

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG2/W/52

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Group of Negotiations on Goods (GATT)

Negotiating Group on Non-Tariff Measures

RULES OF ORIGIN

Communication from Japan

The following communication, dated 14 December 1989, has been received from the delegation of Japan with the request that it be circulated to the members of the Group.

In an attempt to elaborate its first submission (MTN/GNG/NG2/W/36), Japan submits the following proposal to the NTM Negotiating Group as a contribution to further deliberation on this matter. This proposal consists of two parts: (I) a work program towards establishing common criteria to identify the country of origin of goods, and (II) outline of a possible agreement on rules of origin.

I. Towards establishing common criteria to be used in the determination of the country of origin of goods

A feasible and realistic work program to complete the task of establishing common criteria within a reasonable period of time should be worked out by the end of 1990 in the NTM Negotiating Group. To this end, Japan proposes the following:

A. Work program

Phase One (work to be done during the Uruguay Round)

(i) Analytical work on rules of origin by the Customs Cooperation Council (CCC)

1. The CCC is requested to undertake, from the viewpoint of technicality and neutrality, to identify product areas which fall within the following categories, using the Harmonized System nomenclature (all products shall be subject to this study):

(a) Product areas of which origin can be identified by means of the criterion "wholly produced".

GATT SECRETARIAT

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- (b) With regard to other product areas not identified by means of the criterion "wholly produced".
 - i) product areas of which origin can be identified by means of the criterion "the change of four-digit HS heading";
 - ii) product areas of which origin can be identified by means of the criterion "the change of HS Chapter heading" or "the change of six-digit HS sub-heading";
 - iii) product areas not to be covered by (i) (ii).

2. The CCC is also requested to identify problems arising from the application of the rules based upon a change of tariff heading in HS nomenclature and to suggest appropriate supplementary rules to be used to cope with these problems. (Such criteria as "manufacturing process or processing operations" or "ad valorem percentage" may be applicable.)

3. The CCC is also requested to report the generic types of non-MFN policies or programs that are subject to special rules of origin, indicating program/policy used.

4. This study is expected to be completed within one year upon initiation. The CCC is requested to put forward an interim report to the GATT by early autumn in 1990 so that the Negotiating Group can use the report as a basic material for establishing a "basic guideline" in the Uruguay Round negotiations.

- (ii) Participants agree on a "basic guideline" to establish common criteria in the GATT, taking into account the interim report by the CCC. (It is considered that such an agreement among participants will give impetus to the GATT negotiations under Phase Two.)

Phase Two (work to be done by participants after the conclusion of the Phase One)

1. Participants will be requested to submit their own proposals or ideas concerning common criteria in line with a "basic guideline".

2. Participants will, then, initiate negotiations for common criteria based on the report by the CCC as well as proposals by individual participants. The negotiations shall be completed within a reasonable period of time upon initiation. The Committee on Rules of Origin to be established in the GATT shall be an appropriate forum for such negotiations.

Phase Three (during transitional period after the establishment of common criteria) and

Phase Four (after transitional period)

List of common criteria of origin to be established through negotiations shall be made legally binding among participants.

Participants shall take appropriate measures to bring their own rules of origin into conformity with the agreed common criteria. These agreed common criteria shall be periodically reviewed.

B. Proposal on a Basic Guideline

Japan is of the view that it is extremely important for participants to reach agreement on a basic guideline during the Uruguay Round in order to give impetus to and facilitate the negotiation for common criteria. Japan further believes that the following should be included in a "basic guideline" as key elements:

- (i) The origin of a given product of which production is wholly carried out in a certain country shall be attributed to this country ("wholly produced" criterion).
- (ii) In cases where two or more countries take part in the production or manufacturing process of a certain product, the origin of this product may be attributed to a country where the last substantial transformation is undergone (the "last substantial transformation" criterion). There may be three kinds of methods to identify the extent of the last substantial transformation, as provided in the Kyoto Convention, namely, "change of tariff heading", "manufacturing or processing operations" and "ad valorem percentage" approaches.
- (iii) Although these three approaches have merits and demerits in their applications as indicated in the Kyoto Convention, criteria of origin to be adopted shall be stable and not affected by the price manipulation by the importers or exporters, easy to implement by the customs authorities, and shall cover all internationally traded goods. For that reason, it may be appropriate to use the change of tariff headings approach as a basic method in cases where the last substantial transformation criterion is applied in the determination of the origin of a given product with the following proviso. (This should be examined together with the interim report of the CCC).
 - For certain products, "manufacturing process" and "value added (ad valorem percentage)" approach may be used as a supplementary method to the change of tariff heading approach in cases where the list of tariff heading does not

exactly reflect each stage of the manufacturing and production process of a given product.

