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Asia Pacific Trade Agreement (APTA)

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A B S T R A C T

The Asia-Pacific Trade Agreement (APTA), previously known as the Bangkok Agreement[1] and renamed 2 November 2005,[2] was signed in 1975. It is the oldest preferential trade agreement between countries in the Asia-Pacific region. The APTA covers market for 2921.2 million people [2] which accounts for US$14615.86 billion in terms of gross domestic product (GDP) in the Fiscal Year (FY) 2015-2016.[3] APTA's key objective is to hasten economic development among the seven participating states opting trade and investment liberalization measures that will contribute to intra-regional trade and economic strengthening through the coverage of merchandise goods and services, synchronized investment regime and free flow of technology transfer making all the Participating States to be in equally winsome situation. Its aim is to promote economic development and cooperation through the adoption of trade liberalization measures. APTA is open to all members of the United Nations Economic and Social Commission for Asia and the Pacific, which serves as the APTA Secretariat. Members of APTA are currently participating in the Fourth Round of Tariff Concessions, which are expected to conclude in October 2009.[4]

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INTRODUCTION

Member nations

- Bangladesh (original member, 1975)[5]
- China (acceded in 2000)[6]
- India (original member, 1975)
- Republic of Korea (original member, 1975)
- Lao People's Democratic Republic (original member, 1975)
- Sri Lanka (original member, 1975)
- Mongolia (acceded in 2013, full membership in 2020)[7][8]

Negotiations

Exchange of Tariff Concessions

The Third Round, entering into force on 1 September 2006, led to tariff concessions on more than 4,000 items.

The Fourth Round, launched in October 2007, was scheduled to be concluded by the Third Ministerial Council in October 2009. This Round aims to widen the coverage of preferences to at least 50 per cent of the number of tariff lines of each member, and at least 20-25 per cent the value of bilateral trade. It also aims to provide a tariff concession of at least 50 per cent (on average).

Framework Agreement

The Fourth Round of negotiations is extending into areas beyond the traditional tariff concessions in order to deepen trade cooperation and integration. APTA members are currently negotiating three framework agreements on trade facilitation, trade in services, and investments. In addition, APTA members are exchanging information on non-tariff measures.

Institutional arrangements

- Ministerial Council: The Ministerial Council represents the highest decision-making authority. It provides overall policy direction for the future negotiating agenda of the Agreement, as well as supervision and coordination of the implementation of the Agreement. The Council meets at least once every two years, with the First Session held on 2 November 2005 in Beijing, China, and the Second Session held on 26 October 2007 in Goa, India. The Third Session will be held on 22 October 2009 in Seoul, Republic of Korea.
- Standing Committee: APTA is administered by a Standing Committee. Each Participating State designates a national focal point and an alternate focal point responsible for handling this duty.
- Secretariat: The Trade and Investment Division of UNESCAP functions as APTA's Secretariat.

Discussion

The Asia-Pacific Trade and Investment Agreements Database (APTIAD) is a resource for researchers and policymakers in the area of international trade and investment. The online database allows searches in two ways. One relates to the agreements themselves where users can search by agreements, members, key terms, types and scopes of agreements and their status. Another possibility is to search

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publications relevant to regional integration and trade agreements. The Trade Agreements Database component of APTIAD is designed to give researchers and policymakers both an overview of, and easy access to, all the regional and bilateral trade agreements entered into or under negotiation by the countries of the Asia and Pacific region. As of June 2008 there were 136 such agreements, including those agreements that have not been notified to the WTO but for which there is official information readily available, and also those agreements under negotiation for which there has been at least a first formal negotiation round. The Interactive Trade Indicators component of APTIAD is designed to help policymakers calculate some of the most commonly used indicators related to trade performance of national economies and/or trade agreements.

The Interactive Trade Indicator Database enables you to select indicators (e.g. export/import value, export/import growth, export/import share, trade share, trade intensity) by country or region, product and year. Export flows are downloaded from UN COMTRADE using World Integrated Trade Solution (WITS) for the last 10 years (at present 1998-2007) for selected developed and developing countries in the Asia-Pacific region. The Asia-Pacific Trade Agreements Database (APTIAD) is a product of the Trade and Investment Division of the United Nations Economic and Social Commission for Asia and the Pacific. Rules of origin are the rules to attribute a country of origin to a product in order to determine its "economic nationality".[1] The need to establish rules of origin stems from the fact that the implementation of trade policy measures, such as tariffs, quotas, trade remedies, in various cases, depends on the country of origin of the product at hand.

