooperation with the Technical Committee, shall set up a mechanism to consider and propose amendments to the results of the harmonization work programme, taking into account the objectives and principles set out in Article 9. This may include instances where the rules need to be made more operational or need to be updated to take into account new production processes as affected by any technological change.

Article 7

Consultation¹

The provisions of Article XXII of the General Agreement, as improved and elaborated upon by the Negotiating Group on Dispute Settlement, are applicable to this agreement.

¹It is understood that the procedures on consultation and dispute settlement will be re-examined when the legal form of the agreement is examined.

Article 8

Dispute settlement¹

The provisions of Article XXIII of the General Agreement, as improved and elaborated upon by the Negotiating Group on Dispute Settlement, are applicable to this agreement.

PART IV

HARMONIZATION OF RULES OF ORIGIN

Article 9

1. Objectives and principles

With the objectives of harmonizing rules of origin and inter alia providing more certainty in the conduct of world trade, the CONTRACTING PARTIES shall undertake the work programme set out below in conjunction with the Customs Co-operation Council, on the basis of the following principles:

- (a) Rules of origin should be applied equally for all purposes as set out in Article 1 above;
- (b) Rules of origin should provide for the country to be determined as the origin of a particular good to be either the country where the good has been wholly obtained, or where more than one country is concerned in the production of the good, the country where the last substantial transformation has been carried out;
- (c) Rules of origin should be objective, understandable and predictable;
- (d) Notwithstanding the measure or instrument to which they may be linked, rules of origin should not be used as instruments to pursue trade objectives directly or indirectly. They should not themselves create restrictive, distorting or disruptive effects on international trade. They should not pose unduly strict requirements or require the fulfilment of a certain condition

¹It is understood that the procedures on consultation and dispute settlement will be re-examined when the legal form of the agreement is examined.

not relating to manufacturing or processing as a prerequisite for the determination of the country of origin. However, costs not directly related to manufacturing or processing may be included for purposes of the application of an ad valorem percentage criterion;

- (e) Rules of origin should be administrable in a consistent, uniform, impartial and reasonable manner;
- (f) Rules of origin should be coherent;
- (g) Rules of origin should be based on a positive standard. Negative standards may be used to clarify a positive standard.

2. Work programme

- (a) The work programme shall be initiated as soon after the Uruguay Round as possible and will be completed within three years of initiation.
- (b) The Committee and the Technical Committee provided for in Article 4 of this agreement shall be the appropriate bodies to conduct this work.
- (c) To provide for detailed input by the CCC, the Committee shall request the Technical Committee to provide its interpretations and opinions resulting from the work described below on the basis of the principles listed in paragraph 1 of this Article. To ensure timely completion of the work programme for harmonization, such work shall be conducted on a product sector basis, as represented by various chapters or sections of the Harmonized System Tariff Nomenclature.

(i) Wholly obtained and minimal operations or processes

The Technical Committee shall develop harmonized definitions of:

- the goods which are to be considered as being wholly obtained in one country. This work shall be as detailed as possible;
- minimal operations or processes which do not by themselves confer origin to a good.

The results of this work shall be submitted to the Committee within three months of receipt of the request from the Committee.

(ii) Substantial transformation - Change in tariff classification

- The Technical Committee shall consider and elaborate upon, on the basis of the criterion of substantial transformation, the use of change in tariff subheading or heading when developing rules of origin for particular products or a product sector and, if appropriate, the minimum change within the nomenclature which meets this criterion.
- The Technical Committee shall divide the above work on a product basis taking into account the chapters or sections of the Harmonized System, so as to submit results of its work to the Committee at least on a quarterly basis. The Technical Committee shall complete the above work within one year and three months from receipt of the request of the Committee.

(iii) Substantial Transformation - Supplementary Criteria

- Upon completion of the work under (ii) for each product sector or individual product category where the exclusive use of the HS nomenclature does not allow for the expression of substantial transformation, the Technical Committee:
 - shall consider and elaborate upon, on the basis of the criterion of substantial transformation, the use, in a supplementary or exclusive manner, of other requirements, including ad valorem percentages¹ and/or manufacturing or processing operations² when developing rules of origin for particular products or a product sector;
 - may provide explanations for its proposals;
 - shall divide the above work on a product basis taking into account the chapters or sections of the Harmonized System, so as to submit results of its work to the Committee at least on a quarterly basis. The Technical Committee shall complete the above work within two years and three months of receipt of the request from the Committee.

¹Where the ad valorem criterion is applied, the method for calculating this percentage shall also be indicated in the rules of origin.

²Where the criterion of manufacturing or processing operation is prescribed, the operation which confers origin on the product concerned shall be precisely specified.

3. Role of the GATT

On the basis of the principles listed in paragraph 1 of this Article:

- the Committee shall consider the interpretations and opinions of the Technical Committee periodically in accordance with the time-frames provided in (i), (ii) and (iii) above with a view to endorsing such interpretations and opinions. The Committee may request the Technical Committee to refine or elaborate its work and/or to develop new approaches. To assist the Technical Committee, the Committee should provide its reasons for requests for additional work and, as appropriate, suggest alternative approaches;
- upon completion of all the work identified in (i), (ii) and (iii) above, the Committee shall consider the results in terms of their overall coherence.

4. Results of the harmonization work programme and subsequent work

The CONTRACTING PARTIES shall establish the results of the harmonization work programme in an annex as an integral part of this agreement. The CONTRACTING PARTIES shall establish a time-frame for the entry into force of this annex.

