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RULES OF ORIGIN IN WORLD TRADE ORGANIZATION

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ABSTRACT

Significance of international trade is clear for everyone throughout the history especially in contemporary age. Exchange of goods among communities and countries has been conveyed as a significant matter at the area of world economy. It is obvious that such realities, affairs and actions are developed from legal structure. Rules of origin are mentioned as the criteria which are used by the governments to recognize the origin of a type of good. In this regard, several questions have been asked including: what are the rules of origin? What criteria are taken into account in case several countries engage in production of a good? What implications have been proposed by the world trade organization concerning rules of origin? All the aforementioned questions are taken into consideration by the people. The present research aims to represent a concise explanation for rules of origin, variety types of rules of origin, the methods to determine the origin as well as examination of a summary of the agreement on rules of origin. With regard to this fact that Iran has been regarded as a member assigned with monitoring the affairs in the world trade organization, thus overview of the position of rules of origin in Customs Affairs Law has been entered into discussion in this article, that it can be studied in a separate issue.

Keywords: World Trade Organization; rules of origin; preferential rules of origin; Non-preferential rules of origin; change of tariff classification; value added percentage; manufacturing and processing process of good

INTRODUCTION

As mentioned above, the rules of origin have been regarded as those criteria which are used by the governments to recognize

the origin of a good. In general, there has not existed a rule about identifying the country of origin and Freedom Mid States

Contracting in General Agreement on Tariffs and Trade (GATT 1947) in order that they treat based on their national rules of origin. In 1981, the secretary of General Agreement on Tariffs and Trade (GATT 1947) organized a note about the rules of origin under which the ministers of Freedom Mid States Contracting (1982) announced their agreement by overview of rules of origin in a way that all the parties in Freedom Mid States Contracting are employed¹. As the countries in their activities by General Agreement on Tariffs and Trade (GATT 1947) proceeded in determining the rules of origin, it was gradually felt that harmonizing the rules of origin and representing a uniform explanation for it in a way that it is employed by all the countries has been transformed to a necessity which raises facilitation of trade. In addition, this indicates that misuse of rules of origin can result in transforming these rules to the means in line with enforcement of specific trade policies governing the countries in order that they do not be in line with principles of General Agreement on Tariffs and Trade (GATT 1947), yet harmonizing these rules seemed difficult as they were so complicated. To highlight significance of this issue, to avoid transforming the rules of origin governing the countries to a barrier to the trade, not to disturb the rights of

members in world trade organization due to General Agreement on Tariffs and Trade (GATT 1947) and ultimately to provide and enforce rules of origin in a clear and impartial way, the negotiations were arranged in Uruguay in order to determine the rules and commitments by the member countries, resulting to an agreement on rules of origin. The most important applications for determination of rules of origin associate to the enforcement of trade preferences, regional orders, protective actions, compensatory actions, and tariff quota². The present research intends to represent an investigation into the agreement on rules of origin in addition to explanation of the concept and types of rules of origin.

Concept and types of rules of origin and a concise investigation into the agreement on rules of origin

Nowadays, rapid developments have emerged at the area of technology and international division of labour in sake of competitive advantages, under which extensiveness of industrial production chain from one country to several countries has come to realize, that several countries might have had their role in production of an end product. Hence, knowing in which country a good has been manufactured and what methods and rules have been set by the countries as required for development

of rules of origin, that is, such rules are called to those criteria that are used by the governments to identify the origin of a good, mentioned that importance of these rules lies on this fact that customs duties, restrictions and preferences widely rely on origin of a good. Agreement on rules of origin has differentiated between preferential rules of origin and non-preferential rules of origin by representing an explanation for non-preferential rules of origin. Preferential rules of origin have been signed by the members under the multilateral and bilateral agreements and enforced for the goods which are exchanged between the member countries in world trade³. Preferential rules of origin are categorized in two groups of agreements:

Contractual agreements: such agreements are represented in form of multilateral, bilateral and regional agreements.

Non-contractual agreements: under such agreements, developed countries grant concessions to the developing countries in a unilateral way.

Both types of agreements negate nondiscrimination in world trade organization, yet these agreements have been prescribed in the world trade organization⁴. Non-preferential rules of origin are used in the policy-making tools such as taking anti-dumping duties, quotas,

trade preferences and enforcement of signs of origin to specify the country of origin. For instance, use of non-preferential rules of origin under the framework of anti-dumping actions is as follow:

Firstly, all the anti-dumping measures are imposed on the goods which are manufactured in a specific country, thus knowing the place for production of a good is required to enforce these actions.

