GENERAL AGREEMENT ON TARIFFS AND TRADE

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NATIONALITY OF IMPORTED GOODS

Comments by Governments on the Proposed Definition of Origin

The CONTRACTING PARTIES at their Eighth Session, after examining statements submitted by governments describing their principles and practices in determining the nationality of imported goods, decided to submit to governments for comment the following draft definition of origin which, it had been proposed, might be used for customs (other than statistical) purposes - particularly in the application of import duties and quantitative restrictions:

"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 comments received to date are reproduced in this document. An analysis of these comments is being prepared by the secretariat and will be distributed before the opening of the Ninth Session.

Comments by Governments on the Proposed Definition of Origin

Australia

It is considered that need exists for a definition of the type proposed and that the proposed definition would be suitable.

On the other hand it is considered that the wording in the Explanatory Note should be expressed in negative rather than positive terms and that each contracting party should have the right to establish a list of processes which are not regarded as conferring on the goods a new individuality or otherwise transforming them. A negative list would not be nearly as extensive as a positive one and therefore would be more readily informative and easier in administration.

Austria

... the Definition of Origin ... corresponds to the views held by the Austrian authorities concerned. The draft of the new Austrian Tariff Law envisages a Definition of Origin ... which is in line with the definition proposed in GATT document L/179.

Canada

As it will be noticed, the proposed definition of origin contained in the document L/179 of 4 December 1953 approaches closely that of the Canadian certificate of origin /see Canadian regulations reproduced in document L/71/Add.1, page 19/. Most goods would be classified in the same way using either definition.

There is a class of case, however, in which the differences in definition might result in divergent views as to the origin of goods concerned. The proposed phraseology defines the country of origin as the one in which the "goods have last undergone a substantial transformation", and goes on to declare that "a substantial transformation shall - inter alia - be considered to have occurred when the processing results in a new individuality being conferred upon the goods". Under the proposed definition, this processing would not in itself determine the country of origin whereas under our present administration it would if such processing was the last stage of processing prior to shipment to Canada, if it represented at least 50 per cent of the content, and if the country concerned was one entitled to the benefits of treaty or convention rates or the British Preferential Tariff.

Although the two methods of determining the country of origin of imported goods should produce identical results in most cases, the difference of concept is important and it would be difficult if not impossible, for Canada to apply the proposed standard definition without its upsetting established practices regarding the application of our most-favoured-nation and British Preferential Tariff rates. Nor would the adoption of the standard definition of origin, in the form proposed in document L/179, appear to offer any substantial prospect of genuine standardization of reporting by various countries.

Ceylon

We are of the opinion that definition A can be adopted without any difficulty.

As for definitions B and C, their adoption would involve the laying down of a list of processes defining what constitutes a substantial transformation. Manufacturing processes vary in different countries. Defining processes which would have some common ground applicable to all countries, would, in our opinion, be a difficult one. Their administration would also give rise to a great deal of difficulties.

In our view a much more simplified definition of origin would be necessary.

Czechoslovakia

... the definition of origin ... is generally acceptable and therefore we have no comments on it.

Denmark

In Denmark the following definition of the expression "country of origin or production" is used:

> "The expression 'country of origin or production' shall mean the country where the goods were produced or where they were transformed into the condition in which they were introduced into this country.
>
> "Repacking, sorting and blending are not to be regarded as constituting transformation unless the goods after the treatment can no longer be referred to any other country of origin or production than the country in which this treatment has taken place.
>
> "In cases where a certificate of origin is required, this certificate decides which country is to be considered the country of origin or production."

This definition corresponds to the definition laid down in the International Convention Relating to Economic Statistics of 14 December 1928, which runs:

> "The expression 'country of origin or production' shall mean, in the case of natural products, the country where the goods were produced, and, in the case of manufactured products, the country where they were transformed into the condition in which they were introduced into the country of import, it being understood that repacking, sorting and blending do not constitute transformation."

It will be seen that the last point of the Danish definition (concerning cases in which a certificate of origin is required) is not to be found in the international definition, but this addition is found quite indispensable, since persons reporting goods can hardly be supposed to be able to distinguish between two different definitions of the same concept.

