INTRODUCTION

At the meeting of the Negotiating Group held on 15 February 1990, the secretariat was requested to revise the synopsis of points made in relation to rules of origin in written proposals as well as in oral statements, in order to reflect a recently received submission and statements made at that meeting (MTN.GNG/NG2/16, paragraph 19).

The present note sets out the proposals made in the submissions received by 28 February 1990, from the delegations of Japan (MTN.GNG/NG2/W/36 and 52), Hong Kong (MTN.GNG/NG2/W/41), the United States (MTN.GNG/NG2/W/43) and the European Communities (MTN.GNG/NG2/W/55), and summarizes points in statements made in the Group on the basis of the written submissions (MTN.GNG/NG2/11/Add.1, paragraphs 7-9, MTN.GNG/NG2/12, paragraphs 2-10, MTN.GNG/NG2/13, paragraphs 5-10, MTN.GNG/NG2/14, paragraphs 8-14, MTN.GNG/NG2/16, paragraphs 8-18, MTN.GNG/NG2/W/58).

An earlier background note by the secretariat on rules of origin was circulated as MTN.GNG/NG2/W/12.

The present note is organized under the following four headings:

I. General points;

II. Principles and/or disciplines to govern the application of rules of origin;

III. Procedural arrangements which will apply to notification, consultation, dispute settlement and review;

IV. Harmonization/approximation of rules of origin.
I. General points

The discussion held in the Group indicates a broad recognition that there are issues to be negotiated in the area of rules of origin. Some of the participants would like negotiations in GATT with a view to ensuring that rules of origin are not applied in such a manner as to act as a barrier to trade. These negotiations would aim at the adoption of certain key principles or disciplines to govern the application of rules of origin, procedural arrangements which would apply to notification, consultation, dispute settlement and review, and progress towards harmonization. Some of these participants would like to see the adoption, before the end of the Uruguay Round, of a basic guideline which would contain some common criteria to be used in the application of rules of origin, until such time as harmonization negotiations have been completed.

Other participants recognize that rules of origin could be used for protectionist purposes and that they are therefore relevant to the GATT, to the extent that they apply to trade covered by the GATT régime. Consequently, they agree that discussions on certain general principles and procedures can be held in the Uruguay Round, but, contrary to other delegations, would exclude rules applicable to preferential arrangements on the grounds that these are integral parts of agreements negotiated among the parties to those agreements.

Participants apparently agree that the Customs Co-operation Council (CCC) has a rôle to play in the issue of rules of origin. Indeed, some participants consider that the technical aspects of rules of origin would be best dealt with by the CCC. After agreement on general principles governing rules of origin has been reached in the Uruguay Round negotiations, they envisage the adoption by all contracting parties which have not yet done so of Annex D.1 of the "International Convention on the Simplification and Harmonization of Customs Procedures", (the Kyoto Convention) elaborated under CCC auspices. Others envisage that the CCC would be asked to engage in preparatory work whose results would be used in negotiations to be held in GATT on harmonizing rules of origin (see Section IV). However, some delegations doubt that all the work suggested is really essential for progress and consider that it might entail judgements from the CCC which this organization might not have the mandate to pass. The Group is expected to continue its examination of the contribution which the CCC might bring to the discussion on rules of origin.
II. Principles and/or disciplines to govern the application of rules of origin

A. Principles

1. Definition/Applicability

For the purpose of this multilateral rule-making approach, rules of origin shall be defined as those laws, regulations, and administrative practices applied by any contracting party to determine in which territories of the contracting parties their products originate. Also a set of rules of origin shall be defined as all the rules of origin applied by any contracting party in the administration of a particular trade régime (MTN.GNG/NG2/W/41, pages 2-3, paragraph 1).

2. Objectivity, transparency, predictability

Rules of origin should be objective (MTN.GNG/NG2/W/41, paragraph 2(b)).