Secondly, anti-dumping complaint must be made by the importing country's enterprises. According to a variety of anti-dumping measures, the foreign manufacturers and importers have asked whether the production process in domestic industries of importing country has been sufficed to grant the origin to the manufactured good or not. Thirdly, most of counterfeiting measures are resolved through employing rules of origin⁵. The agreement on rules of origin has been set in appendix 1 in agreement by world trade organization and the checklist for multilateral agreements on trade of a good. The agreement on rules of origin consists of 9 articles and two appendices at the area of non-preferential rules of origin. The first appendix in the agreement is about the responsibility of technical committee about rules of origin and the second appendix is about non-preferential rules of origin. As mentioned above, the main purpose of

agreement is to harmonize rules of origin. Harmonization is not possible among the rules of origin due to the complicated nature of various rules and regulations that are used by the countries in determination of origin of a good. The agreement has considered a transitional period for harmonization that it was supposed to be ended by 1998, yet it is still going on. Article two of agreement refers to substantive rules of member countries in transitional period. In article 3 of agreement, the parties' obligations after transitional period are discussed. Further, the principles and duties in article 2 of agreement include nondiscrimination, transparency, a uniform, impartial and reasonable enforcement, lack of delay, confidentiality and protection from the confidential information, availability of rules, right of appeal as well as this term 'which country must be the country of origin in which the good has been acquired and changed', that all have been regarded authentic at the period after transitional period⁶.

In article 4, Technical Committee on Rules of origin has predicted the principles pertaining to harmonization. Committee on Rules of origin is under supervision of trade council and technical committee on rules of origin which engage in technical affairs pertaining to the agreement is under

supervision of World Customs Organization (WCO)⁷. In summary, all the activities and duties of technical committee on rules of origin concerning harmonization of rules of origin include:

1-representation of necessary definitions: technical committee on rules of origin addresses the cohesive definitions for the goods that are manufactured in a county to which it can say the country of origin.

2-Determination of rules for a fundamental change concerning tariff classification; To apply the criterion "fundamental change of good" which is one of the leading criteria governing the rules of origin, technical committee on rules of origin adheres to determine the terms and conditions and how to use the aforementioned criterion in case the rules of origin are used for the certain goods and specify the acceptable changes under the nomenclature framework of tariff classification for the goods that are consistent with this criterion.

3-representation and determination of the supplementary rules and criteria: to apply supplementary criteria or change the criterion "fundamental change", technical committee on rules of origin adheres to represent rest of necessary criteria and measures such as value added percentage and how to calculate it and/or the criterion for how to process the operations by determining specific conditions and how to

use them. It is obvious that the rules pertaining to the transitional period will govern the rules of origin for member countries in world trade organization till procurement and issuance of the harmonized rules of origin⁸.

The methods on how to determine origin

Rules of origin which are used to identify the country of origin are grounded on two various fundamental criteria as follows:

1-the criterion "total production"

2-the criterion "fundamental change"

Concerning the first criterion "total production", the considered product is entirely manufactured in a country, for which the raw materials and natural products including mineral and agricultural products can be the best samples. Conversely, the goods which have been made from the materials or pieces imported from overseas or remained without a specific origin fall from these rules.

The problems in determining the origin of goods are raised when production and assembly come to realize in more than one country. To determine the origin in case several countries are engaged in production of good has been considered as the criterion "fundamental change in international trade" that three factors are used to explain it due to ambiguity of this term:

-change in tariff classification

-criterion "value added percentage"

- Manufacturing and processing process of good

The criterion "fundamental change" knows the origin of good belonging to a country in which the good is manufactured under specific operations with different name, application and feature in that country. Fundamental change goes beyond the change in materials undergoing transformation of a material to a new and different material with different name, application and feature⁸.

Change in tariff classification

The common method to bring about change in tariff classification lies on setting a common law through which the constituent materials in manufacturing a product or supplying the materials and components under industrial operations in form of a new product concerning the rules of customs tariffs classification are considered in a tariff that is different from the tariffs for the constituent materials. This method is used in case the constituent materials of the good are not under their major tariff, and the reason for this lies on this fact that their major features as a good from the end product under their tariff have not been maintained⁹.

Advantage of this criterion lies on this fact that it is easy to use in conceptual perspective; in addition, accepting the harmonized system in most of countries

implies that they use the criterion "change of tariff classification" to determine the origin of good. To elaborate the advantages of this method, it suffices to consider identification of origin based on certain rules and regulations in change of customs tariff, whereby no problem will raise in representation of documents to confirm the origin in this way. Yet concerning the disadvantages of this criterion despite the efforts which have been made in committee on harmonized system to guarantee the equal classification, several problems were raised due to unequal classification for goods. On the other hand, use of the criterion "change in customs tariff" will come to realize by use of a list of exceptions that are made based on nomenclature or customs tariff, so that the used list must encompass the contents which are provided in harmony with economic and industrial progress, otherwise the manufacturers will encounter problem in determining the origin of good-consequently the complexity of this method is specified as the weakness.

