International Chamber of Commerce
Policy and Business Practices

BUSINESS RECOMMENDATIONS ON RULES OF ORIGIN IN PREFERENTIAL TRADE AGREEMENTS

POLICY STATEMENT

Prepared by the ICC Commission on Customs and Trade Facilitation

Summary

As countries are increasingly concluding bilateral and regional Preferential Trade Agreements (PTAs), diverging rules of origin regulations and procedures are becoming a trade barrier along the whole supply chain. This is becoming even more challenging in absence of a multilateral agreement on rules of origin, especially where new PTAs overlap existing ones. This policy statement highlights the challenges traders and suppliers – most notably small and medium sized enterprises (SMEs) – face in this regard and sets forth eight recommendations calling for global horizontal cohesion through the streamlining of certification procedures.

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Introduction

With limited progress being made in the Doha Round of multilateral trade negotiations, countries are increasingly looking to bilateral and regional Preferential Trade Agreements (PTAs) as a trade liberalizing alternative. PTAs have multiplied as a result, with over 400 bilateral and regional deals currently in existence. Recent developments include 'mega-regional' PTA negotiations such as the Trans-Pacific Partnership (TPP), the Regional Comprehensive Economic Partnership Agreement (RCEP) and the Transatlantic Trade and Investment Partnership (TTIP).

A growing number of PTAs cover the same trading areas. The resulting overlap of PTA rules and procedures creates confusing and inconsistent market entry arrangements, which are particularly felt by small and medium sized enterprises (SMEs) with limited resources. These inconsistencies are also problematic in situations where companies seek to determine which PTA provides greatest advantage for trading their goods.

Challenges

PTAs contain compliance arrangements in a 'Rules of Origin' chapter. The use of the term 'Rules of Origin' to describe the chapter is somewhat inaccurate, since aside from containing the criteria for determining the origin of the goods, the chapter most importantly contains the procedures by which traders are to claim their tariff concession from customs (i.e. the means by which traders 'use' the preferential agreement).

These rules create divergent procedures for traders at the border-crossing, including the following issues that are specific to each PTA:

- How a company is to formulate and make a claim for preferential tariff treatment under the PTA
- Procedures for verification of preferential tariff treatment claims under the PTA
- Procedures for customs acceptance or rejection of preferential tariff treatment under the PTA
- Timeframes for dispute resolution

International trade documentation and procedures have, over centuries, become international customary standards recognized by international practice, precisely because they seek to foster convergence by providing common processes for border-crossing. Creating a new type of procedures and standards in each new PTA makes processes opaque for business engaged in international trade, and exposes commercial actors to greater risk when conducting or financing trade. Divergent procedures and standards in PTAs also increases the possibility of fraudulent behaviour that is harder to monitor, and provides avenues for non-party goods entering the PTA zone – increasing the possibility of reputational risk for the producer.

While the negotiation of PTAs is limited to the bilateral and regional level, it is important to recognize that commercial trade does not operate within these same geographic limitations. Companies' supply chains receive inputs from countries all over the world, before the 'last substantial transformation' of the good, which then serves as the final 'origin' of the good for trade preference purposes. A good is then supplied to multiple buyer nations, requiring compliance at each level of the supply chain, for each destination on a shipment-specific basis, as per the market entry requirements.

In some trading regions, local suppliers are required to provide declarations to companies who export

and import under a PTA, adding yet another layer of complexity and burden on business resources.[1] Modern trade is characterised by increasingly complex global supply chains. Depending on day-to-day availability and market fluctuations, a local producer can supply an input or intermediate good to a product that may or may not be exported. As the number of PTAs with preferential rules of origin requirements increases, so too has the resulting burden and cost of providing the required information from various sources along the supply chain. Businesses of all sizes – including local producers who do not export themselves – now find themselves confronted with a situation in which they can no longer manage the complexity and administrative burden of the information requirements on origin. It is for these reasons that origin requirement procedures (e.g. supplier declarations) linked to PTAs are starting to form a behind-the-border barrier to trade.

With the growing importance of global value chains and the movement of goods across multiple countries and regions, increased complexity caused by overlapping PTA procedures and rules of origin will lead to an increased burden on business and barriers to cross-border trade. The more complex, numerous and divergent rules and procedures are in and across PTAs, the higher the costs to business. If these costs exceed the benefits of using a given trade treaty, companies avoid the treaty and utilization of tariff concessions is reduced, negating the whole purpose of concluding trade agreements in the first place.

The principles contained in the World Trade Organization's (WTO) 2013 Trade Facilitation Agreement (TFA) call for reduction of global non-tariff barriers. As such, PTA negotiators should focus on how – procedurally – an exporter and an importer are to take advantage of the preferences conferred in a trade agreement, particularly in the context of overlapping PTAs.

ICC Recommendations

ICC makes the following recommendations and statements in relation to Preferential Rules of Origin in the context of PTAs:

1. ICC calls upon governments party to bilateral and regional PTA negotiations to take every possible action to streamline Rules of Origin and origin procedures in their regional and bilateral agreements by following wherever possible the provisions and procedures of the World Customs Organization Revised Kyoto Convention, in line with the principles contained in the WTO's Trade Facilitation Agreement.[2]

2. ICC recommends that countries party to bilateral and regional PTAs negotiations should insert provisions into agreements that allow procedures enabling 'extended cumulation' or 'cross cumulation' to occur between their common agreements. This allows common bilateral parties to differing regional agreements to share or cumulate origin across trading regions and agreements.

3. ICC calls upon the WCO to develop – in close cooperation with the private sector – common procedural standards for customs verification of origin documentation under PTAs, in the spirit

[1] For example in the European Union Supplier Declarations are required in relation to preferential trade, see EU Council Regulation No 2015/2447, articles 61-66. < http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32015R2447&from=EN>.