It will further be seen that the difference between the two mentioned definitions and the definition of GATT document L/179 is, partly that three exceptions (repacking, sorting and blending) have not been mentioned in the proposed definition, partly that a "substantial transformation" is required in order to change the country of origin or production of a commodity, which transformation is defined as a process giving the commodity a new individuality; moreover, each country is supposed to prepare a list of processes substantially altering the nature of the goods.

The preparation of such a list will hardly be possible in practice. Such a multitude of different processes of production exists that the work will be quite interminable, and even the reverse procedure - to make a list of processes which are not to be regarded as altering the nature of the commodity - must be considered impracticable, if it is not restricted to a few processes, such as the ones mentioned above in the definition used in Denmark. And even these exceptions cannot be taken without reservation, not even if the question is left out of account of whether the process prevents the goods from being referred to a known country of origin or production, e.g. in the case of blending of goods from two countries. There will, for instance, be cases of repacking (bottling), which must be regarded as processes of production, but such cases must be treated individually and cannot be laid down in advance.

There is no objection to the insertion of Items A, B and C of the definition proposed in GATT document L/179, special importance being attached to the words "inter alia" in Item C, which actually leave the countries at liberty as regards the decision of what processes of production they will consider essential. On the other hand, the explanatory note should be omitted as in practice it is not considered possible to live up to the rules proposed therein.

It is found desirable that, in the final formulation of a definition of country of origin or production, consideration be given to goods whose country of origin it is difficult to ascertain in practice, including e.g. casings, used packing material, various types of waste, and certain chemical compounds so that the exporters of the various countries will understand in advance what lines apply in this respect concerning the administration of all the contracting parties, cf. Denmark's reply to the questions raised in GATT document G/28.

Finland (Translation)

Finland has no remarks to make concerning the proposed establishment of a certificate of origin for imported goods. This proposal is in conformity with the existing regulations and their application in Finland.

France (Translation)

The French Government has no objection to the proposed definition for the application of tariff laws and regulations (and not for statistical purposes). It is, in fact, in conformity with the ideas upheld by the French Administration at the Customs Cooperation Council in Brussels, and the French Delegation played an important part in the drawing up of this definition at the Eighth Session of the GATT.

It is true that it would have been preferable to attempt to agree upon a more precise definition and to establish a list of processes which would be considered, in all countries, as conferring on goods a new individuality or as involving other substantial transformation, instead of leaving each contracting party at liberty to choose its own interpretation. But the discussions which took place at Geneva clearly showed that it was impossible to reach an agreement on this point, for the present at least.

In stating the French Government's agreement with the proposed definition, nevertheless, it should be noted that, in our opinion, the definition should not be used for any other purpose than the determination of the origin of foreign goods, and the application of minimum and general tariff rates or quantitative restrictions, and should not affect the definition applied to preferential rights.

Federal Republic of Germany

The Government ... agrees to the proposed definition.

Greece (Translation)

The Government ... considers acceptable the proposed definition of origin.

India

Clause A of the proposed definition of origin is in accord with the rules in force in India, governing origin of goods for purposes of assessment of customs duty at preferential rates.

With regard to Clauses B and C, the position under the rules in force in India is that an article is eligible for assessment at the preferential rate if the article is one in respect of which the final process of manufacture has been performed in the United Kingdom or a British Colony and the expenditure on material produced and labour performed in such country in the manufacture of the article is not less than one-half of the factory or works costs of the article in its finished state in the case of certain articles, and not less than one-quarter of the factory or works cost in the case of other articles. Under Clause C of the proposed definition the final process of manufacture referred to above must be deemed to be one which results in a substantial transformation; i.e. inter alia one which results in a new individuality being conferred on the goods. The explanatory note to this Clause envisages that each contracting party is permitted to prescribe a list of processes any one of which in its opinion will be deemed to have resulted in a substantial transformation of the goods.

While the Government of India prima facie see no objection to the contents of this Clause, they would like to reserve their final position until the case has been more fully studied.

Italy (Translation)

The adoption of a standard international definition of origin is, no doubt, of considerable importance in securing a desired expansion of trade.

That is the reason why it has been thought that the above-mentioned definition should be given close consideration, taking account of the fact that, as is well known, the difficulties to be overcome for the establishment of uniform rules are not inconsiderable.

As regards the text itself, it should be indicated that Part A is fully acceptable from the Italian point of view.

