Non-preferential rules of origin:

Their importance and thoughts for the future

WCO Global Origin Conference 2017

Addis Ababa, Ethiopia, May 4, 2017

Jonas Kasteng
Senior Adviser, National Board of Trade Sweden
Contact: jonas.kasteng@kommers.se

Non-preferential rules of origin should be objective, predictable and transparent

Non-preferential rules of origin constitute the basis for a diverse range of trade policy instruments and trade related policy areas, for example:

- Trade remedies,
- Quantitative restrictions and tariff quotas,
- Sanitary and phytosanitary measures,
- Public procurement,
- Sanctions
- Labelling and marking
- Trade statistics

Non-preferential rules of origin should not be used as a trade policy instrument

According to the WTO Agreement on Rules of Origin:

- *“non-preferential rules of origin should not be used as instruments to pursue trade objectives directly or indirectly.”*
- *“They should not themselves create restrictive, distorting or disruptive effects on international trade”*
- *“Members are required to ensure that rules of origin are not used as a trade policy instrument”*

Source: Part IV, Article 9; Part II, Article 2

The WTO negotiations on non-preferential rules of origin

- The WTO negotiations aimed at harmonizing the non-preferential rules of origin – the list rules should be applied identically by all countries, for all products and for all purposes
- The negotiations were suspended in 2007 – members countries mainly disagreed on the use of non-preferential rules of origin in relation to trade remedies
- Today WTO members are free to determine their own non-preferential rules of origin – but these should be in accordance with the WTO rules

Why are non-preferential rules of origin important for trade remedies?

- Trade remedies may only be imposed on products *from certain countries* where the criteria on dumping, injury and causality are fulfilled
- However, in today's world with fragmented global production chains it is increasingly difficult to establish the origin from certain countries with legal certainty
- There is an increasing risk that trade remedies are used as an indirect trade policy instrument to facilitate the imposition of trade remedies

“Unlinking” non-preferential rules of origin and trade remedies

- Short-run objective:

  Limiting the possibility to use non-preferential rules of origin as a direct or indirect trade policy instrument
  (see Option 1 and Option 2)

- Long-run objective:

  Modernizing the non-preferential rules of origin based on global value chains, including services and intellectual value
  (see Option 3)

Option 1: Make all list rules legally binding

- Countries should make their non-preferential rules of origin legally binding – without the possibility to amend the rules for trade remedy purposes
- **All** list rules must be included !
- The list rules must be updated to the new trade reality and be flexible!
- Country-specific legally binding list rules might, however, hamper the future of the WTO harmonization process

Option 2: Non-binding list rules combined with a ’commitment clause’

- The non-preferential rules of origin should remain non-binding
- Certain list rules may still be made legally binding for specific purposes – but potential trade effects should always be considered
- A ’commitment clause’ prohibiting the amendment of non-preferential rules of origin for trade remedy purposes should be included in the domestic legislation
- Notifications to the WTO Committee on Rules of Origin in order to increase transparency

Option 3: The modernization of the non-preferential rules of origin

- Non-preferential rules of origin – like all rules of origin – should be modernized
- The ’value added’ in the production process, i.e. a global value chain perspective including services and intellectual value, should be emphazised
- This might create a new pattern of non-preferential origin in global trade that differentiates between *”Made in”* and *”Made by”* – which should make the rules less interesting for trade remedy purposes
- The new principles should be developed at the multilateral level

The principle of ’last substantial transformation’ must still be respected

- No ’carve outs’ should be permitted – the principle of ’last substantial transformation’ must be respected in the definition of non-preferential origin
- The non-preferential origin should not be disregarded due to the lack of ’economic justification’ of the ’last substantial transformation’
- An approach of this kind would be contrary to the global value chain perspective since producers have to defend their production processes to the non-business community

Additional considerations about the non-preferential rules of origin

- Non-preferential rules of origin are relatively unknown and their use difficult to understand – even within the trade community
- It is difficult to interest policy makers for non-preferential rules of origin since they are one step away from the trade policy measures
- Non-preferential rules of origin might, accordingly, be amended without too much notice and attention – with a possible big impact on trade
- Amendments of non-preferential rules of origin need to be closely monitored by, for example, the WTO

