COMMISSION OF THE EUROPEAN COMMUNITIES

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Brussels, 12 December 1973

PROPOSAL FOR A
REGULATION (EEC) OF THE COUNCIL

concerning the definition of the concept of originating products
for the implementation by the Member States of
Articles 109 (2) and 119 (2) of the Act concerning the
Conditions of Accession and the Adjustments of the Treaties

(submitted to the Council by the Commission)

EXPLANATORY NOTE

According to provisions of Articles 109 (2) and 119 (2) of the Act concerning the Conditions of Accession and the Adjustments to the Treaties, goods originating in the African and Malagasy States, in the partner States of the Community in East Africa and in the Overseas Countries and Territories, are subject on importation into the new Member States to the same treatment as applied to them before accession, except in the case where progress to the Common Customs Tariff leads to a reduction in customs duty in a new Member State.

If that progress leads to an increase in duty, the treatment applied to the States, countries and territories in question constitutes a preferential treatment in derogation from the most-favoured nation clause.

Thus, it is necessary to specify the rules of origin applicable to the goods covered by this treatment

This is the purpose of this regulation

Proposal for a

Regulation (EEC) of the Council

concerning the definition of the concept of originating products for the implementation by the Member States of Articles 109 (2) and 119 (2) of the Act concerning the Conditions of Accession and the Adjustments of the Treaties

THE COUNCIL OF THE EUROPEAN COMMUNITIES

Having regard to the Treaty establishing the European Economic Community in particular Article 113 thereof,

Having regard to the proposal from the Commission

Whereas according to Articles 109 (2) and 119 (2) of the Act concerning the Conditions of Accession and the Adjustments of the Treaties, goods originating in the associated States mentioned in Article 109 (2) and goods originating in the overseas countries and territories referred to in Article 119 (1) are subject on importation in the new Member States, to the same treatment as applied to them before accession; if progress to the CommonCustoms Tariff leads to reduction in customs duty in a new Member State, the new reduced customs duty applies to the said importations; it is expedient to lay down precise rules for the determination of the origin of goods benefitting from the said treatment; for this purpose and in order to simplify the customs formalities to be implemented by the States, countries and territories in question, it is equally necessary to apply the provisions of Regulation (EEC) No. 1251/71 of the Council of 7 June 1971 (1) on the implementation of Decision No. 36/71 of the Association Council set up under the Convention of Association between the EEC and the African and Malagasy States associated with this Community, Regulation (EEC) No. 1289/71 of the Council of

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7 June 1971 [2] on the implementat on of Decision No. 1/71 by the Association Council under the Agreement setting up an association between the EEC and the United Republic of Tanzania, the Republic of Uganda and the Republic of Kenya, and of the Decision of the Council of 7 June 1971 [3] on the definition of the concept of originating products and methods of administrative cooperation for the purpose of implementing the Decision of 29 September 1970 concerning the association of overseas countries and territories with the European Economic Community,

HAS ADOPTED THIS REGULATION :

Article 1

1. The provisions of Regulation (EEC) No. 1251/71 of the Council of 7 June 1971 on the implementation of Decision No. 36/71 of the Association Council set up under the Convention of Association between the European Economic Community and the African and Malagasy States associated with this Community shall, for the purpose of Article 109 (2) of the Act concerning the Conditions of Accession and Adjustments to the Treaties, apply to the definition of originating products in respect of products of these States.

2. The provisions of Regulation (EEC) No. 1289/71 of the Council of 7 June 1971 on the implementation of Decision No. 1/71 of the Association Council set up under the Agreement establishing an Association between the European Economic Community and the United Republic of Tanzania, the Republic of Uganda and the Republic of Kenya, shall for the purpose of Article 109 (2) of the Act concerning the Conditions of Accession and the Adjustments to the Treaties, apply to the definition of originating products in respect of products of these States.

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(1) O.J. No. L 135 of 21.6.71, p. 1

(2) O.J. No. L 141 of 27.6.71, p. 1

(3) O.J. No. L 141 of 27.6.71, p. 47

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3. The provisions of the Decision of the Council of 7 June 1971 concerning the definition of the concept of originating products and the methods of administrative cooperation for the purpose of the application of the Decision of 29 September 1970 relating to the association of overseas countries and territories with the European Economic Community shall, for the purposes of Article 102 (2) of the Act concerning the Conditions of Accession and the Adjustments to the Treaties, apply to the definition of originating products in respect of products of these States.

Article 2

This regulation shall enter into force on 1 January 1974.

This regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Council,

The President

Origin rules in EFTA and in the EC Association agreements

The intention is that free trade in industrial goods between the six EFTA non-candidate countries and the enlarged EEC will be based on a set of rules for deciding how to identify the products entitled to free trade treatment. EFTA itself, as a free trade area, has such a set of origin rules, whereas the EC, as a customs union with its common external tariff, does not need one to govern the trade between its members. Origin rules are necessary in an Association such as EFTA in which Member States have maintained their autonomy in national customs tariffs because, in the absence of such rules, it would be possible for exporters in other countries to ship their goods to an EFTA country with a low or nil rate of duty and then forward them to another EFTA country with a high rate of duty. This would undermine the tariff structure of the latter country and distort the usual patterns of trade.

Though the Common Market has no origin rules for its internal trade, it has them to govern its trade with the countries which have formed association agreements with it, and its rules are commonly referred to as the "EAMA" (Etats Africains et Malgaches associés) or the Yaoundé type – from the Convention of Association, signed at Yaoundé, Cameroon, between the Community and these eighteen African states. To find out the similarities and differences between the EFTA and the "EAMA" systems, the EFTA Bulletin put some questions to the chairman of EFTA's Committee on the Rules of Origin, Mr. H. Brunner, of the Division of Commerce of the Swiss Federal Department of Public Economy.

What are the main characteristics of the various kinds of origin system which are in use?

There are three main groups of origin rules. To take our own first, there is the EFTA system which uses three criteria for identifying the goods that qualify for treatment as of EFTA origin. First, there is the "wholly-produced" rule which is the most obvious criterion and is common to most if not all origin systems. Then there is the process criterion and, alternatively, at the choice of the exporter, the percentage criterion. Under the second, a "qualifying process" is listed against the finished product, and if the process is performed within the area of EFTA, the finished product qualifies as of EFTA origin. Under the third criterion, the product is regarded as being of EFTA origin if no more than 50 per cent of its value comes from outside the EF A area. These are the general rules, and the possibility of choosing between the latter two – although the choice is not open for some products – is one of the principal features of the EFTA system.

In the "EAMA" system the basic rule, beside the wholly-produced rule, is that there should be a change of BN (Brussels Nomenclature) tariff heading as a consequence of the processing of a material before a product can qualify as being of the relevant origin. This is a general criterion which is complemented by exceptions embodied in two lists. There is a list of products for which the requirements are more restrictive than simply a change of tariff heading, and a list for which the requirements are less restrictive. In the former, the requirements may prescribe the use of certain "originating" materials, or may prescribe a two-stage process, or there may be in addition the requirement that a certain percentage of the value of the product must be of the relevant origin. Thus in contrast with the EFTA system which permits a choice, in a "EAMA" type system a percentage qualification comes into play only in addition to the process rule.

There are also the US and Commonwealth systems in which the basis is a percentage criterion, but the percentage requirement may vary with the product.

What is the reason for having in the EFTA system the possibility of choosing between the process and percentage criteria?

The percentage rule gives us more possibilities, because if in the case of a particular product the specified qualifying process has not been performed in EFTA, the percentage requirement may nevertheless be fulfilled. The qualifying process may require the use of a certain material, and in a particular case this material may not have been used, so this criterion may not be invoked. But it is still possible that 50 per cent of the value of the product may be of EFTA origin, and in that case the product would qualify. It should be noted, however, that the choice of criterion is not available for textile products. They qualify for EFTA origin treatment only on the basis of the process criterion.

Apart from the possibility which the exporter has of choosing the criterion on which he claims EFTA treatment, what other important differences are there between the two systems?

Another feature which is special to EFTA is the inclusion of a basic materials list. The idea of this is that the goods on the list can be used in all processes and they are considered as originating in EFTA wherever they in fact come from. This does not apply to the import of these materials: they are liable to whatever duties (if any) are listed in the national tariffs, but when a process of production is performed on them the material is treated as being of EFTA origin when determining the origin of the finished product.

On what grounds are materials included in the list? Is it that they are lacking in EFTA?

Yes, the general principle for the inclusion of items in the list is that they are not available within EFTA or else are in insufficient supply within EFTA.

An article recently published in the monthly journal of the Swedish Export Association makes much of the absence, in the

"EAMA" system, of the idea of cumulative origin. What is the significance of this idea?

In EFTA the principle of cumulation applies in the widest sense. That is, in all cases where the process criterion prescribes a two-step process, it does not matter if the processes are performed in one EFTA country or in different EFTA countries. What matters is that the whole is done within EFTA. This applies, for example, to cotton fabrics: both the spinning and the weaving have to be done within EFTA for the fabric to qualify as of EFTA origin, but the spinning and the weaving do not both have to be done in one EFTA country.

The cumulative principle applies also in the case of the percentage criterion. The criterion can justify a claim to EFTA origin when, for example, 20 per cent of the value originates in one EFTA country and 30 per cent in another. Putting it round the other way, to qualify for origin treatment the contribution in two or more EFTA states has to be such that the non-EFTA materials do not amount to more than 50 per cent of the export price of the product. And there is another difference here between the EFTA and the "EAMA" systems. In the former, the price to which the percentage has to be related is the export price of the product, including cost of materials, labour, profit and so on. In the "EAMA" system, when the percentage rule enters into the definition, the price it is related to is the ex-factory price.