Rules of origin should be implemented in an impartial and transparent manner (MTN.GNG/NG2/W/41, page 2, paragraph 2(e)).

3. Trade-neutrality

Rules of origin should not have a trade-distorting, restrictive or disruptive effect (MTN.GNG/NG2/W/41, page 2, paragraph 2(c)).

Rules of origin shall be readily understandable, published in an easily understood language, and shall be uncomplicated and predictable in application (MTN.GNG/NG2/W/43, Section III(c)).

Arbitrariness should be avoided and transparency, predictability and objectivity should be secured (MTN.GNG/NG2/W/52, page 5).

Rules of origin should be clear and simple (MTN.GNG/NG2/W/52, page 5).

Rules of origin should not be prepared or used as a means of restricting or distorting international trade (MTN.GNG/NG2/W/52, page 5).

Origin rules shall be neutral and technical in nature and should not be adapted to specific purposes (MTN.GNG/NG2/W/55, page 3).
4. Non-discrimination

Rules of origin covering most-favoured-nation trade should be applied in a non-discriminatory manner to all contracting parties (MTN.GNG/NG2/W/41, page 2, paragraph 2(a)).

5. Rights and benefits under the General Agreement

Rules of origin should not nullify or impair contracting parties' rights under the General Agreement (MTN.GNG/NG2/W/41, page 2, paragraph 2(d)).

6. Positive standard

Rules of origin shall be based on a positive standard to the maximum extent possible, i.e. they should state what confers origin as opposed to what does not confer origin. Negative standards are permissible to clarify a positive standard (MTN.GNG/NG2/W/43, Section III(a)).

7. Consistency

All origin systems maintained by a country shall ensure that the origin of products is determined in a consistent manner within each system (MTN.GNG/NG2/W/43, Section III(b)).
8. Administrative or judicial review

Any determination of origin shall be reviewable by an administrative or judicial authority of the relevant country other than the authority issuing the determination which has the authority to reverse or modify the determination (MTN.GNG/NG2/W/43, Section III(d)).

Contracting parties shall subscribe to the principle that all interpretative decisions may be challenged before a judicial authority of the issuing country (MTN.GNG/NG2/W/55, page 3).

B. Disciplines

1. Objectivity, predictability, impartiality and transparency

Laws, regulations, judicial decisions and administrative rulings of general application to rules of origin shall be treated as if they were a requirement on imports and a customs matter within the meaning of Article X of the General Agreement. All information which is by nature confidential or which is provided on a confidential basis for the purpose of the application of rules of origin shall be treated as strictly confidential by the authorities concerned who shall not disclose it without the specific permission of the person or government providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings (MTN.GNG/NG2/W/41, paragraphs 9-10).

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 a 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 or processing, such as research and development, shall be prohibited.

When commercial operators are in doubt in respect of the origin status of one of their products they should be given the right to seek information and to obtain binding replies within a reasonable period. To this end, contracting parties shall issue upon request of an exporter or importer binding assessments of the origin status of a product. Requests for such assessments shall be accepted even before trade in the product concerned begins. Such assessments shall remain binding as long as the conditions under which they have been decided (production process, tariff classification, value, etc.) remain comparable (MTN.GNG/NG2/W/55, page 3).
Rules of origin shall be predictable. Especially the requirements to be fulfilled in the determination of origin shall be clearly defined. In this regard the 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 shall be 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 shall be applied, manufacturing process which confers origin shall be specified in the rules of origin.

Rules of origin shall be applied in a neutral manner and not in a manner which would constitute a means of disguised restrictions on international trade and investment (MTN.GNG/NG2/W/52, page 6).
Contracting parties which are parties to an agreement in conformity with Article XXIV of the General Agreement shall ensure that their sets of rules of origin applicable to such an agreement are not prepared, adopted or applied in such a manner as to create any restrictive or disruptive effects on international trade nor to create any greater trade-distorting effect on international trade than is consistent with Article XXIV of the General Agreement (MTN.GNG/NG2/W/41, page 3, paragraph 4).

