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Report

drawn up on behalf of the Committee on External Economic Relations

on the rules of origin

Rapporteur: Mrs L. MOREAU

PE 87.342/fin.
Or. Fr.

English Edition

At its sitting of 16 May 1983, the European Parliament referred the motion for a resolution by Mr Welsh (Doc. 1-1304/82), pursuant to Rule 47 of the Rules of Procedure to the Committee on External Economic Relations.

At its meeting of 22 June 1983, the Committee on External Economic Relations decided to draw up a report and appointed Mrs Louise Moreau rapporteur.

The committee considered the draft report at its meetings of 1 December 1983 and 22 February 1984. At the latter meeting it unanimously adopted the motion for a resolution as a whole.

The following took part in the vote: Sir Fred CATHERWOOD, chairman; Mrs Louise Moreau, rapporteur; Mr Blumenfeld, Miss Hooper, Mr Lemmer, Mrs Lenz (deputizing for Mr Filippi), Mr Mommersteeg, Mr Pesmazoglou, Mr Radoux, Mr Rieger, Mr Riveriez, Mr Seeler, Mr Spencer, Sir Jack Stewart-Clark and Sir Fred Warner.

This report was tabled on 28 February 1984.

The deadline for the tabling of amendments to this report appears in the draft agenda for the part-session at which it will be debated.

C O N T E N T S

A

The Committee on External Economic Relations hereby submits to the European Parliament the following motion for a resolution, together with explanatory statement:

MOTION FOR A RESOLUTION

on the rules of origin

The European Parliament,

- having regard to Article 113 of the Treaty of Rome,

- having regard to the Convention of Lomé and in particular to Article 11 thereof and Protocol No. 1 thereto,

- having regard to Regulations 1314/71 and 3377/82 establishing the Generalized System of Preferences,

- having regard to the rules of origin guidelines laid down by the competent bodies of the European Community in the context of its external relations,

- having regard to the resolution tabled by Mr WELSH (Doc. 1-1304/82),

- having regard to the report of the Committee on External Economic Relations (Doc. 1-1500/83),

A. whereas the rules of origin mechanisms have become a fundamental instrument of trade policy by virtue of their considerable influence on trade flow patterns,

B. whereas the rules of origin, by specifying the amount of processing that must be carried out, are intended to ensure that certain specific preferences are really granted to the countries with which trade agreements have been concluded,

1. Affirms the need to uphold the principle of free trade, which is one of the basic principles of the Treaty of Rome, and hopes, at the same time, that the structure of the rules of origin and their application will take due account of the interests of Community industry and of the export possibilities open to our trading partners;

2. Recalls that the rules of origin constitute a technical instrument of key importance in the application of the customs concessions provided for in the trade agreements concluded by the EEC;

3. Considers it essential, given the importance of the rules of origin, that they should be made more transparent and easier to apply; considers it useful, moreover, in the interests of simplification, to limit the number of criteria applicable to a processing operation to two groups only: (a) the areas subject to Regulation 802/68 and (b) the preferential areas;

4. Considers it essential to encourage trade between the EEC and the EFTA countries and, to that end, calls on the competent authorities to solve the rules of origin problem and to start the preparatory work for a harmonization of the relevant technical rules and standards;

5. Considers that studies of the manner in which the rules of origin operate should be carried out with a view to ensuring that mechanisms exist to contain fraudulent practices which cause serious deflections of international trade;

6. Considers that the rules of origin are not an obstacle to international trade and that criticisms made on the assumption that they are derive from a fundamental misinterpretation of the nature of the preferential trade system;

7. Hopes that the same rules will be applied where goods are imported into and exported from one and the same country;

8. Stresses the need for clear and simple texts explaining the form of the certificates of origin, specifying the authorities responsible for issuing them and indicating the circumstances in which they may be required to be presented;

9. Stresses the need to make quite sure that the rules are applied in a uniform manner since, given the small number of mutual aid agreements that exist at present, there is a risk of their being interpreted in a haphazard fashion;

10. Instructs its President to forward this resolution to the Council and the Commission.

B

EXPLANATORY STATEMENT

I. INTRODUCTION

The rules of origin have become a basic instrument of the Community's trade policy. Forming an integral part of the world trading system, they lay down the conditions to which a product must conform to be considered as 'originating' in a certain country and hence to be eligible for preferential tariff treatment by the Community.