Rules of origin have become a challenging topic in international trade, not only because they constitute a highly technical area of rule-making, but also because their designation and application have not been harmonized across the world. The lack of harmony is even more remarkable in the era of regionalism, when more and more free trade agreements (FTAs) are concluded, creating the spaghetti bowl effect.[2]

The most comprehensive definition for rules of origin is found in the International Convention on the Simplification and Harmonization of Customs procedures (Kyoto Convention), which entered into force in 1974 and was revised in 1999. According to Specific Annex K of this Convention:[3]

Rules of origin means the specific provisions, developed from principles established by national legislation or international agreements ("origin criteria"), applied by a country to determine the origin of goods;

The definition makes it clear that rules of origin are basically the "criteria" to determine the origin of goods. Such criteria may be developed from principles in national legislation or international treaties, but the implementation of rules of origin (i.e., certification and verification) is always at the country level. It is also important to note that the purpose of rules of origin is to define the country of origin, not a geographical area such as region or province (which is very important in the field of intellectual property rights). The country of origin is often found in the label or marking of a good, for instance "product of China", "made in Italy", etc.

Considering the modest number of Members of the World Customs Organization (WCO) acceding to Specific Annex K (accession to Specific Annexes is optional), the Kyoto Convention has a rather insignificant impact on the application of rules of origin in international trade. However, this Convention does provide many important definitions and standards, which serve as a harmonized basis for national laws and trade agreements to formulate origin. Apart from the definition for rules of origin, it also provides definitions for "country of origin", "substantial transformation", and a number of recommended practices.[4]

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Rules of origin can be classified into non-preferential rules of origin and preferential rules of origin. Non-preferential rules of origin are those primarily designated in order to sustain the most-favored-treatment (MFN) within the World Trade Organization (WTO). Preferential rules of origin are those associated with "contractual or autonomous trade regimes leading to the granting of tariff preferences going beyond" the MFN application. This separation is stipulated in Article 1 of the WTO's Agreement on Rules of Origin.[5]

Article 1: Rules of Origin

1. For the purposes of Parts I to IV of this Agreement, rules of origin shall be defined as those laws, regulations and administrative determinations of general application applied by any Member to determine the country of origin of goods provided such rules of origin are not related to contractual or autonomous trade regimes leading to the granting of tariff preferences going beyond the application of paragraph 1 of Article I of GATT 1994.
2. Rules of origin referred to in paragraph 1 shall include all rules of origin used in non-preferential commercial policy instruments, such as in the application of: most-favored-nation treatment under Articles I, II, III, XI and XIII of GATT 1994; anti-dumping and countervailing duties under Article VI of GATT 1994; safeguard measures under Article XIX of GATT 1994; origin marking requirements under Article IX of GATT 1994; and any discriminatory quantitative restrictions or tariff quotas. They shall also include rules of origin used for government procurement and trade statistics.

It is important to understand the difference between these two categories of rules of origin. Non-preferential rules of origin are deemed "non-preferential" because they are applied in a non-preferential basis to determine the country of origin for certain purposes of application within the multilateral trading system. In contrast, rules of origin in FTAs and in the Generalized System of Preferences (GSP) is considered preferential because they help to determine the country of origin in order to grant preferential and special treatment to products originating in a contracting party or a beneficiary country.[6]

In principle, FTAs as well as their rules of origin must be notified to the WTO as an obligation of Members.[7] However, rules of origin in FTAs and autonomous trade regimes (e.g., GSP schemes) are not subject to any substantive requirement from the WTO. This is because the Agreement on Rules of Origin does not govern how rules of origin in an FTA or a GSP scheme should be formulated and implemented. There is only a brief Common Declaration with Regard to Preferential Rules of Origin, which sets out some standards and recommendations for the formulation of preferential rules of origin.[8] The fact that preferential rules of origin do not fall within the realm of the WTO adds more divergence to the "spaghetti bowl" of rules of origin: each FTA and each autonomous trade regime may formulate its own rules of origin. As a consequence of the rapid growth of regionalism, hundreds of rules of origin are currently applied in hundreds of FTAs. According to the WTO, as of 4 January 2019, 291 RTAs are in force - counting only those notified to its Secretariat.[9] Whereas, according to the International Trade Centre (ITC), more than 440 FTAs are in force up to the end of March 2019.[10]

Indeed, within the WTO, non-preferential rules of origin are not more harmonized than in FTAs. Despite tremendous effort, the work program to harmonize non-preferential rules of origin has not made significant progress to date, which means there is not yet a common set of rules of origin for non-preferential purposes within the WTO. During the so-called "transitional period", the formulation and implementation of non-preferential rules are literally at the discretion of Members.[11] The only difference as compared to preferential rules of origin is that non-preferential rules of origin are subject

