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## IMPLICATIONS OF THE IMPLEMENTATION OF THE HARMONIZED RULES OF ORIGIN ON OTHER WTO AGREEMENTS

Proposal by Korea

The following communication, dated 14 October 1998, has been received from the Permanent Mission of Korea.

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Pursuant to the agreement of the Committee on Rules of Origin on the implication of the implementation of the harmonized rules of origin on other WTO Agreements, I am herewith submitting to the Committee on Rules of Origin the proposal of the Republic of Korea which contains its views on how harmonized rules of origin should be applied to other WTO Agreements.

## IMPLICATIONS OF THE IMPLEMENTATION OF THE HARMONIZED RULES OF ORIGIN ON OTHER WTO AGREEMENTS

1. Concerning the scope of application, Article 1.2 of the Agreement on Rules of Origin specifies that rules of origin include all rules of origin used in non-preferential commercial policy instruments, such as in the application of: most-favoured-nation treatment under Articles I, II, III, XI and XIII of GATT 1994; antidumping/ countervailing duties; safeguard; origin marking requirements; and any discriminatory quantitative restrictions or tariff quotas. They also include rules of origin used for government procurement and trade statistics.

2. With the objective of working towards ensuring greater certainty and predictability in the global trading system and eliminating the potential for rules of origin to serve as non-tariff barriers to trade, Korea submits the following proposal to the Committee on Rules of Origin. The principle of this proposal is based on the backbone of the WTO system, that is, the non-discrimination principle reflected in most-favoured-nation treatment (GATT Article I).

### A. RELATIONSHIP WITH THE AGREEMENT ON ANTI-DUMPING

3. Basically, antidumping measures are based on the concept of “exporting country” rather than "origin country". To calculate the dumping margin, derived from the difference between export price and normal price, the domestic price of the like product in the exporting country is used as the normal price. Only in exceptional cases referred to Article 2.2 and 2.5 does the country of origin play a role in the Agreement on Antidumping.

- The first case (Article 2.2) refers to a situation where there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or low level of sales in domestic market of the exporting country is not appropriate to be used for normal price. In such case, the origin country of that product is meaningful.

- The second case (Article 2.5) refers to a situation where products are imported through an intermediate country (exporting country). If the products are merely transshipped, or such products are not produced in the exporting country, or there is no comparable price for them in exporting country, the comparison for dumping margin may be made with the price in the origin country.

4. Korea believes that when it is necessary to decide on the origin country for the above reasons, rules of origin should be applied. For example, if manufacturing is carried out in a third country under such conditions that the locally produced merchandise obtains origination status, investigation in the context of the two cases should be made based on the price in that third country.

- More specifically, if a certain operation including assembly (which is recognized as substantial transformation by rules of origin granting origination status) takes place in a third country, imposing anti-dumping duties on a product, without a new investigation deemed necessary due to the change of origin of the good by that operation, only on the ground that antidumping duties were imposed previously on that product, would be a violation of the antidumping agreement. It would also be a breach of the principle of most-favoured-nation.

- This rationale should be applied to the case where the same operation occurs in the importing country instead of a third country.

5. As for the issue of circumvention of antidumping measures, negotiators in the Uruguay Round could not agree on a specific text. However, considering its non-preferential characteristics and the

importance of most-favoured-nation treatment in Article 1.2 of the Agreement on Rules of Origin, the rules of origin must be applied to the issue of circumvention of antidumping measures.

- The assembly case referred to in paragraph 4 is an example which some Members see as a clear case of circumvention. However, Korea is of the view that such a case could and should be dealt with in the framework of the current antidumping agreement with the help of rules of origin.

6. The rationale offered above can also be generally applied to the Agreement on Subsidy and Countervailing measures in spite of the difference between the two agreements.

B. RELATIONSHIP WITH THE AGREEMENT ON TEXTILES AND CLOTHING

7. Although the MFA is expected to be phased out as a result of the Uruguay Round, quantitative restrictions will remain in the textiles and clothing sector until the end of 2004. Article 5.1 of the Agreement on Textiles and Clothing (ATC) warns of certain types of circumvention : "Members agree that circumvention by transshipment, re-routing, false declaration concerning country or place of origin, and falsification of official documents, frustrates the implementation of this Agreement to integrate the textiles and clothing sector into GATT 1994." Articles 5.2 and 5.3 of the Agreement on Textiles and Clothing also specify that if such kinds of circumvention take place, consultation among the concerned Members should be held to seek a mutually satisfactory solution, and that the Members should take necessary action against such circumvention practices

8. However, there are other types of trade practice related to the rules of origin that are not directly mentioned. For instance, country A exports textiles or clothing to country B. Faced with quantitative restrictions, country A exports the product to country C, which is not affected by country B's quota, and the product is processed enough to be conferred origin in country C. If that product is then exported from country C to country B, it should be treated as the product of country C by the rules of origin and not be regarded as subject to the quota amount set for the exports of country A. If it is subject to the quota, this would constitute a violation of the principle of non-discrimination, in the sense that products wholly produced in country C and those processed and having origin in country C are being treated differently.

9. Therefore, the Agreement on Rules of Origin should be strictly observed if the global trading system is to remain based on the principle of non-discrimination.

C. RELATIONSHIP WITH THE AGREEMENT ON SAFEGUARDS

10. Although there is no direct reference to rules of origin in the Agreement on Safeguards or GATT Article XIX, when a quota is allocated among supplying countries pursuant to Article 5.2(b) of the Safeguard Agreement, an argument similar to the one presented in the ATC could also be made for safeguard measures.

D. RELATIONSHIP WITH THE AGREEMENT ON GOVERNMENT PROCUREMENT

11. In the Uruguay Round, Article IV.1 of the Agreement on Government Procurement can be understood to mean that the specifications in the Agreement on Rules of Origin apply to the Agreement on Government Procurement. That article reads, "A Party shall not apply rules of origin to products or services imported or supplied for purposes of government procurement covered by this Agreement from other Parties, which are different from the rules of origin applied in the normal course of trade and at the time of the transaction in question to imports or supplies of the same products or services from the same Parties." Therefore, there is no inconsistency between

Article IV.1 of the Agreement on Government Procurement and Article 2.1 of the Agreement on Rules of Origin.

## E. CONCLUSION

12. The Korean government is of the view that the Agreement on Rules of Origin needs to be applied to the other Agreements in the WTO, such as those relating to antidumping/countervailing measures. Such applications need to be based on most-favoured-nation treatment as is emphasized in Article 1.2 of the Agreement on Rules of Origin. The Korean government wishes to re-affirm that neither rules of origin nor any other Agreements in the WTO should be used for protective purposes.