It should be remembered that the national origin rules formerly applied in the Community Member States were shaped by the needs of their respective economies and their international trade policy guidelines and accordingly differed considerably.

During the early years of the European common market, there were no international regulations on rules of origin. The Community therefore produced a mandatory definition of the concept of 'origin' for the purpose of ensuring uniform application of the Common Customs Tariff and trade policy measures and for the Community determination and certification of the origin of goods exported to third countries.

The general criteria applicable to 'origin' are set out in Council Regulation (EEC) No. 802/68 of 27 June 1968, as amended by Regulation (EEC) No. 1318/71 of 21 June 1971.

II. TWO DISTINCT TYPES OF ORIGIN RULES

The Community has two distinct types of origin rules which are designed to meet completely different needs. These are the 'preferential' origin rules, upon which this Commission has been invited to examine, and the "non-preferential" origin rules.

The Communities preferential origin rules are intended to decide whether a particular origin can be claimed or not and set out specific conditions to be met before goods can claim preferential treatment at import into the Community. On the other hand the Communities non-preferential origin rules are more flexible as they are designed so that it is always possible to assign a country of origin to an imported product.

III. THE 'NON-PREFERENTIAL' ORIGIN RULES

The 'non-preferential' rules of origin in addition to their purely statistical use are also used when issuing certificates of origin, if required at all, for the Communities trade with countries which do not give the Community any treatment beyond that of the most favoured nation clause. These rules also are used in cases where the Community or a Member State has introduced a prohibition or limitation on the import of a particular product from a particular country, for example in the context of the bilateral textile Agreements concluded under the Multifibre Agreement or the Italian restrictions on the import of Japanese motor cars.

These non-preferential rules are also used when the Member State which has a restriction on the direct import of goods from a particular country has obtained the right, under the application of Article 115 of the Treaty, to prevent indirect imports of products of the same origin in free circulation in the other Member States of the Community.

In this context there may arise questions as to whether a product made in the Community, mainly or partly from parts imported from the country to which the restrictions on direct import apply, has that origin or Community origin. If the product has Community origin there can be no restriction on its movement anywhere in the Community. The non-preferential rules also apply in such cases.

The reason for origin rules

The Community applies two basically different approaches in its preferential arrangements; they can be called 'the customs union system', for example as used inside the Community and with Turkey, and the 'free trade area system' which is used in all the other cases including the G.S.P.[1].

The customs union system stipulates that the external tariffs (including levies) and commercial policies of the Community and the partner country are the same. The free trade area system implies that the external tariffs (including levies) and commercial policies applied by the partners are independent and will remain so.

In a free trade area system only 'originating' products can benefit from preferential treatment so as to avoid the trade deflection which would otherwise arise (that is the entry of third country goods into the Community via the partner country at a lower rate of duty than the CET or freely when they would otherwise be subject to any other restrictions such as a quota).

The origin rules provide for specified amounts of working or processing to be carried out on imported products used in manufacture before the resulting products can have duty free access to the market of the community or a partner country. This means that products imported from third countries cannot benefit from preferential treatment.

(a) 'Sufficient working or processing'

'Sufficient working or processing' is precisely defined in relation to each and every final product. The basic rule is one requiring the production process to be such in which imported, non-originating materials are transformed so that the final product is in a different tariff heading than the imported materials.

There are two sets of exceptions to this basic principle, one, 'List A', where additional working or processing is specified and the other 'List B' where, as an alternative to the 'charge of tariff heading rule', other criteria are specified. Insofar as the rules in Lists A & B are concerned, these, for some products, specify that specific processes have to be performed. However, for other products, the rules provide for a certain added value to be acquired. These Lists A & B are essentially the same in all the Communities preferential arrangements.

Examples of the kind of rules found in lists A & B are given below.

For example, if cotton fibres are spun to make yarn, which in turn is woven into cloth, which is then made into a shirt, then it is possible to specify for the shirt which processes must be carried out for it to be originating. This is in fact weaving the cloth and making the shirt. If these processes are both carried out the shirt originates otherwise it does not.

[1] See Annex

But if the production process is a complex one, using many parts and components, any one of which may be produced locally or imported, and there are many alternative ways of combining these components - like a washing machine - then the origin rule is usually one based on obtaining a specific percentage of added value (60 %).