3. Non-discrimination

The set of rules of origin applied by each contracting party to trade conducted under Article I of the General Agreement shall not be more stringent than the rules of origin it applies to its domestic products, and shall not discriminate between other contracting parties (MTN.GNG/NG2/W/41, page 3, paragraph 2).

Rules of origin shall not be established, modified or applied in a discriminatory manner. The same conditions for the determination of origin and the 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 products:

(a) domestic and imported products;

(b) products imported from a certain country and those imported from other third country;
4. **Tariff bindings**

Rules of origin applying to any product that is described in Part I of the Schedule relating to a contracting party, as provided for in Article II of the General Agreement, shall be treated as if they were a substantive part of such product description, and accordingly shall not be altered so as to impair the value of the relevant concession provided for in such Schedule. Substantive modifications of rules of origin relating to products described in Part I of Schedules annexed to the General Agreement shall be subject to the procedures established under Article XXVIII of the General Agreement (MTN.GNG/NG2/W/41, page 4, paragraphs 7-8).

**Point made in the discussion:** Rules of origin could not be bound as if they were tariffs (MTN.GNG/NG2/12, paragraph 8).

5. **Retroactivity**

Rules of origin, if modified, shall not be applied retroactively (MTN.GNG/NG2/W/52, page 6).

(c) products manufactured by a foreign affiliated company and those manufactured by a domestic company;

(d) products manufactured by a company affiliated with capitals of certain country's company and those manufactured by the same type of company with capital participation by other country's company.

(MTN.GNG/NG2/W/52, page 5).
III. Procedural arrangements which will apply to notification, consultation, dispute settlement and review

1. Committee on Rules of Origin

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 this [multilateral rule-making approach] at the request of any contracting party. The GATT secretariat shall act as the secretariat of the Committee (MTN.GNG/NG2/W/41, paragraphs 12-13).

2. Notification

(a) Existing rules

Upon entry into force of this [multilateral rule-making approach] each contracting party shall notify promptly to the secretariat its rules of origin applying on that date. Subject to the rights and obligations of contracting parties applicable before that date, the rules of origin so notified shall be considered as those to which the rights and obligations established under this [multilateral rule-making approach] apply (MTN.GNG/NG2/W/41, paragraph 11).

Contracting parties shall submit to the GATT secretariat a description of the laws, regulations, judicial or equivalent decisions and administrative practices they have in place to confer origin within 90 days of the date this Agreement enters into force. This description shall be written in an easily understood language (MTN.GNG/NG2/W/43, page 3, paragraph 1).

Upon entry into force of the 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 (MTN.GNG/NG2/W/52, page 7).

Commercial operators and administrations must be informed about rules of origin and their interpretation applied by contracting parties. To this end, contracting parties shall inform the GATT secretariat about their origin rules. In the event that for the application of the rules of origin, interpretative regulations become necessary, such regulations shall be published before their entry into force (MTN.GNG/NG2/W/55, page 3).
(b) Proposed changes

Contracting parties proposing to introduce substantive modifications of their rules of origin, including any change in the schedule of products to which particular rules of origin apply, or to introduce rules of origin for new products, shall:

(i) notify other contracting parties through the secretariat of the proposed modifications, changes or new rules at an early appropriate stage;

(ii) allow reasonable time for other contracting parties to make comments in writing, afford reasonable opportunity for discussion of these comments with other contracting parties upon request, and take these written comments and the results of such discussions into account before finalizing the proposed modifications, changes or new rules.

Contracting parties shall not introduce substantive modifications of their rules of origin, including any changes in the schedule of products to which particular rules of origin apply, nor introduce rules of origin for new products except in accordance with the provisions established in paragraph 5 above (MTN.GNG/NG2/W/41, pages 3-4, paragraphs 5-6).