ANNEX I

Technical Committee on Rules of Origin

1. The on-going responsibilities of the Technical Committee shall include the following:

- (a) at the request of any member of the Technical Committee, to examine specific technical problems arising in the day-to-day administration of the rules of origin of contracting parties and to give advisory opinions on appropriate solutions based upon the facts presented;
- (b) to furnish information and advice on any matters concerning the origin determination of goods as may be requested by any contracting party or the Committee;

- (c) to prepare and circulate periodic reports on the technical aspects of the operation and status of this agreement; and
- (d) to review annually the technical aspects of the implementation and operation of Parts II and III of this agreement.

2. The Technical Committee shall exercise such other responsibilities as the Committee may request of it.

3. The Technical Committee shall attempt to conclude its work on specific matters, especially those referred to it by contracting parties or the Committee, in a reasonably short period of time.

Representation

4. Each contracting party shall have the right to be represented on the Technical Committee. Each contracting party may nominate one delegate and one or more alternates to be its representatives on the Technical Committee. Such a contracting party so represented on the Technical Committee is herein referred to as a member of the Technical Committee. Representatives of members of the Technical Committee may be assisted by advisers at meetings of the Technical Committee. The GATT secretariat may also attend such meetings with observer status.

5. Members of the Customs Co-operation Council who are not contracting parties may be represented at meetings of the Technical Committee by one delegate and one or more alternates. Such representatives shall attend meetings of the Technical Committee as observers.

6. Subject to the approval of the Chairman of the Technical Committee, the Secretary-General of the Customs Co-operation Council (hereinafter referred to as the Secretary-General) may invite representatives of governments which are neither contracting parties nor members of the Customs Co-operation Council and representatives of international governmental and trade organizations to attend meetings of the Technical Committee as observers.

7. Nominations of delegates, alternates and advisers to meetings of the Technical Committee shall be made to the Secretary-General.

Meetings

8. The Technical Committee shall meet as necessary, but not less than once a year.

Procedures

9. The Technical Committee shall elect its own chairman and shall establish its own procedures.

ANNEX II

Common Declaration with regard to preferential rules of origin

1. Recognizing that some contracting parties apply preferential rules of origin, distinct from non-preferential rules of origin, the contracting parties hereby agree as follows.

2. For the purposes of this Common Declaration preferential rules of origin shall be defined as those laws, regulations and administrative determinations of general application applied by any contracting party to determine whether goods qualify for preferential treatment under contractual or autonomous trade regimes leading to the granting of tariff preferences going beyond the application of Article I:1 of the General Agreement.

3. The contracting parties agree to ensure that:

(a) when they issue administrative determinations of general application, the requirements to be fulfilled are clearly defined. In particular:

- in cases where the criterion of change of tariff classification is applied, such a preferential rule of origin, and any exceptions to the rule, must clearly specify the sub-headings or headings within the tariff nomenclature which are addressed by the rule;

- in cases where the ad valorem percentage criterion is applied, the method for calculating this percentage shall also be indicated in the preferential rules of origin;

- in cases where the criterion of manufacturing or processing operation is prescribed, the operation which confers preferential origin shall be precisely specified;

(b) their preferential rules of origin are based on a positive standard. Preferential rules of origin which state what does not confer preferential origin (negative standard) are permissible as part of a clarification of a positive standard or in individual cases where a positive determination of preferential origin is not necessary;

(c) their laws, regulations, judicial and administrative rulings of general application relating to preferential rules of origin are published as if they were subject to, and in accordance with, the provisions of Article X:1 of the General Agreement;

(d) upon request of an exporter, importer or any person with a justifiable cause, assessments of the preferential origin they would accord to a good are issued as soon as possible but no later than 150 days¹ of a request for such an assessment provided that all necessary elements have been submitted. Requests for such assessments shall be accepted before trade in the good concerned begins and may be accepted at any later point of time. Such assessments shall remain valid for three years provided that the facts and conditions, including the preferential rules of origin, under which they have been made remain comparable. Provided that the parties concerned are informed in advance, such assessments will no longer be valid when a decision contrary to the assessment is made in a review as referred to in sub-paragraph (f) below. Such assessments shall be made publicly available subject to the provisions of sub-paragraph (g) below;

(e) when introducing changes to their preferential rules of origin or new preferential rules of origin, they shall not apply such changes retroactively as defined in, and without prejudice to, their laws or regulations;

(f) any administrative action which they take in relation to the determination of preferential origin is reviewable promptly by judicial, arbitral or administrative tribunals or procedures, independent of the authority issuing the determination, which can effect the modification or reversal of the determination;

(g) all information which is by nature confidential or which is provided on a confidential basis for the purpose of the application of preferential rules of origin is treated as strictly confidential by the authorities concerned which 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.

4. The contracting parties agree to provide the secretariat promptly their preferential rules of origin, including a listing of the preferential arrangements to which they apply, judicial decisions, and administrative rulings of general application relating to their preferential rules of origin in effect. Furthermore contracting parties agree to provide any modifications to their preferential rules of origin or new preferential rules of origin, as soon as possible to the secretariat. Lists of information received and available with the secretariat shall be circulated to the contracting parties by the secretariat.

¹In respect of requests made during the first year from entry into force of the agreement on rules of origin contracting parties shall only be required to issue these assessments as soon as possible.