(b) 'Full', 'total' or 'integral' cumulation

This is the most liberal form of cumulation from an economic point of view and is the most simple in conceptual terms. Basically the Community and the partner state(s) are regarded together as one territory for the purposes of satisfying the origin rules. This means that it does not matter either where the operations are carried out within the area, or if the trade is 'bilateral' (involving only two partners) or 'diagonal' (involving more than two partners).

The Community applies this kind of cumulation to the ACP (Lomé) countries and the OCT, where in effect the OCT, ACP countries and the Community form one large single territory inside which the origin rules can be satisfied before final export to the Community. The Community also applies this in the Maghreb Agreements (where Algeria, Morocco, Tunisia and the Community form the single territory).

(c) 'Bilateral' cumulation

This kind of cumulation requires that the materials or components exported from partner (A) to be used in the other partner (B) in further manufacture must be originating in (A) before they can be taken into consideration for cumulation in (B) as if they had been wholly produced in (B). Economically seen, this system is stricter than 'full' cumulation.

The system is called 'bilateral' cumulation because the Community applies it on a bilateral basis only in the context where it is used (agreements with Mediterranean and EFTA countries). This means that the originating status obtained by way of this kind of cumulation using materials (e.g. cloth) from (A), is only valid when the final product (e.g. a shirt) produced in (B) is sent back to (A).

(d) 'Diagonal' cumulation

The basic element is the same as in 'bilateral' cumulation in that materials and components can only be used for cumulation when further processed if they have already obtained originating status. The system is different from 'bilateral' cumulation because it is not limited to a bilateral framework but applies also where more than two partners are involved. This system is however even less liberal economically speaking because additional rigorous conditions apply to the further working or processing in partner (B) before the goods are exported to (C).

This system which applies in the EEC-EFTA context was negotiated by the Community to take account of the fact that the EFTA countries both prior to 1972 and after 1972 had a free trade area between themselves independent of, but after 1972 linked to, the EEC-individual EFTA countries' free trade Agreements. It was recognized that the cumulation system had to reflect - to a limited extent - the existence of this multilateral trade. It was later used as the basis for the cumulation within the three GSP regional groups - ASEAN, Central American Common Market and the Andean Group. In the EFTA Agreements this system applies together with a system of bilateral cumulation with each EFTA country.

The Commission proposed to the Council in 1979 that this system should be replaced in the EFTA context by an extension of bilateral type cumulation to the multilateral trade.

IV. CONCLUSIONS

The criticisms of the rules of origin system currently in force usually relate to the rules applicable to countries enjoying preferential treatment, since these are more detailed and more precise than those applicable to relations between the EEC and third countries (application of Regulation 802/68).

One objection is that the rules of origin criteria differ depending on the partners or groups of partners to whom they are applied. To this it may be replied that a uniform application of the rules of origin is not always desirable, given the differences in the trade or competition policy pursued by the EEC and its partners.

In the interests of simplification, however, it would perhaps be appropriate to restrict the number of criteria for a processing operation to two groups:

- areas subject to Regulation 802/68; and
- preferential areas.

A further problem concerns the forms to be completed for the purpose of determining origin. There is a temptation to simplify matters by replacing the form either with 'general declarations' or with the simple requirement that the relevant invoices be submitted. While such a simplified procedure may be possible between countries which are neighbours and between which the customs formalities are carried out properly, it is not always possible in the case of countries which are more distant from each other or in which the administrative infrastructures are inefficient.

Yet another controversial issue is the existence of fraud or incorrect declarations which, in the context of international trade, are tantamount to unfair competition. The criticisms here concern firms and undertakings rather than international bodies. There can be no denying that, in the interests of European industry, it would be desirable to promote studies of the manner in which the rules of origin operate, particularly from the point of view of setting up machinery to prevent or contain fraudulent practices which cause deflections of international trade.

It has sometimes been asked whether the rules of origin constitute an obstacle to international trade.

To assert that the rules of origin are an obstacle to the development of international trade is in our view incorrect. To do so is to misunderstand totally the nature of a system of preferential trade. Import duties must be paid on a product originating in a third country before it can enter the EEC. If that product has previously undergone processing in a country which has a preferential trade arrangement with the EEC, it cannot be said that the arrangement automatically allows the product to enter the Community country where it is intended for consumption free of customs duty.