- Further examination should be carried out on the benchmark to identify products to which supplementary methods are applied and on the method to calculate values to be added with regard to the value added approach.
 - Further study should also be made to identify other appropriate supplementary methods in cases where the change of tariff heading approach cannot be applied.
- (iv) List of common criteria of origin to be established through negotiations shall be made legally binding among participants. However, application of the specific rules of origin adopted for the implementation of GSP is permissible.

C. Rules to be observed by the contracting parties in the transitional phase (phases two and three)

In the transitional phase where common criteria are not fully introduced yet by participants, participants should observe the following rules:

- (i) Participants shall notify their own rules of origin to the Committee on Rules of Origin.
- (ii) In establishing, modifying or applying their own rules of origin, participants shall follow the General Disciplines, Key Principles and Procedures as provided in the agreement described in II.
- (iii) Participants shall correct their own rules of origin in accordance with the procedures as provided in the agreement as described in II, if their rules contravene the General Disciplines and Key Principles of the agreement.

II. Outline of a possible agreement on rules of origin

An agreement on rules of origin should be made through negotiations of the Uruguay Round. It should include the following elements.

Part I Objectives, General Disciplines and Key Principles

1. Objectives

The objectives of an agreement are:

- (i) to provide general principles and procedures to be followed by the contracting parties in establishing, modifying or applying their own rules of origin.

- (ii) to establish appropriate mechanism for notification, consultation and dispute settlement.

2. General Disciplines

Contracting parties shall observe the following principles in establishing, modifying or applying rules of origin.

- (a) Rules of origin should not be prepared or used as a means of restricting or distorting international trade;
- (b) Rights and benefits of contracting parties under the GATT should not be impaired or nullified;
- (c) The principle of non-discriminatory treatment should be observed;
- (d) Arbitrariness should be avoided and transparency, predictability and objectivity should be secured;
- (e) Rules of origin should be clear and simple.

3. Key Principles

- (i) (Non discrimination)

Rules of origin shall not be established, modified or applied in a discriminatory manner. Same conditions for the determination of origin and same strictness in the application of rules of origin shall be applied in the determination of the country of origin of a given product regardless of their sources.

This principle shall be applied equally to the following different types of product:

- (a) domestic product and imported product;
- (b) product imported from a certain foreign country and product imported from other third country;
- (c) product manufactured by a foreign affiliated company and product manufactured by a domestic company;
- (d) product manufactured by a company affiliated with capital of certain country's company and product manufactured by the same type of company with capital participation by other country's company.

(ii) (Predictability)

Rules of origin shall be predictable. Especially the requirements to be fulfilled in the determination of origin shall be clearly defined. In this regard following points are particularly important;

- (a) Rules of origin which state only what does not confer origin (negative standards) or state only abstract conditions or unduly strict conditions shall be prohibited.
- (b) In cases where the criterion of value added is applied, the calculation method of value added shall also be provided in the rules of origin.
- (c) In cases where the criterion of manufacturing process is applied, manufacturing process which confers origin shall be specified in the rules of origin.

(iii) (Objectivity)

Rules of origin shall be technical and neutral in nature and shall not be used as a means other than to determine the country of origin of a given product. In this regard the following conditions are particularly important:

- (a) Rules of origin shall not be devised nor used as means of restricting trade or investment. Technically excessive requirements as a prerequisite for the determination of country of origin shall be prohibited.
- (b) Rules of origin that require to fulfil a certain condition which is not associated with manufacturing and processing, such as research and development, shall be prohibited.

Rules of origin shall be applied in a neutral manner and not in a manner which would constitute means of disguised restrictions on international trade and investment.