As regards Part B, on the other hand, a number of reservations have to be made in connexion with the phrase "substantial transformation". This phrase, in fact, though explained in Part C, which is followed by an explanatory note, might easily give rise to doubts in matters of interpretation by the various national administrations. These doubts would mainly concern the meaning to be attached to the word "substantial". Such doubts would obtain even if it were possible (as indicated in the explanatory note) to establish a list of processes to be regarded as conferring upon the goods a new individuality or otherwise substantially transforming them. Indeed, such a list would, for obvious reasons, be purely illustrative.

After a close examination of the whole matter, it is believed that the proposed definition should be limited to the first two parts (A and B) and that in the second part the words "substantial transformation" should be substituted by "industrial transformation".

Failing such a solution the Italian Government could accept the substitution of "substantial processing" for the words "substantial transformation". It should be stressed that Italy would take this last solution into consideration only if its adoption were necessary to secure a larger measure of agreement.

It follows therefrom, as already indicated, that both Part C and the explanatory note should be deleted.

It would also seem useful to add a new provision for the purpose of avoiding taking into account processing operations the sole purpose of which is to evade payment of higher rates.

The text of this clause could be as follows: "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."

New Zealand

The New Zealand representatives at the Eighth Session expressed the view that a common definition of nationality was unlikely to be attained, and the results of the working party's discussions at the Session are regarded as supporting this view.

Except perhaps for paragraph A, which deals with goods wholly produced or manufactured in a country from the materials and labour of that country, the proposed "definition" is not considered to be in fact a definition, but rather a statement of principles to be applied in defining origin.

Such terms as "substantial transformation" and "new individuality" in themselves require much further definition, and in New Zealand's opinion the criterion of value is the only satisfactory basis upon which to determine origin.

New Zealand is therefore unable to accept the draft as a definition of origin.

Norway

... the Norwegian Government find it necessary to continue the application of the definition /used at the present time by the Norwegian Administration/ given at page 83 in document L/71/Add.1:

"As far as raw materials are concerned the country of origin is the country where the goods have been produced and as far as manufactured goods (including refined goods) are concerned the country where the goods have received their present form. Goods which have been subject to repacking, sorting or mixing are not considered to be manufactured goods."

Pakistan

The Government ... have no objection to the proposed definition of origin. The proposed definition is wide enough to cover the customs requirements.

Sweden

The suggested definition of the country of origin of the goods corresponds on the whole to the norms for the determination of country of origin which in different respects are applied to goods imported to Sweden. The Swedish authorities therefore have no objection to the definition. It might, however, be advisable to add a clause to the effect that, at the determining point of the country of origin of the goods for customs purposes, one may disregard any work made on the goods mainly with a view to changing the country of origin of the goods in order to make it possible to import the goods or to obtain a lower customs duty.

United Kingdom

1. The United Kingdom approaches the question of commenting upon the draft definition of origin drawn up by the Working Party in October 1953 firstly from the standpoints whether it would be apt to the purposes for which the United Kingdom would have to use it and whether it would represent any improvement on the procedures currently in force in the United Kingdom, and secondly from the standpoint whether it is a provision which would serve a useful international purpose and which should therefore be supported even though it may not be applicable to the particular circumstances of the United Kingdom.

2. As indicated in document L/179, the main purposes for which the draft definition would be used in the United Kingdom are the application of differential import duties and the operation of quantitative restrictions. The former is relevant in the United Kingdom in one respect only, namely, the admission of goods at preferential rates of duty; apart from this aspect, which is and will remain important, there is no case in which the rate of duty chargeable upon imported goods is dependent upon their sources. The second is relevant, but it is to be hoped that its present importance is transient. In paragraphs 3-7 of this Note the draft definition is examined, from the first point of view mentioned in paragraph 1, in its application to the admission of goods at preferential rates of duty and to the operation of quantitative restrictions.

3. The purposes of the preferential duty system is to encourage the development of Commonwealth resources and to stimulate trade between the countries of the Commonwealth. This is done by according favourable duty treatment to goods grown or produced in the preference area and to those manufactured goods, a prescribed proportion of the value of which is derived from prescribed expenditure in respect of materials grown or produced or work done in the preference area. It is important to note that it is the total contribution of the preferential area which is significant; the question of which country contributed the largest share or effected the most substantial transformation of raw materials and labour into a finished article is irrelevant. It follows that the concept of origin, in so far as it implies a particular country, is not material in the application of the only differential duties which the United Kingdom operates. The draft definition under comment is, however, directed towards the determination of the particular country where an imported good is to be regarded as having had its origin. It is, therefore, not apt to the main purpose for which the United Kingdom would need to employ it.