Contracting parties shall notify the GATT secretariat of any proposed administrative or legislative changes to their origin rules, including changes regarding specific products and programmes at least 120 days before the change is to be adopted. The notice shall include a description of the proposed change, products and/or countries affected, an explanation of the reasons for proposing such a change, and an indication of its likely trade effects.

If 120 days advance notification is not possible due to exceptional circumstances, the contracting party making such a change shall notify the GATT as soon as possible prior to adoption of the change. In cases where advance notification is not possible due to exceptional circumstances, notification must be made no later than 10 days after adoption of the change (MTN.GNG/NG2/W/43, page 3, paragraphs 2-3).

Prior to the adoption of a proposed legislative or administrative change, the contracting party proposing a change to its origin rules shall consult with other contracting parties upon request. Such a request should be made no less than 45 days prior to the proposed date of adoption of the

Contracting parties shall:

(i) 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;

(ii) notify the GATT secretariat of the products to be covered by the proposed rules together with a brief description of the proposed rules;

(iii) provide upon request, to other contracting parties particulars or copies of the proposed rules;

(iv) allow reasonable time for other contracting parties to make comments in writing on the proposed rules, discuss the comments upon request and take them into account;

(v) ensure that all adopted rules and regulations are published in an expeditious manner.

(MTN.GNG/NG2/W/52, page 7).
3. Consultation

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 this [multilateral rule-making approach].

If any contracting party considers that any benefit accruing to it, directly or indirectly, under this [multilateral rule-making approach] is being nullified or impaired, or that the achievement of any objective of change. The purpose of such consultations is to provide an opportunity for affected contracting parties to express their concerns in an effort to ensure that the proposed change is as neutral as possible with regard to trade effects, and in conformity with the agreed upon principles and procedures, as well as with GATT obligations and principles. In exceptional circumstances where consultations prior to adoption of a change in an origin rule are not possible, the contracting party making such a change shall consult with other contracting parties upon request as soon as possible and in no case later than 30 days after adoption of the change (MTN.GNG/NG2/W/43, page 3, paragraphs B.1-2).
the [multilateral rule-making approach] is being impeded by another contracting party or parties, it may, with a view to reaching a mutually satisfactory resolution 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 (MTN.GNG/NG2/W/41, paragraphs 14-15).

4. Dispute settlement

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 30 days of receipt of such request, to investigate the matter, with a view to facilitating a mutually satisfactory solution.

Should the matter remain unresolved three months after the Committee first meets in response to such a request, the settlement of the dispute may be subject to the procedures of Articles XXII and XXIII of the General Agreement, as improved and elaborated upon by the Negotiating Group on Dispute Settlement, are applicable to this Agreement (MTN.GNG/NG2/W/43, page 4).

The provisions of Article XXII and XXIII of the General Agreement, as improved and elaborated upon by the Negotiating Group on Dispute Settlement, are applicable to this Agreement (MTN.GNG/NG2/W/43, page 4).

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. The Committee may establish a technical expert group and direct it to examine the matter (terms of reference of this Group to be decided by the Committee) (MTN.GNG/NG2/W/52, page 8).

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.

As far as the principles mentioned above are concerned, the dispute settlement procedure referred to under GATT Articles XXII and XXIII shall be applied (MTN.GNG/NG2/W/55, page 4).
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.

**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.

Points made in the discussion: A Committee of contracting parties might not be the most competent body to judge disputes relating to rules of origin because this was a technical subject (MTN.GNG/NG2/12, paragraph 8).

The proliferation of dispute settlement mechanisms should be avoided and the GATT's existing mechanisms should be resorted to for disputes relating to rules of origin (MTN.GNG/NG2/16, paragraph 16).

Other provisions relating to dispute settlement

If disputes arise between parties relating to rights and obligations under 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 (MTN.GNG/NG2/W/S2, pages 8-9).
5. Review

A periodic review of the origin systems of contracting parties shall be undertaken to ensure the systems are transparent and in conformity with agreed upon principles and procedures, as well as GATT obligations and principles.