It should be noted that use of this method will be beneficial or far from problem when the nomenclature or customs tariff uses a classification system in both holding countries in which the goods are manufactured or the pieces are assembled, otherwise harmonization of two tariffs in

two independent systems will raise problems for both countries in introducing and accepting the country of origin.

Value added criterion

Value added criterion is a degree of change to grant origin to the required good. In other words, value added criterion is obtained from a minimum value percentage in the manufacturing country or a maximum value percentage through the operations which have been applied on the imported materials and components. If the minimum and maximum values are not observed, the value added criterion will not specify the origin of good¹⁰. Value added criterion for its simplicity¹¹. Yet, this method will encounter specific restrictions, i.e. the change in content of value added relies on several factors such as change in exchange rate and inadequate production process¹². Since value added criterion ignores the risks, inflation and the changes which occur in the status of good and currency value and price of raw materials, it is not accounted as an acceptable method to determine origin of good. Since countries evaluate value added in different ways, no similar results might be acquired based on this criterion for the same goods¹². On the other hand, if price of foreign materials and pieces is not specified previously and difference of figures of domestic and foreign pieces be close to

each other so that if the origin of good undergoes change by a little fluctuation, susceptibility of this method in determination of origin will be confirmed in most cases. Hence, value added criterion will not be a proper method to determine the origin¹³. Manufacturing and processing process of good has been regarded as the technical criterion. Manufacturing and processing process of good is represented as the supplementary criterion. If this criterion of change does not meet the tariff classification, it will be used to determine the origin of good. However, the advantages of this system include transparency, predictability and low cost, this criterion is not satisfactory as it is tough. There is doubt on determination of the origin, because the legislators rely on the industry to get information, mentioned that the content of this criterion is not clear for everyone due to its classification in technical conditions¹⁴.

CONCLUSION

Notably, due to international division of labour, various countries might have role in production of a product, thus knowing where a good has been manufactured has been more likely necessitated. Rules of origin are called to those rules that are used by the governments to identify origin of a good, and significance of these rules lies on this fact that customs duties, restrictions

and preferences widely rely on origin of good. Preferential rules of origin are called to those rules that have been signed in bilateral and multilateral agreements in which no attention has been paid to the manufacturing country and a huge attention has been paid to this point that goods have been manufactured in the member country in the agreement so as to use the preferences. Preferential rules of origin intend to avoid trade diversion, i.e. trade diversion implies the principles which say that a sufficient degree of changes must occur in the country which received preferences so as to consider the manufactured good made of this country.

Non-preferential rules of origin are used in the policy-making tools such as taking anti-dumping duties, quotas, trade preferences and enforcement of signs of origin to specify the country of origin; since these tools require differentiation of domestic products from foreign products and differentiation of foreign products, to which rules of origin play a major role. Hence, rules of origin have not just economic concept, being used in stabilization of political tools. The important point in non-preferential rules of origin lies on this fact that in which country the good has been made? When a good is manufactured in a country, determination of origin will be easy for it. Problems in determination of

origin of goods derive when production and assembly occur in more than one country. In this regard, the criterion "fundamental change" has been accepted in international trade, that three factors are used to explain it due to ambiguity of this term:

1. **-change in tariff classification**
2. **-criterion "value added percentage"**
3. **Manufacturing and processing process of good**

Concerning the fundamental change, good must be transformed to a new good with a different name and feature. In the criterion "change in tariff classification", it must take this point into account that the materials which are used to manufacture a product are under a specific tariff yet under influence of new operations under another tariff. As change has been brought about in the tariff classification, good has been changed in it, where it is called the origin of good. Two other criteria are accounted as supplementary criteria, that such criteria are used in case the criterion of change does not meet in tariff classification. Each of these criteria has advantages and disadvantages that the world trade organization must compensate the disadvantages in these criteria during harmonization process. As known, the criterion "change" is an acceptable criterion in the tariff classification as the goods have

been classified previously under a harmonized system of tariff classification. Yet, there are several exceptions to which no response can be found in the harmonized system of tariff classification, whereby in some cases further criteria must be sought to find a solution. Concerning the criterion "value added percentage", we seek an area to find an origin for good that gives the highest value to the good, yet as known status of the goods undergoes change in a day, yet this criterion does not consider the changes, thereby this criterion does not seem acceptable. Manufacturing and processing process of good has not been taken into account due to its technical nature, yet this criterion is used in some industries. As the result, when the criterion "change" does not meet in the tariff classification, two other criteria are used.

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