4. Since the draft definition is not suitable for our needs, no attempt is made in this Note to pursue in detail the consideration of whether it would lead to any improvement on the procedures currently in force in the United Kingdom, but it can be said briefly that the adoption of the definition would impose on the trading community a heavy and unnecessary additional burden of documentation.

5. In this case there is less incompatibility between the purposes for which the draft definition of origin would be appropriate and those which guide the United Kingdom in its operation of quantitative restrictions: attention is therefore directed primarily to determining whether adoption of the draft definition would effect any improvement on present procedures.

6. The draft definition employs a general criterion (that of "substantial transformation") which would certainly spring naturally to mind in any approach to the question of what was fundamental in determining origin: it should, however, be noted that no single criterion is necessarily conclusive in this matter and that regard may have to be had, according to the particular case under examination, to other factors. But it is clear that the mere recital of one of the broad general principles which govern the determination of origin does not carry one far towards the attainment of the advantages which have been held out in connection with a standard definition of origin. The determining factor in this regard is the extent to which there would be uniformity of action in day-to-day administration of quantitative restrictions as between one importing country and another: and that is contingent upon the extent to which different countries put the same interpretation upon the broad principle to which they have subscribed. The Working Party recognized that the mere enunciation of a general principle would not suffice, for the draft text, after citing one instance in which substantial transformation should be deemed to have taken place (where a new individuality is conferred on the goods), goes on to indicate that countries may establish lists of processes which are regarded as conferring new individuality upon goods or of otherwise substantially transforming them.

7. So far as the United Kingdom is concerned, it has been found that it is neither desirable nor practicable to lay down precise rules for determining whether or not a particular process or finishing operation upon manufactured goods is such as to alter the origin of goods. For the alternative to the present system under which borderline cases are looked at on their individual merits, is the establishment, for the whole range of goods, of precise standards and definitions which would involve the creation of an administrative machine of a size out of all proportion to the problems which in practice have to be solved. The proposals of the Working Party run counter to these conclusions and we cannot believe that they would lead to any improvement in our procedures or would in any way facilitate the conduct of trade.

8. If the Working Party's proposals are looked at from a wider viewpoint than the purely national one, it is not considered that they are such as to deserve or command general support or acceptance, for the proposed definition appears to be open to the following criticisms.

9. Rule A of the definition does no more, in effect, than to say that "th nationality of goods resulting exclusively from materials and labour of a single country shall be that of the country in question". This is an obvious and uncontroversial affirmation; but it does not appear likely to advance materially the quest for a standard definition which, to quote the words of document G/61, would "reduce the objectionable diversity of practice in this very complex area of nationality of goods." It should also be noted that the field of application of Rule A is limited by the fact that it is rare for even natural produce and minerals to reach the markets of other countries without any materials or labour from third countries having entered into the make-up of the goods as bought and sold in commerce: the wrapping of fruit in paper originating in a third country or the packing of vegetables in cases or containers originating from a third country would appear to be sufficient to exclude the fruit or vegetables from the ambit of Rule A.

10. Rule B is open to the preliminary criticism that although it constitutes a complement to Rule A so far as concerns the scope of the two rules, it does not provide a determination of origin in all the cases to which it applies: it does not follow that goods "resulting from materials and labour of two or more countries" have in fact at any time "undergone a substantial transformation". Lemons grown in country A may well be wrapped in paper from country B before export to country C. In such a case the goods are outside the scope of Rule A and fall within the scope of Rule B; but Rule B does not provide a determination of the origin of the goods because the wrapping of lemons in paper cannot be considered as substantial transformation. The rule is, however, open to the much more major criticism that intrinsically it does not advance in the slightest degree the question of the origin of goods to which two or more countries have contributed, for it merely transforms the question of what is the origin of certain goods into one of what constitutes a substantial transformation in relation to such goods. Neither of the words "substantial" and "transformation" is free from doubt as to its meaning. There is an implicit recognition of this in the definition itself, since it proceeds to elucidate that substantial transformation is to be taken to involve the conferring of a new individuality. This criterion, in its turn, is too indeterminate to stand on its own and has to be buttressed by the proposed elaboration

of lists of processes which are regarded as conferring new individuality upon goods or of otherwise substantially transforming them. Thus the structure of the definition is finally found to rest upon lists (which cannot be otherwise than of dismaying length and complexity) to be drawn up by individual countries each proceeding according to its own lights. Since the two criteria, that of "substantial transformation" and of "the conferring of a new individuality", are essentially subjective criteria it would be inevitable that the conclusions reached by one country would differ from those arrived at elsewhere. The result might, in the long run, be the erection of a system which might perhaps have the virtue of being workable, but which certainly would not achieve the expressed objective of international uniformity.