The principles and procedures shall be reviewed periodically to ensure their consistency with harmonization efforts outlined in [Section IV], as well as their relevance to experience gained in the implementation of this Agreement (MTN.GNG/NG2/W/43, Section C.1-2).

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.

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 (MTN.GNG/NG2/W/52, page 8).
IV. Harmonization/Approximation of rules of origin

Two of the proposals before the Group (MTN.GNG/NG2/W/43 and W/52) envisage a work programme for negotiations in GATT leading to the harmonization of rules of origin, though only the latter proposes the establishment of common criteria for the determination of origin. For the third proposal (MTN.GNG/NG2/W/41), harmonization, if it is feasible, would be better pursued as a long-term objective. According to the fourth proposal (MTN.GNG/NG2/W/55), work on technical questions relating to non-preferential rules of origin should be carried out in the CCC. The suggestions relating to harmonization are summarized below, together with relevant points made in the discussion held in the Group.

A. Objective

There should be work towards harmonization, which should not necessarily be limited to the adoption of a specific common rule of origin. The change in tariff classification approach was appealing since most countries were now using the Harmonized System nomenclature. This approach also provided a detailed framework in which to express origin. In order to prevent arbitrary application of rules of origin, specific rules were preferable to general principles as expressed in the Kyoto Convention, as these were open to differing interpretations (MTN.GNG/NG2/12, paragraph 5).

A feasible and realistic work programme to complete the task of establishing common criteria within a reasonable period of time should be worked out (MTN.GNG/NG2/W/52, page 1).

Rules of origin should be adapted to technological developments and should take into account the interests of small countries which manufacture and export technological products which use locally developed technology but at the same time incorporate many imported components (MTN.GNG/NG2/16, paragraph 14).

Increased harmonization of rules of origin seemed to be called for because trade-neutral rules of origin were more necessary than ever. The criteria used had to be made simpler and more coherent so that they would be more predictable (MTN.GNG/NG2/12, paragraph 8).

Any agreement on rules of origin should provide for preferential treatment and maximum flexibility in the application of rules of origin for the least developed countries because these could not satisfy the local content requirements of USP schemes of donor countries (MTN.GNG/NG2/16, paragraph 14).

B. Forum

Negotiations on harmonizing rules of origin should be undertaken in GATT using Customs Co-operation Council (CCC) expertise as appropriate (MTN.GNG/NG2/W/43, page 2).
Participants agree on a "basic guideline" to establish common criteria in the GATT. The Committee on Rules of Origin to be established in the GATT shall be an appropriate forum for negotiations (MTN.GNG/NG2/W/52, page 2).

Rules of origin were a technical subject best dealt with by more widespread accession to the Kyoto Convention. Any further steps would require considerable reflection (MTN.GNG/NG2/12, paragraph 8).

Accession to all Annexes of the Kyoto Convention would be a good starting point for work on approximation or harmonization of rules of origin. However, more specific disciplines than those combined in the Convention were called for. Discussing why so few countries had adhered to the Kyoto Convention would throw light on the direction which GATT negotiations could take (MTN.GNG/NG2/16, paragraph 5).

While the Kyoto Convention regulated to a certain extent what was done in the field of rules of origin, reservations could be made to any of its contents. Wider acceptance of the Kyoto Convention might not be sufficient to permit harmonization (MTN.GNG/NG2/13, paragraph 10).

The Kyoto Convention did not give sufficient weight to the interests of exporters, in that the criterion of substantial manufacturing or processing was open to subjective evaluation which could be biased in favour of large economies and could deny to the small economies the rights to which they were entitled to under the GATT (MTN.GNG/NG2/14, paragraph 11).

Since the only existing international regulations on rules of origin were in Annexes D.1, D.2 and D.3 of the Kyoto Convention, the CCC should be requested to provide a balance sheet of the practical operation of these Annexes, which would also set out the status of ratifications and explain the content of reservations (MTN.GNG/NG2/14, paragraph 10).