[2] ICC has previously called on all WTO Member States to move forward on the stalled WTO Non-preferential Agreement on Rules of Origin (ARO) - see 'ICC Policy Statement on Non-Preferential Rules of Origin for commercial policy purposes' (June 2015).

of the provisions of the WTO's Trade Facilitation Agreement.[3] This should include the WCO researching and developing WCO procedural principles surrounding the duty of care in relation to origin in PTAs, including some or all of the following topics:

- A defined, transparent set of 'safe harbour' provisions that underpin appropriate due diligence in the provision of supply chain information supporting claims of product origin to facilitate the making of such claims. Importers and exporters must have confidence that the statement making process is known and accepted across global supply chains and not subject to local ad hoc variations. The process of making a statement must not lead to opportunities for criminal or corrupt behaviours within the supply chain or at the border. Origin statement processes must provide legal protections to facilitate trade and lower costs to business and not simply transfer costs and liabilities across the supply chain;
- Guidance for governments and negotiators to ensure that the system of origin verification implemented in a PTA would be low-cost for traders and provide government support to the companies involved in the trade transaction.[4] Such guidance should also explore trusted third party origin documentation issuance under PTAs, under appropriate global standards, to reduce costs for traders;
- Approval processes by customs authorities for e-commerce origin solutions (including Artificial Intelligence systems implemented for the Harmonized System).

Adoption of common procedural principles related to these topics would be trade facilitating, provide traders better protection from post entry origin penalties, and in some cases even protection from post entry duties.

4. ICC recommends that origin disputes under PTAs should not be decided unilaterally by the customs authority of a single trade agreement partner, particularly as these matters can reduce customs efficiency, and outcomes can be delayed significantly in some instances. Instead, all PTAs should contain provisions for resolution of minor origin disputes within commercially responsive timeframes, with appropriate support for importers and exporters involved in the transaction.

5. ICC recommends that governments preparing to enter a PTA carefully consider the realities of the customs capacities of trading partners, particularly the number of customs ports in which electronic capacity may be lacking. Governments should ensure there are capacity building programmes in place prior to entry into force of a PTA, particularly where PTA parties include developing and emerging markets.

6. ICC recommends that parties to PTA negotiations should aim for horizontal global cohesion of PTA Rules of Origin procedures wherever possible, to facilitate the possibility of a future multilateral agreement [5] The commercial business interest in the streamlining of rules of origin

[3] The WCO 2014 Certification of Origin Guidelines provide a useful overview of the various systems in use. However, there is a need to go beyond such an overview and align global procedural standards for rules of origin in PTAs, in order to prevent the stifling of cross-border trade.

[4] There is a need for increased awareness of preferential rules of origin in the private sector, and governments have a responsibility in this regard. Useful examples include the Republic of Korea's 'One Stop FTA Support Centre' for SMEs < http://www.customs.go.kr/kcshome/site/index.do?layoutSiteId=engportal>, and the popular Inter-American Development Bank 'Virtual Courses on Integration and Trade' <http://www.bid-capacitacion-integracion.org/index.php/en/>.

[5] See the 'RTA Exchange Initiative', E15 Group of Experts on RTAs <http://www.rtaexchange.org/site/about-us>.

is that traders must be able to access the benefits and comply with the terms of each treaty in the most efficient way to foster trade and economic growth. To this end, standardization of procedural requirements across PTAs is trade facilitating – creating increased transparency and predictability. Furthermore, standardization, where possible, of procedures will allow business processes along the whole supply chain to be replicated and automated, in efforts to further reduce trading costs.

7. ICC recommends that governments aim to align starting points from which to commence negotiations for trade agreements – for example standards endorsed by the WCO in the Revised Kyoto Convention reflecting existing business practices. This would improve the streamlining of international trade and ultimately reduce costs for business and consumers, rather than the current trend of divergent and burgeoning regulatory requirements. The problem of aggregate complexity in differing treaties could be overcome through the acceptance of a set of standard definitions and procedures for all border crossing and market access – such as those on offer through the WCO's Revised Kyoto Convention. The costs of border crossing can be a significant portion of the final commercial costs for manufacturers. These costs are ultimately passed on to the consumer; thereby increasing the purchase price. Complex market entry requirements mean that companies need to have staff or advisers analyzing their market entry systems. Internal staff at each level of the transaction process must understand these processes so they can take advantage of the entry requirements. Divergence of procedures in a PTA represents a failure to utilize working systems that were in place before the agreement, which in turn creates novel and divergent regulatory requirements for exporters and producers, increasing cost to business.

8. ICC recommends that all parties involved in the development of PTAs should consider bilateral or regional trade agreements as interim steps or 'building blocks' on the path to an eventual agreement at the multilateral level. ICC strongly believes that where the proliferation of PTAs raises the risk of regulatory fragmentation, streamlining of mega-regional PTA negotiations could create momentum towards broader trade liberalization.[6] Accordingly, procedures for traders contained within and across bilateral and regional PTAs must be aligned in the horizontal sense, in order to facilitate trade both in the present, and under a future multilateral deal. It is essential that PTA negotiators do not repeat the mistakes of previous negotiations in developing further divergent sets of rules and administrative procedures.

[6] 'ICC Policy Statement on Mega-Regional Trade Agreements and the Multilateral Trading System' (15 April 2016).

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www.iccwbo.org
@iccwbo

INTERNATIONAL CHAMBER OF COMMERCE
33-43 avenue du Président Wilson, 75116 Paris, France
T +33 (0)1 49 53 28 28 F +33 (0)1 49 53 28 59
E icc@iccwbo.org www.iccwbo.org