So far as the process criterion is concerned, how common is it to require a two-step process?

It is fairly common in EFTA for chemicals and for engineering products and particularly for textiles. But, except in the case of textiles, the possibility of using the percentage criterion eases rules which are otherwise strict. And cumulation is also important in the use of the percentage criterion.

In the "EAMA" system also most of the exceptions from the general rule of transfer to another tariff heading are found in the case of textiles. A two-step process is usually required for them. For chemicals, a two-step process is often required and sometimes a 50 per cent rule in addition to the tariff heading change. The two-step requirement also applies to a wide range of metal and machinery products, and additional percentage criteria often have to be fulfilled.

Some illustrations would make clearer what such rules entail. Could you give a few examples?

Here are three examples:

Tariff heading 61.01: outer garments, men's and boys' (e.g. suits, coats). To qualify as of the relevant origin the manufacture must start from yarn or unbleached fabrics and go through all the processes necessary for the production of the garments.

80.03: wrought tinplate. A change of tariff heading is necessary, and in addition the value of materials coming from third countries must not be more than 50 per cent of the ex-factory price of the product.

90.07: photographic cameras. There must be in this case a change of tariff heading and (a) the value of parts of outside origin must not exceed 40 per cent of the ex-factory price and (b) at least 50 per cent of the value of the parts used have to originate in either the Community or the associated state.

Do you think that, despite the difference between the two systems, the "EAMA" rules could be appropriate for the future agreements with the non-candidate EFTA countries?

Preliminary studies have shown that the "EAMA" system could provide a workable basis for relationships between the Community and the non-candidate countries. However, because the trade relationships between the EC and the non-candidates differ from those between the EC and the countries so far associated with it, some amendments of the present "EAMA" rules may be found to be necessary. They would be necessary in particular to take account of the existing patterns of trade and of the degree of industrial specialization in EFTA, with the division of labour that has followed from this.

Committee of Trade Experts

The Committee of Trade Experts held its fourth meeting of 1971 from 21st to 23rd September.

The Committee concluded its examination of the effects of changes in the Brussels Nomenclature on the provisions of the EFTA Convention Draft Decisions to this effect will be put before the Councils in the course of the autumn

The discussions of the draft Agreement on the control and marking of articles of precious metals, which was resumed at the Committee's meeting in June, were continued The Committee agreed that the hallmarking experts should meet in the middle of November in order to re-examine and finalize the technical annexes.

The Committee carried out a mandate given to it by the Council on the possible implications for EFTA trade of the Finnish import equalization tax A report to the Councils was agreed upon

Among other matters discussed at the meeting were problems connected with public procurement and the reciprocal recognition schemes. These matters will be the subject of further discussion at the Committee's next meeting, which is scheduled for 30th November 1971.

Future meetings

November 4th-5th Ministerial Meeting
30th-3rd December Committee of Trade Experts

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 19 October 1973

authorizing the French Republic to exclude from the implementation of Council Regulation (EEC) No 2810/73 the products referred to in the said Regulation, imported into the Department of Réunion

(Only the French text is authentic)

(74/15/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, in particular Article 113 thereof;

Having regard to the Internal Agreement of 29 July 1969 [1] on the measures to be taken and the procedures to be followed to implement the Convention of Association between the European Economic Community and the African and Malgasy States associated with that Community, in particular Article 5 (1);

Whereas Council Regulation (EEC) No 2810/73 [2] of 15 October 1973 on the implementation of Decision No 46/73 of the Association Council set up by the Convention of Association between the European Economic Community and the African and Malgasy States associated with that Community, authorizes a derogation for 1973 and 1974 from the definition of the concept of originating products to take account of the special situation of Mauritius in regard to certain industrial textile products;

Whereas importation of these textile products into the Department of Réunion in implementation of Regulation (EEC) No 2810/73 could cause difficulties by a change in the economic situation, in particular hindering the industrialization of this Island;

Whereas Article 16 (2) of the Convention of Association between the European Economic Community and the African and Malgasy States associated with that Community provides that Member States could be authorized to take protective measures in respect of certain products,

HAS ADOPTED THIS DECISION:

Article 1

The French Republic shall be authorized to exclude from the implementation of Council Regulation (EEC) No 2810/73 products referred to in that Regulation imported into the Department of Réunion.

Article 2

This Decision shall apply as from 1 July 1973.

Article 3

This Decision is addressed to the French Republic.

Done at Brussels, 19 October 1973.

For the Commission

The President

François-Xavier ORTOLI

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[1] OJ No L 282, 28. 12. 1970, p. 44.
[2] OJ No L 290, 17. 10. 1973, p. 3.