Admittedly, a process of simplification and harmonization of the rules of origin might in many respects be beneficial. In practice, however, it would prove very difficult because so many agreements have been concluded by the EEC and because at times they are based on fundamentally different political and economic guidelines. Having said that, there are certain principles which could help to bring about a measure of simplification:

- the rules establishing the origins of a product should be applied 'erga omnes';
- the same rules should be applied where goods are imported into and exported from one and the same country;
- clear and simple texts should be used to explain the form of the certificates of origin, specify the authorities responsible for issuing them and indicate the circumstances in which their presentation is obligatory.

Consideration of the practical application of the Community's rules of origin prompts us to make the following basic point: if the rules of origin system is to conform to the trade policy yardsticks laid down by the Community, it is essential that it be applied and interpreted in a uniform manner. If it is not, there is a risk that the principles which led the Community to establish trade relations with its partners, having due regard for the constraints which from time to time arise, and to evolve a particular system of international trade, will be distorted.

If the rules of origin are from time to time applied differently depending on how they are interpreted, there is a danger of the system being operated in a totally arbitrary fashion and of the guidelines chosen by the Community for the realization of its external economic relations policy being distorted. The mutual aid agreements which call for a uniform interpretation of the rules

of origin are as yet few in number, and it is therefore essential to make quite sure that the rules are always interpreted and applied in identical fashion.

ANNEX I

List of preferential arrangements to which origin rules apply

1. EFTA Agreements

Austria
Finland
Iceland
Norway
Portugal
Sweden
Switzerland

Reciprocal agreements, each individually with 'bilateral' cumulation. There is also 'diagonal' cumulation for multilateral trade.

2. Faroe Islands

Unilateral arrangement with bilateral cumulation.

3. Mediterranean Agreements

Maghreb

Algeria
Morocco
Tunisia

Linked non-reciprocal agreements with 'integral' cumulation covering all three countries and the Community

Mashreq

Egypt
Lebanon
Syria
Jordan

Independent non-reciprocal Agreements with bilateral cumulation with the Community

Israel, Malta and Cyprus : Independent reciprocal Agreements with bilateral cumulation with the Community

Yugoslavia : Independent non-reciprocal Agreement with bilateral cumulation

Spain : Independent non-reciprocal Agreement with bilateral cumulation. The Lists A & B differ somewhat from the other Agreements.

4. ACP & OCT

The Lomé Convention (negotiated) and the Council Directive on the OCT (autonomous) form a linked whole. A non-reciprocal system with 'integral' cumulation.

5. GSP

Autonomous and non-reciprocal.

No cumulation with the Community. (no 'donor country element')

But for 3 regional Groupings there is 'diagonal cumulation' between their Members.

- Andean Group

  Bolivia
  Colombia
  Ecuador
  Peru
  Venezuela

- Central American Common Market

  Costa Rica
  El Salvador
  Guatemala
  Honduras
  Nicaragua

- ASEAN

  Indonesia
  Malaysia
  The Philippines
  Singapore
  Thailand

N.B. : A very large number of GSP countries are in fact covered by the Lomé Convention, the OCT or a particular Agreement (e.g. Egypt)

MOTION FOR A RESOLUTION (DOCUMENT 1-1304/82)
tabled by Mr WELSH
pursuant to Rule 47 of the Rules of Procedure
on the Rules of Origin

The European Parliament,

A. having regard to the Treaty of Rome and particularly Article 113 thereof,

B. having regard to the Lome Convention and particularly Article 11 and Protocol No. 1 thereto,

C. having regard to Regulations 1314/71 and 3377/82 establishing the Generalised System of Preferences,

D. having regard to the Commission's answers to Written Questions 1061/81,[1] 1680/81,[2] 710/82[3] and 1321/82,

1. Considers that the Rules of Origin applied by the Community to different Groups of Trading:

   a. discriminate unreasonably against certain partners benefitting from the Generalised System of Preferences,

   b. do not encourage developing countries to use materials and semi finished products sourced from the Community as opposed to other developed countries,

   c. do nothing to encourage trilateral trade between the EEC and its EFTA and GSP partners;

2. Considers that the answers by the Commission to the written questions attached hereto reveal considerable confusion of mind;

3. Believes that obscure and contradictory origin rules have the effect of reducing the volume of trade and thus employment opportunities;

4. Instructs its competent Committees to examine the operation of the different Rules of Origin and produce recommendations as to how they could be simplified clarified and used to promote an expansion of trade between the Community and its partners.

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1 OJ No C 333, 21.12.81, p.32
2 OJ No C 126, 17.5.82, p. 6
3 OJ No C 262, 6.10.82, p. 12