Building on general principles to be adopted in the Uruguay Round negotiations, the CCC should set up an Origin Committee in which consultation and cooperation concerning the technical aspects of origin rules could take place and to which all doubtful cases could be referred. This Committee should:

- study the possibility of approximation of existing origin rules using the Kyoto Convention as a basis;
- develop approximation of new interpretations of origin rules;
- examine any possible additional provisions (such as development of explanatory notes) which could be helpful for the interpretation of the notion of the last substantial operation.

The result of this work should be laid down in a binding instrument (MTN.GNG/NG2/W/55, page 4).
C. Coverage

Negotiations should cover all products, programmes and policies which involve rules of origin subject to GATT disciplines, including trade carried out under all preferential arrangements such as GSP and free-trade areas, but excluding government procurement because this was not an area currently covered by GATT disciplines (MTN.GNG/NG2/12, paragraphs 5 and 10).

Application of specific rules of origin adopted for the implementation of GSP is permissible (MTN.GNG/NG2/W/52, page 4).

A uniform set of rules of origin should be developed for all purposes and all sectors and should cover dumping and government procurement as well as tariff preferences (MTN.GNG/NG2/16, paragraph 12).

Work on harmonization of rules of origin should only address non-preferential rules, because preferential rules were concerned with conditional m.f.n., whereas non-preferential rules related to the principle of unconditional m.f.n. treatment provided for in Article I of the GATT (MTN.GNG/NG2/14, paragraph 11).

Rules applicable to preferential arrangements should be excluded from discussion in the Uruguay Round, because such arrangements were conditional upon the application of specific rules of origin. These rules were negotiable only among the parties to the agreements of which they were integral parts (MTN.GNG/NG2/14, paragraph 10).

One participant whose country was a party to two separate free-trade areas which covered two-thirds of its trade, was ready to discuss in GATT principles which would also be applicable to preferential rules of origin including those incorporated in the free-trade area agreements to which it was a party (MTN.GNG/NG2/16, paragraph 12).
D. Work programme

MTN.GNG/NG2/W/43

Phase one

In the first phase, which is expected to last one year, it is envisaged that the CCC will be requested to:

1. Using the harmonized system nomenclature, identify where change within the nomenclature results in transformation of a product sufficient to confer origin. This examination shall be conducted in a technical and objective manner and the resulting determinations would be made without consideration to secondary criteria such as trade policy considerations and existing rules, including but not limited to value-added requirements, specific requisite manufacturing processes or other similar non-tariff classification methodologies. As part of this exercise, the CCC should identify those product areas or specific products where use of the harmonized system nomenclature may not alone be an adequate basis for a logical rule of origin (MTN.GNG/NG2/W/43, pages 1-2).

MTN.GNG/NG2/W/52

In the first phase, which is expected to last one year, it is envisaged that the CCC will be requested to:

1. Undertake, from the point of view of technicality and neutrality, to identify product areas which fall within the following categories, using the HS nomenclature (all products shall be subject to this study):

(a) product areas where origin can be identified by means of the criterion "wholly produced";

(b) with regard to other product areas not identified by means of the criterion "wholly produced":

(i) product areas where origin can be identified by means of the "change of four-digit HS heading";

(ii) product areas where 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) and (ii).

(MTN.GNG/NG2/W/52, pages 1-2).

Point made in the discussion: In the past, it had been considered in the CCC that such matters as the determination of when a product had been sufficiently transformed to confer origin were policy issues rather than technical ones and the CCC had been prevented by its members from getting involved with them (MTN.GNG/NG2/13, paragraph 10).
2. Identify those product areas which are typically subject to a variety of rules of origin and/or rules of origin different from the primary rule of origin used by individual countries. The CCC shall consult with the CONTRACTING PARTIES in identifying these products and use the information concerning individual country origin systems provided to the GATT secretariat under [agreed procedural rules]. Taking this information into account, the CCC shall report to the GATT those product areas, along with the specific HS number(s) and the specific rules that are used by different countries.