Conclusions

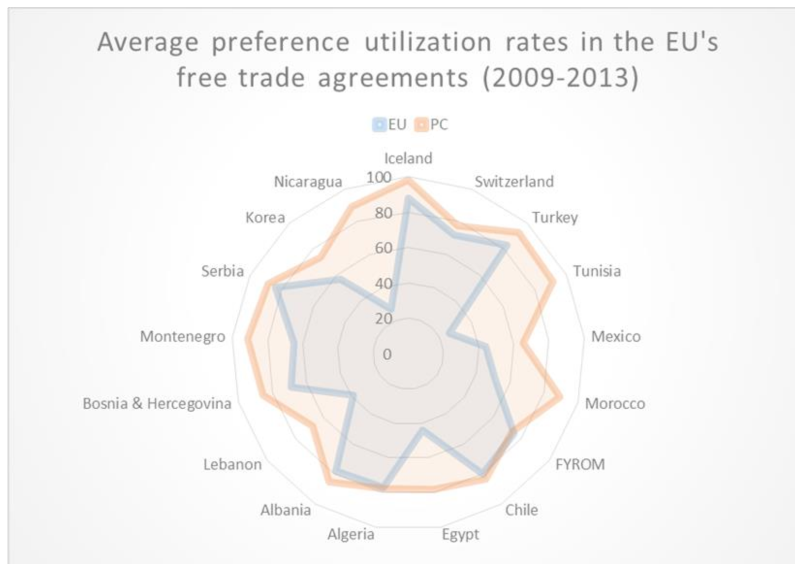
- The use of non-preferential rules of origin are important for various trade policy instruments, in particular for trade remedies
- The non-preferential rules of origin should be ”unlinked” from the trade remedy proceedings at the domestic level – i.e. a more flexible approach than WTO harmonization
- In any case, the non-preferential rules of origin should be modernized in order to define the true origin (based on global value chains, including services and intellectual value)
- Since the non-preferential rules of origin are largely unknown – but important – they should be closely regulated and monitored

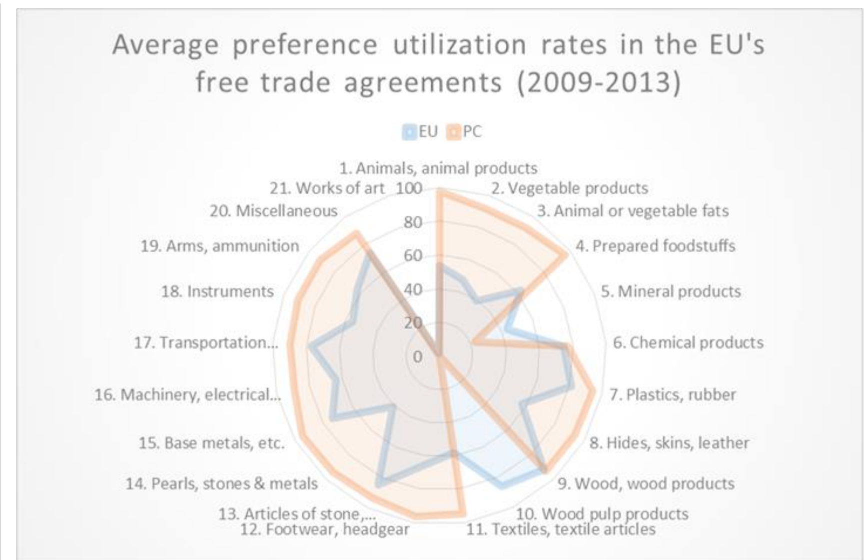
Disclaimer

- The National Board of Trade Sweden is a Swedish Governmental Agency
- It provides the Swedish Government with analyses and recommendations on trade policy issues – with focus on the Swedish position in the EU
- It publishes independent reports to increase awareness on the importance of open and free trade with transparent rules
- The ideas presented by the National Board of Trade Sweden are not necessarily those of the Swedish Government

ADVERTISEMENT: FORTHCOMING PAPER

Preference utilization and preferential rules of origin in the EU





National Board of Trade Sweden & UNCTAD