

**UNICE PRELIMINARY REACTION TO THE GREEN PAPER ON THE FUTURE OF RULES OF ORIGIN IN PREFERENTIAL TRADE ARRANGEMENTS**

**General comments**

As the international division of labour becomes increasingly sophisticated, with components sourced from varying suppliers worldwide, and production processes increasingly subdivided and fragmented geographically, the **determination of geographical origin has become increasingly complex** both for companies and for customs administrations.

With the proliferation of preferential trade agreements, the special rules of origin linked to these agreements have become a major concern for companies, and they are now a significant non-tariff barrier. While this is already the case when multilateral rules of origin apply, it is becoming even more evident when various preferential rules of origin come into play. Despite the fact that costs to economic operators of complicated rules of origin are becoming increasingly evident, their **negative impact has never been fully taken into account** when new trade agreements are drawn up.

For these reasons, **UNICE welcomes the EU initiative to review the system** of preferential rules of origin set out in the 18 December 2003 Green Paper. It is time to put some order into the increasing number of complex, differing and unmanageable sets of preferential agreements, which dissuade companies from taking full advantage of them.

The issues of how to harmonise preferential rules with the multilateral rules, and simplify the multilateral rules of origin, in order to make them easier to apply for companies and for customs administrations should therefore be central to any review of these rules. UNICE favours deep modernisation, standardisation and simplification of the preferential rules of origin. The review process should also strive for a flexible approach capable of lasting for a number of years.

Unfortunately, these issues are not addressed in the present EU Green Paper, which takes an **excessively administrative and legal approach to these problems**.

Instead of addressing the questions on how rules of origin can be simplified given the increasing difficulties to determine origin according to existing rules in today's complex production processes, **the Green Paper focuses on strengthened liability rules penalising errors by importers in order to improve compliance**. In UNICE's view this is not the appropriate approach to the issue.

For UNICE, new rules for preferential arrangements **should not impose additional constraints on economic operators**. The issue of unnecessarily complex rules of origin facing an increasingly integrated and complex international production system cannot be solved by pushing increased administrative responsibilities on to individual importers. This does certainly not comply with the goal of unleashing forces in European business facing global competition.

With a view to establishing an operational framework for managing preferential origin, UNICE recommends that the European Commission carries out a study on the simplification, standardisation and harmonisation of existing preferential rules of origin.

## Specific comments

Particularly, UNICE would like to comment on the following issues stated in the Green Paper:

- On page 11 it is stated that an importer may be exempted from payment of the customs debt under certain circumstances when goods are found to be non-originating. However, in real life, the burden on the shoulders of the importer is too heavy and it is almost impossible to get such an exemption. Importers acting in good faith should not be held liable and requested to pay the customs debt when goods are found to be non-originating.
- The responsibility for mistakes and omissions made by third countries should be placed with the exporter and/or the authorities in that same country. Companies rely on the information they receive from their suppliers or the authorities in those countries. For a third country, any advantageous access to the EU Single Market should go hand in hand with intensified obligations in case of mistreatment as long as tariffs and preferential treatments are applied within international trade regulations.
- Some beneficiary countries simply do not have the skills, resources or infrastructure to enable them satisfactorily to control or verify origin statements. UNICE therefore supports technical assistance initiatives to those countries on preferential rules of origin.
- On page 14 it is mentioned that “a clause assigning financial liability to any contracting party that has failed to implement a preferential agreement correctly and *consequently caused injury to the other party*” (our italics).

For European business, there is no automatic assumption of economic injury from the mere fact that the agreement has not been correctly implemented. The question of whether or not there is injury would have to be verified separately from correct implementation of the rules of origin.

- On page 15 it is stated that “Importers ... possess (or should demand) ... full information on the production, specifications and hence the origin of the goods, in the industrial sense of the term.” Apart from the fact that there is no such thing, to our knowledge, as “origin in an industrial sense”, it can be extremely difficult for importers of complex products consisting of hundreds of different components, sourced by the manufacturer(s) from dozens of various suppliers and sub-suppliers, to determine the correct origin according to the preferential rules of origin relevant to the specific transaction.
- Furthermore, on page 19, it is stated that “granting tariff preferences to products which do not have the required originating status is illegitimate in both economic and budgetary terms”. While it may certainly be detrimental from a budgetary/fiscal viewpoint, and also illegal in the strict sense of the term (rather than illegitimate), it might however be legitimate from an economic viewpoint for the economies of both the EU and of the exporting country.
- The fact that restrictive and complicated rules of origin have a negative impact on the intended trade-promoting effects of preferential agreements is clearly borne out by the statistical survey in the Green Paper, which shows that only 45 percent of total imports eligible for GSP preferences actually take advantage of the preferential tariffs.

In fact, importers are discouraged from availing themselves of the preferential tariffs because of the excessive fines importers face if exporters supply incorrect or falsified origin documentation. If liabilities and sanctions are further strengthened, importers will

be even more reluctant to take advantage of preferential schemes, and the economic rationale behind the GSP and other preferential schemes will be further eroded.

- The trade-enhancing development effect of preferential agreements is in fact eroded, not only by the red tape surrounding these agreements, but also by the restrictive origin requirements of the agreements themselves, as well as the complex tariff structure of the EU GSP system.
- Simplification of existing preferential rules of origin would serve both the interests of the parties intended to benefit from preferential agreements as well as the European companies being harmed when goods are non-originating.

## **Conclusion**

In view of the negative effects that complicated preferential rules of origin have on trade development, UNICE recommends that, rather than strengthening liability rules penalising importers for errors in order to improve compliance with existing preferential rules of origin, the European Commission undertakes a study on how to simplify and harmonise existing preferential rules of origin, as well as the excessively fragmented and complicated tariff structure of the present EU GSP system. This study should address the significance and usage of preferential rules, deepening what was included in the annex of the Green Paper, and taking into account the impact of the EU enlargement. This would achieve the objectives of trade creation and mutual economic growth which are the purpose of the preferential trade arrangements entered into by the European Union.

Reform of preferential rules of origin which preserves the competitiveness of European companies should take due account of the views of the economic operators using these rules to overcome the difficulties they are encountering.

UNICE looks forward to pursuing the debate on this issue with the European Commission and all interested parties.

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