11. There is ample support for the belief that different countries would, in establishing their lists of processes, reach widely differing conclusions in the evidence provided by the last meeting of the Working Party of the extent to which a relatively small number of countries would reach different conclusions on simple, indeed traditional, instances of the processing, finishing or making-up of goods. Three simple examples were discussed, namely,

(i) African hardwood sawn, dressed, planed, tongued and grooved and finally assembled into flooring panels,

(ii) grey cloth bleached and then printed, and

(iii) motor-car parts assembled in a country other than that in which they were manufactured.

There was a complete divergence of opinion among the countries represent regarding the stage at which the goods were regarded as having become the product of the country where the processing was carried out. These were comparatively simple cases but in practice many more complicated processes are applied to manufactured goods, hundreds of different kinds of operation being applied to thousands of different classes of goods, so that the prospect of diverse answers by different countries over an extremely large field became overwhelmingly large.

12. Apart from failure to achieve the desired uniformity there is considerable room for doubt whether the criteria proposed will satisfactorily distinguish the origin of goods to which two or more countries have made contributions of materials or labour. The rolling of ingot lead into lead sheets or foil, for example, undoubtedly either confers a new individuality upon the goods or constitutes a substantial transformation of them: but the increase in value of the goods is only of the order of 6 per cent and it is open to doubt whether this is sufficient to justify the submission of ingot lead and lead sheet or foil to completely different tariff treatment. On the other hand, the elaborate embroidery of a pair of gloves of relatively inexpensive material may result in a doubling or even trebling of the value of the gloves. Neither the conditions of substantial transformation nor those of conferring of a new individuality have been met and accordingly the unembroidered gloves will be subject to the same treatment as those which have been embroidered: it is doubtful whether this is the kind of result which was intended.

13. In short, the United Kingdom believes that acceptance of the Working Party's proposals would result in the setting up of a facade of general agreement regarding the determination of the origin of goods behind which there would be fundamental disuniformity in application, and, moreover, entertains considerable doubt as to whether the criteria suggested are good ones. Moreover, it is not convinced that there is any real need for the setting up of a uniform definition of origin, either for the application of differential duties or for the operation of quantitative restrictions. Certainly there have been few complaints by United Kingdom traders occasioned by the absence of standard rules for determining origin. Bearing in mind that acceptance of the Working Party's proposals would lead to certificates of origin being required when none is now demanded, it is felt that traders are more likely to be oppressed than aided by further action by the CONTRACTING PARTIES in this field, and the United Kingdom considers that no further time and effort should be spent on the proposal.

United States

The proposed definition of origin would not require any change in United States customs regulations. It is noted that the definition is not complete and that this may be preferable. For example, it does not appear to cover many fishery products.

The United States feels that the explanatory note to accompany the definition should make clear that the definition, although applying for customs (other than statistical) purposes is not valid for determining country of origin for national security purposes. Where the exclusion (or restriction short of exclusion) is based on national security, including national defense reasons, contracting parties should be free to adopt more stringent definitions. Accordingly, it is suggested that the single sentence which now constitutes the present explanatory note should be re-written and additional sentences added to read as follows:

> "Each contracting party, on the basis of the above definition, may establish a list (or lists) of processes which are (or are not) regarded as conferring on the goods a new individuality, or as otherwise substantially transforming them. Any contracting party imposing upon imported articles permissible restrictions on security grounds under Article XXI of the General Agreement may utilize for such purposes a different definition of nationality than that herein set forth. Nothing in the above definition is intended to limit action which a contracting party may take under any general exception contained in the General Agreement."

Japan

A. No objection.

B. No objection.

C. No objection in principle. However, 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 an uniform interpretation be established accordingly.