3. Report the generic types of non-m.f.n. policies or programmes that are subject to special rules of origin, indicating the country, programme/policy used (MTN.GNG/NG2/W/43, page 2).

2. 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 percentages" may be applicable).

3. Report the generic types of non-m.f.n. policies or programmes that are subject to special rules of origin, indicating the country, programme/policy used (MTN.GNG/NG2/W/52, page 2).

The CCC will be requested to put forward by early Autumn 1990 an interim report so that the Negotiating Group can use it as "basic material for establishing a basic guideline" in the Uruguay Round negotiations. This "basic guideline" to establish common criteria in the GATT, will be agreed on taking into account the CCC's interim report. It is considered that such an agreement among participants will give impetus to GATT negotiations under Phase Two (MTN.GNG/NG2/W/52, page 2).

Points made in the discussion: Before time-and-resource consuming tasks were requested of the CCC, the Group should ensure that these tasks were needed. The first study envisaged in MTN.GNG/NG2/W/43 seemed to assume that the change-in-tariff-heading criterion formed the basis for any discussion on rules of origin and thus prejudged the discussion. The second study might require more time than was available before the end of the Uruguay Round, because information had to be collected and analysed. These was no reason to include in the third study a survey on preferential schemes which should not be covered in the discussion (MTN.GNG/NG2/14, paragraph 10).

The change in tariff-heading criterion did not take into account the latest technological developments because in many high-technology products, the components and the final product were classified under the same heading. Therefore economic criteria such as percentage of local content of value added could be required as well (MTN.GNG/NG2/16, paragraph 13).

By the end of the Uruguay Round, there might be agreement on a basic guideline to apply to rules of origin, without the details of its application being known (MTN.GNG/NG2/16, paragraph 13).
Phase Two

Work to be undertaken by the GATT using CCC expertise, as appropriate:

1. With the objective of harmonizing rules of origin, increasing predictability in the multilateral trading system and promoting transparency, the contracting parties shall use the above reports as a basis for negotiations.

2. These negotiations shall be completed within one year upon initiation.

3. Agreements resulting from these negotiations shall be adopted by the CONTRACTING PARTIES subject to domestic authorization. They will enter into force in accordance with a time-frame agreed upon by the CONTRACTING PARTIES.

4. The CONTRACTING PARTIES shall review the principles and procedures provided in the [above] Sections and amend them as necessary to implement and ensure the adherence to the results of these negotiations (MTN.GNG/NG2/W/43, page 2).

Phases Three and Four (during and after transitional period)

Work to be undertaken by participants after the conclusion of 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 time upon initiation. The Committee on Rules of Origin to be established in the GATT shall be an appropriate forum for such negotiations.

1. Common criteria of origin to be established through negotiations shall be made legally binding among participants.

2. 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 (MTN.GNG/NG2/W/52, page 3).
Basic guideline

Subject to the content of the interim report of the CCC, it is recommended that, pending the adoption of common negotiated criteria, the change of tariff heading approach be used to determine origin in cases where products undergo transformation in two or more countries. This criterion should be supplemented by the "manufacturing or processing operations" and the "ad valorem percentage" methods in cases where the change in tariff heading approach does not permit determination of origin. There should also be further study of these supplementary methods and the benchmarks to be used to decide when they are going to be resorted to (MTN.GNG/NG2/W/52, page 3).

Rules to be observed in the transitional phase

During the transitional phase which will precede the adoption of common agreed criteria, it is recommended that participants follow the principles, disciplines and procedures to be agreed upon before the end of the Uruguay Round, and that they amend their existing rules if these do not conform with these principles and disciplines (MTN.GNG/NG2/W/52, page 4).