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to more binding requirements in WTO agreements, particularly the Agreement on Rules of Origin and the Agreement on Trade Facilitation.[12]

So far, the most successful initiative to harmonize this area of rule-making at the multilateral level is the WTO's implementation of preferential rules of origin in favor of least developed countries (LDCs). The 2015 Nairobi Decision on Preferential Rules of Origin for LDCs, which is built upon the decision adopted earlier in 2013 at the Hong Kong Ministerial Conference, has for the first time laid out general guidelines and detailed instructions on specific issues to determine the status of products originating in an LDC country. Moreover, preference-granting Members are required to notify to the Secretariat of their prevalent origin criteria and other origin requirements. To enable transparency and comparability, such notifications must also follow a template adopted by the WTO's Committee on Rules of Origin.[13]

Results

Being the criteria to determine the economic nationality of goods, the role of rules of origin is inherently derived from the fact that a number of trade policy measures are applied based on the source of the imports. For instance, if country A wants to impose anti-dumping duties on steel products originating from country B, it is when rules of origin come into play. Without rules of origin, country A cannot apply this measure properly because it cannot determine whether or not the steel in a certain consignment is "made in country B". Beyond this fundamental issue, when steel products originating from country C only transit through country B, they should not be subject to this trade remedy measure; but when steel products of country B opt to transit through country C before being entering country A, it should be considered a circumvention of the anti-dumping duties. All these issues give rise to the need to formulate and implement rules of origin. Basically, rules of origin allow the application of trade measures to the right subject-matters whenever their nationality is taken into account. Likewise, rules of origin are crucial to trade statistics because a country may need to keep track of their trade balance with partners.[14,15]

Rules of origin are particularly important in FTAs, which are established to provide preferences exclusively to products of preferential origin. In this context, rules of origin are indispensable to differentiate between goods originating in contracting parties and those originating in third countries.[16,17]Such differentiation serves two purposes: (1) it allows the importing party to determine whether a product is eligible for preferential treatment under the FTA at hand; (2) it avoids the scenario where exports from third countries enter the FTA via the member with the lowest external tariff (i.e., trade deflection).[14] This explains why in a customs union, there is no need to establish rules of origin among its contracting parties - members of a customs union are required to maintain a common external tariff imposed on imports from third countries.[15]

Due to such role, rules of origin also help to create trade among members of a preferential trade arrangement. Such trade creation effect may happen through two channels. Firstly, because preferences are destined exclusively for goods originating in partner countries, it follows that one party tends to increase its imports from another party of an FTA. To illustrate,[18,19] if country A signs an FTA with country B, due to lower duties, product X originating in country B now becomes cheaper than similar product X' originating in country C; therefore, country A has the incentive to import a higher volume of X. Secondly, inputs originating in a partner country are also preferred because they are normally considered as originating in the other party where it is incorporated in production. It means country A has the incentive to use inputs originating in country B because this will allow its products to qualify for the originating status under the FTA with country B more easily. Both channels may lead to an increased trade between country A and country B, but may also have an adverse effect on their trade with country C (i.e., trade diversion). Therefore, although rules of origin help to overcome trade

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deflection and encourage trade creation, it also causes trade diversion, which in many cases is not economically efficient.[16]

Apart from the core origin criteria, rules of origin also comprise general provisions which cover other aspects in origin determination. They are referred to as general previsions because they are applied across the board, and not specific to any product. Although there is no harmony across trade agreements, the Comparative Study on Rules of Origin of the WCO has listed the most commonly found provisions of this category.[21] Based on this study, the following glossary is provided by the International Trade Centre as a brief guideline for enterprises.[22]

Accessories, Spare Parts and Tools: A provision that clarifies the origin determination process of accessories, spare parts or tools delivered with the good.[20]

Advance rulings: A provision that allows an exporter or an importer to obtain an official and legally binding opinion on the classification, origin or customs value of their products from the local customs authorities prior to exporting/importing of the goods.

Appeals: A provision which sets up an appeal process in respect of origin determination and advanced rulings.

Approved exporter: Approved exporter provision refers to exporters who fulfil certain conditions, export frequently under and FTA and are registered with the local customs authorities (have obtained an approved exporter authorization).

Certification: A provision that details the type of origin documentation that needs to be provided to claim preferential tariffs under an FTA.

Competent authority: A provision that lists national authorities responsible for overseeing origin-related provisions and for issuing the certificate of origin. This is often the government or a government department which can then delegate the procedure of issuing certificates to other domestic organisations.

