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RULES OF ORIGIN AND TRADE FACILITATION

The contents of this article complement those of the recently published FAL Bulletin No. 201, which referred to the rules of origin included in economic integration agreements signed by members of the Latin American Integration Association (LAIA). On this occasion the relationship between rules of origin and facilitation of international trade in goods is examined. The contents of both this issue and of FAL Bulletin No. 201 have been taken from a more extensive document written by the same author, which is publication No. 28 of the ECLAC Comercio Internacional Series, Normas de origen y procedimientos para su administración en América Latina, of May 2003.

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I. THE IMPORTANCE OF RULES OF ORIGIN

One example which illustrates the significance that a rule of origin can have for a country, is when sanctions are being applied to another country, because of the effect of the possible or proven adoption of an unfair trade practice in relation to some product that is exported from the second country to the first. The country affected then has to take precautions to ensure that its imports of this same good come unquestionably from a country other than the one to which it is applying the protective countervailing measure. This is to prevent the sanctioned nation from using a third country as an intermediary in a process of triangulation or deflection of trade, whereby the merchandise would finally reach the market of the country applying the sanction.

Although rules of origin are necessary, their functioning inevitably generates economic costs because they change the ratio of relative prices and the allocation of productive resources within a country and also between countries in the case of an economic integration agreement. Nor is the distribution of benefits equitable among production sectors, economic activities and the different countries according to their circumstances. Accordingly, rules of origin may be used as a national or regional tool of global, sectoral, industrial or trade policy, especially if the rule is specific and not general in nature. In any case, it is important to note that rules of origin can, in net terms, have a greater effect for countries with a lower relative level of economic development, as the industrial sectors of such countries are less diversified and integrated. The basic principles for ensuring that rules of origin are effective in practice are described below.

II. PRINCIPLES OF RULES OF ORIGIN

It is generally accepted that at least the three following unquestionable principles must be observed in order to improve the application of rules of origin to goods:

1. Simplicity. The rules of origin must be clear and transparent, in order to minimize the possibility of their being applied in a subjective, discriminatory or fraudulent manner. Otherwise, they generate unnecessary complications that hinder the trade in goods.

2. Predictability. These rules must be sufficiently clear, known and stable to enable the productive sector, especially when it is focused on external trade in goods, both public and private, to be able to anticipate in a strategic and secure manner how the rules will applied to the various kinds of merchandise and shipments, taking into account their respective destinations.

3. Administrability. The rules must be easily and efficiently administrated, and verifiable in a simple and timely manner. That is, they should not contribute to generating economic or financial difficulties for companies in a manner that could be avoided by having a modern and timely system of public administration, especially with regard to customs matters. This principle is directly connected with ensuring that the application of rules of origin is in fact facilitating the trade in goods, by reducing transaction costs for international economic agents.

It is interesting that these three principles are directly related to facilitation of the trade in goods. Uniformity of rules of origin has also been suggested as a principle, in the sense that the rules should be applied consistently by each geographical entity, without distinguishing the provenance of the merchandise. However, as the rules reflect in each case and in a specific manner the particular economic sensitivity of whoever applies them, which varies according to the exporter in question, the uniformity principle remains a theoretical issue.

III. CENTRAL ELEMENTS THAT MAKE UP THE RULES OF ORIGIN

In view of their conceptual and thematic scope, the following two factors can be distinguished as the components of a rule of origin:

1. Definition of the rule of origin. This is understood as the conditions or requirements that, according to the regulation, a product must comply with, in connection with its origin, in order to be considered as from a particular country or territory.

2. Application of the rule of origin. This refers to the administrative regulation that specifies the procedures that must be carried out for correct application of the rule, especially the customs procedures. This aspect may in turn be subdivided into the following two elements:

(a) Certification of origin. This is the administrative procedure to be followed to show that a merchandise fulfils the conditions that are defined in the respective regulation, so that the product can be considered to have the origin referred to.