(iv) (Prohibition of retroactive application of the rules of origin)

The rules of origin, if modified, shall not be applied retroactively.

Part II Mechanism for Notification, Consultation and Dispute Settlement and Institutional Arrangement

1. Notification

(i) Notification of laws and regulations on rules of origin

Upon entry into force of an agreement each contracting party shall notify promptly to the GATT secretariat its laws and regulations on rules of origin applying on that date including the rationale and coverage of countries and products. Notified laws and regulations will be circulated to contracting parties through the GATT secretariat.

(ii) Prior Notification and Publication

Contracting parties shall:

- (a) publish a notice in a publication at an early appropriate stage, in such a manner as to enable interested parties to become acquainted with it, that they propose to introduce a new rule of origin or modify an existing one;
- (b) notify the GATT secretariat of the products to be covered by the proposed rules together with a brief description of the proposed rules;
- (c) provide, upon request, to other contracting parties particulars or copies of the proposed rules;
- (d) allow reasonable time for other contracting parties to make comment in writing on the proposed rules, discuss the comments upon request and take them into account;
- (e) ensure that all adopted rules and regulations of origin are published in an expeditious manner.

2. The Committee on Rules of Origin

(i) Activities of the Committee

- (a) 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 the agreement at the request of a contracting party. The Committee shall carry out such responsibilities as are assigned to it under the agreement or by the Parties.

- (b) A periodic review of the rules of origin of contracting parties as well as their applications shall be undertaken to ensure their conformity with agreed upon principles, criteria and procedures, as well as GATT obligations and principles.
- (c) The agreement and common criteria shall also be reviewed periodically to ensure their consistency with their relevance to experience gained in the implementation of the agreement.

(ii) Negotiations for common criteria

Contracting parties shall undertake negotiations, with a view to establishing a comprehensive list of common criteria of origin.

3. Consultation and Dispute Settlement

- (i) 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 the agreement.
- (ii) If any contracting party considers that any benefit accruing to it, directly or indirectly, under the agreement is being nullified or impaired, or that the achievement of any objective of the agreement is being impeded, by another contracting party or parties, it may, with a view to reaching a mutually satisfactory solution 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 consultations promptly.
- (iii) 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 [X] days of receipt of such request, to investigate the matter, with a view to facilitating a mutually satisfactory solution.
- (iv) The Committee may establish a technical expert group and direct it to examine the matter (terms of reference of this group is decided by the Committee).
- (v) Panel proceedings

If no mutually satisfactory solution has been reached under the procedures of this section, within [X] months of the request for the Committee investigation, the Committee shall, upon request of any Party to the dispute, establish a panel.

When a panel is established, the Committee shall direct it to:

examine the matter;

consult with parties to the dispute and give full opportunity for them to develop a mutually satisfactory solution;

make a statement concerning the facts of the matter as they relate to the application of provisions of the agreement and make such findings as will assist the Committee in making recommendations or giving rulings on the matter.

Panels may use the report of any technical expert group as the basis for their consideration of issues that involve questions of a technical nature.

They should aim to deliver their findings, and where appropriate, recommendations to the Committee without undue delay, normally within a period of [X] months from the date that the panel was established.

(vi) Enforcement

After the investigation is completed or after the report of a technical expert group or panel is presented to the Committee, the Committee shall give the matter prompt consideration. With respect to panel reports, the Committee shall take appropriate action normally within [X] days of receipt of the report, unless extended by the Committee, including:

a statement concerning the facts of the matter;

or recommendations to one or more parties;

or any other ruling which it deems appropriate.

The Committee shall keep under surveillance any matter on which it has made recommendations or given rulings.

(vii) Other Provisions Relating to Dispute Settlement

If disputes arise between parties relating to rights and obligations of the agreement, parties should complete the dispute settlement procedures under the agreement before availing themselves of any rights which they have under the GATT. Parties recognize that, in any case so referred to the CONTRACTING PARTIES, any finding, recommendation or ruling pursuant to the provisions of this section may be taken into account by the CONTRACTING PARTIES, to the extent they relate to matters involving equivalent rights and obligations under the General Agreement. When Parties resort to GATT Article XXIII, a determination under that Article shall be based on GATT provisions only.