Cumulation: A provision which allows to consider goods obtained in as well as processing taking place in one FTA member country as originating in another.

De Minimis: A provision that allows a small amount of non-originating materials to be used in the production of the good without affecting its originating status. The provision acts as the relaxation of the rules of origin.

Direct transport: A provision requiring goods that are claiming preferential treatment under an FTA to be shipped directly from the FTA country of origin to the FTA country of destination.

Duty drawback: A provision that relates to reclaims or refunds of customs duties previously paid on inputs. In the context of FTAs, duty drawback provision, usually relates to the ability to claim back duties paid on non-originating materials used to produce the final good which is exported under preferential tariffs.

Exemption of certification: A provision which lists exemptions from the requirement to provide a proof of origin. Under certain circumstances originating goods can be imported into an FTA country without a proof of origin and still be treated as originating.

Exhibitions: A provision which allows an originating good to be purchased in a third party (non-FTA) country during an exhibition and imported into an FTA country under preferential treatment.

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Fungible materials: A provision determining how non-originating and originating fungible materials should be tracked (accounted for) when both types are stored together and/or used to produce originating and non-originating goods. It allows both types of goods to be tracked not through physical identification and separation but based on an accounting or inventory management system.[21]

Indirect materials: A provision which specifies that the origin of certain materials (referred to as indirect or neutral) used in the production process should not be taken into account when determining the origin of the final good.

Minor errors: A provision that clarifies that when the origin of the goods is not in question, preferential origin claims should not be rejected as a result of small administrative errors and discrepancies.

Non-qualifying operations: A provision that lists operations which do not confer origin. They are considered below the threshold of sufficient production / processing.

Outward processing: A provision that allows a good to be temporarily removed from the FTA territory and processed in the third party country without affecting origin determination of the final product. No account is taken of the fact that the good has left the territory of an FTA during the production process.

Packaging: A provision that clarifies whether packaging should be accounted for when determining the origin of the product.

Penalties: A provision that specifies the legal consequences of submitting an origin documentation based on incorrect or falsified information. These can relate to criminal, civil and administrative penalties.

Period of validity: A provision that specifies the length of time an origin certificate or an origin declaration (see proof of origin) is valid for from the moment it has been issued.

Principle of Territoriality:

A provision stating that for the purpose of determining the origin of goods, all working and processing needs to be carried out within the territory of parties to the agreement without interruption.[22]

Conclusions

Certification and verification are procedural aspects of rules of origin, but they are of no less importance. Even if a product fulfills the substantive origin criteria, it will not be entitled to preferences unless it complies with the procedural requirements. The requirements regarding certification and verification are usually provided in an annexes called operational procedures, or sometimes in the chapters on customs procedures. Those annexes or chapters include a number of provisions such as retention of documents, refund of excess duties paid, minor errors, etc., which need to be taken into account if traders want to claim preferences for their goods.

Most essentially, to be eligible for preferential treatment, a consignment must be accompanied by a proof of origin. The most popular form of proof of origin required in most trade agreements is a certificate of origin. Besides, there are other forms of proof of origin, for instance, a declaration of origin or an origin statement. Many agreements provide value thresholds below which proofs of origin may be waived.[23]

Regarding certification, a trader needs to know whether or not self-certification is permitted by the trade agreement under which he claims preferences. If it is permitted, the trader (either the producer, the exporter, or in some cases, the importer) only needs to fill out the information relating to the consignment on a prescribed form (if any), and declare that the goods listed therein fulfill origin criteria

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and other requirements. However, if self-certification is not allowed, a trader must apply for a proof of origin issued by a certifying authority, which is normally the chamber of commerce or an agency of the ministry of trade or commerce. To obtain such document, the exporter or the producer will submit various documents relating to the production or manufacturing of the goods. The competent authority will examine the documents, and pay visits to an applicant's premise to verify if necessary, and certify if the goods are compliant with the origin criteria set out in the trade agreement at hand.[23]

Regarding verification, when the consignment arrives at the port of entry in the importing country, the proof of origin will be submitted to the customs authority. To facilitate trade, sometimes a physical submission is not required - the importer or its representative may simply submit the document number and/or an electronic copy thereof. The customs' acceptance of the proof of origin will decide whether or not the consignment is entitled to preferential treatment. In case there arise some doubts, the customs authority may resort to several measures, e.g. examining the original proof or origin or verifying the information on the document and the goods actually imported. The customs may require the trader to provide more information, or even contact the issuing authority in the exporting country for further clarification.[24]

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