(b) Proof of origin. This relates to the procedure established to inspect, verify and control the validity of the certificate of origin of the product, as well as the veracity of the data expressed in it. This element also includes the legal consequences deriving from non-compliance with the regulation.

IV. MAIN AREAS IN WHICH RULES OF ORIGIN OPERATE

Rules of origin may be preferential or non-preferential. Preferential ones are those applied in a selective trading arrangement, which applies special and favourable tariff or non-tariff treatment to one, or more, or all of its member States. Non-preferential rules of origin may in turn be contractual or autonomous. Contractual rules are those that apply in the economic integration agreements, while autonomous rules are those of the international development assistance programmes, such as for example, the Generalized

System of Preferences (GSP) which are applied by some developed countries for the benefit of certain imports from developing countries. These rules may be applied by one or more national beneficiaries and also may benefit at least one country.

In relation to Latin America and the Caribbean, apart from GSP, such rules are included in the Andean Tariff Preferences Act and the Caribbean Basin Initiative of the United States of America. There are also the trade preferences granted by the European Union for imports of goods from its former colonies in Asia, the Caribbean and the Pacific, in the framework of the former Lomé agreements (now known as the Cotonou agreements). The benefits granted through the contractual preferential rules of origin are always contingent on compliance by the beneficiaries with certain explicit conditions. For their part, non-preferential rules of origin apply to international trade that takes place outside any agreement that gives tariff or non-tariff privileges. This issue is the responsibility both of the multilateral legal forum of the World Trade Organization (WTO), and of the national criteria or legislation that apply in this area.

V. RULES OF ORIGIN AT THE MULTILATERAL LEVEL

The first document of an international nature that considers the issue of rules of origin in a global and multilateral manner is the International Convention on the Simplification and Harmonization of Customs Procedures, the original version of which was drafted by the Customs Cooperation Council (CCC) in May 1973, and which entered into force in September 1974. This document is usually referred to as the Kyoto Convention. The CCC, which dates from 1952, adopted in 1994 the working name of the World Customs Organization (WCO), as it is now better known. The Kyoto Convention was modified recently, through the Protocol of Amendment to the International Convention on Simplification and Harmonization of Customs Procedures, in June 1999. This new legal instrument, which is also referred to as the Kyoto Convention 2000 or the Revised Kyoto Convention, is an updated version of the previous Convention, in the light of the main changes that have taken place in the world economy over the intervening period. In view of the legal status of WCO, the new regulation, which will soon enter into force, will have the same non-binding nature as the previous one.

In contrast to the case of WCO, the regulations of WTO are binding for its member States. In that connection, WTO has had an Agreement on Rules of Origin since 1994, the main aim of which is to help harmonize and clarify the rules of national origin that apply to non-preferential international trade. Basically, this Agreement is linked to trade policy instruments, antidumping and countervailing measures, safeguard measures, prescriptions with regard to marks of origin, any discriminatory quantitative or quota-based tariff restriction, public sector purchases and the recording of trade statistics. Significantly, one of the annexes of this Agreement refers to the preferential rules of origin in the existing economic integration agreements, specifying that at present the latter must keep WTO informed as to their rules of origin.

In parallel to the Agreement mentioned, a work programme was established and also the institutions to carry it out. In fact, two special committees were created. The first is the Committee on Rules of Origin, made up of representatives of each member of WTO. The second is the Technical Committee on Rules of Origin, which functions under the auspices of the WCO. Despite the intense work carried out so far by those two institutions, the work, which should have been concluded in December 2001, is still underway. This is because, as mentioned previously, each country has its own economic circumstances, in which different trade partners have different effects, which also vary according to the sector or the product in question. Accordingly, it would seem that the necessary conditions do not yet exist for implementation of the intended harmonization in the context of WTO with regard to rules of origin for non-preferential international trade. This means that the uniformity principle for rules of origin does not yet have any practical validity.

At any rate, it is expected that at some opportune juncture WTO will produce binding multilateral rules of origin for non-preferential international trade, which might subsequently include those included in the economic integration agreements. It is important to note that not only WCO is contributing to this process, but also various other international organizations, and in particular the United Nations Economic

Commission for Europe (ECE), which has a specific recommendation on rules of origin, which is also non-binding in nature.

VI. NATIONAL RULES OF ORIGIN

In the meantime, while there is no binding multilateral regulation concerning rules of origin for non-preferential international trade, individual national criteria or legislations continue to have precedence in this area. In this area, there has been a wide range of national responses. For example, the United States of America and Mexico have quite solid national regulations that apply to all imports of non-preferential origin, containing general provisions, and also specific requirements that apply to certain economic sectors or particular products.

At the other extreme, the majority of countries in the world do not have any regulation on rules of origin. Towards the mid-range are the nations which, although they do not have legislation on rules of origin, observe a simple criterion that is generally applied by customs officials, namely to consider that a product is manufactured in a particular country if at least 50% of its final value was added in the territory of that country. Many countries of the world however have no legislation or criteria in that regard, which implies that their customs practices are discriminatory and unpredictable, and thus operate as a hindrance to international trade.

VII. CONCLUSIONS

1. The large quantity and variety of rules of origin constitutes a significant hindrance to world trade. One interesting empirical fact is that the rules of origin that exist in the current economic integration agreements alone, which only account for a fraction of the large and complex web of rules of this type that exist at the international level, account for about 43% of the total world trade in goods. moreover, this issue will become more significant over the next few years, as this percentage coefficient is projected as being close to 55% by 2005, in view of the economic integration agreements that are currently being signed or that are in the process of negotiation and will have been concluded by that date.

2. The world economy is going to have to coexist for an indeterminate period of time with a number of different rules of origin, and it is important that the requirements imposed by those rules should facilitate the international trade in goods. Accordingly, in the meantime, both the public sector and economic agents in the countries should seek to obtain rules of origin that are simple, precise and clear in their specification, in order that they constitute a true stimulus that not only simplifies external transactions in goods, but also reflects the urgency of converting them into a factor for encouraging such international operations.

3. Progress may also be made by adapting the different existing rules in a dynamic manner to the new conditions imposed by the functioning of the world economy and by disseminating their contents in detail to all interested parties in the private sector that are involved in external operations. This would maximize their potential, and special attention should be given to small and medium-scale entrepreneurs.

4. At the same time, as rules of origin are so important for the private sector of the economies, the point of view of private-sector agents should be really taken into account by the public officials who make decisions or negotiate in this area. The same should occur with regard to changes intended to update existing rules of origin.

5. It would also be advisable to simplify and enhance the efficiency of the administrative procedures relating to compliance with rules of origin. This mainly refers to the principle of administrability, as well as the issue of certificates of origin, with subsequent verification and the possible economic or legal consequences in the cases of error or fraud, and the settlement of disputes. This covers all the formal aspects of implementation of such rules.

6. Simplification of the procedures would be beneficial to both the public sector and the private sector of

any country. In fact, this would contribute to optimizing government expenditure while also reducing the transaction costs of economic agents engaged in international transactions in goods. This point is directly concerned with operation of the national customs administrations as entities that facilitate trade, an area in which research must be continued, as there is not yet a consensus for deciding on optimal procedures.

7. In any case, in contrast to the current difficulty in standardizing rules of origin as such at the global level, it does seem possible to make efforts to standardize and update the operational procedures for such rules, from the issue of the certificate of origin to the associated supervision and control, for example, by using similar electronic formats. This would be an important step forward with a view to facilitating international trade in goods for both the public sector and the private sector of the countries, especially for those currently using a variety of rules of origin.

8. The costs associated with rules of origin are distributed asymmetrically among the different countries, and those most affected are the countries with a lower relative level of economic development. It is therefore recommended that consideration be given to establishing special and differential treatment for them in this area. Such a procedure could initially be established within the framework of existing economic integration agreements, and subsequently, when possible, at the multilateral level.