POSITIONSPAPIER

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Deutscher Industrie- und Handelskammertag

Concept Paper for Modern Trade Agreements

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Increasing Utilisation of Preferential Customs Tariffs

Who we are:

The Association of German Chambers of Commerce and Industry (Deutscher Industrie- und Handelskammertag, DIHK) is the central organisation of 79 Chambers of Commerce and Industry, CCI (Industrie- und Handelskammern, IHKs) in Germany, representing 3.6 million companies from industry, commerce and services. All German companies registered in Germany, with the exception of handicraft businesses, the free professions and farms, are required by law to join a chamber. The DIHK also coordinates the network of 140 foreign chambers of commerce, delegations and representative offices of the German business (Auslandshandelskammern, AHK) in 92 countries worldwide.

Basic remarks:

The DIHK supports free trade and considers the multilateral approach within the framework of the WTO as the best way to open markets worldwide. Due to its multi-lateral trade rules and effective dispute settlement mechanisms, the WTO remains an irreplaceable instrument for promoting international trade.

Nevertheless, the DIHK believes that multilateral agreements can be usefully complemented by selected bilateral or regional agreements, if these aim to liberalise trade in goods and services and strengthen investment relations. As multilateral negotiations have not made significant progress in recent years, the ongoing negotiations between the EU and its main economic partners should be concluded with the clear objective of reaching ambitious and timely agreements.

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Main message:

The DIHK supports comprehensive and ambitious negotiations to remove trade and investment barriers between the European Union and its trading partners in bilateral agreements. From the point of view of DIHK and Eurochambres, the European umbrella association of chambers of commerce, an utilisation rate of at least 85% for agreed tariff preferences should be striven for across all agreements. In order to achieve this, bureaucratic hurdles in regard to the determination and application of preferential rules of origin must be as simple as possible and the requirements for proving preferential origin must be manageable. Building on the "DIHK Position Paper on International Trade Policy[1]", this "Concept Paper for Modern Trade Agreements" specifies proposals for reducing bureaucratic hurdles with the aim of increasing the utilisation rates of preferential customs tariffs. The proposals should apply to all EU agreements.

Preferential rules of origin

With its successful export economy, Germany is more dependent on open markets and free trade than almost any other country. Therefore, trade agreements negotiated by the EU are of great importance for German business. Rules of origin are an essential element of any trade agreement. They define the conditions under which a product is regarded as originating and can benefit from advantageous customs tariffs when imported in the country of destination. The rules of origin in all trade agreements must meet the needs of companies on both sides. As small and medium-sized enterprises (SMEs) in particular can benefit from trade agreements, the rules of origin should be as simple as possible. In addition, unbureaucratic procedures must be established for the necessary proof of origin, which are easy to understand for manufacturers and exporters and can easily be applied in practice.

Utilisation rates of trade agreements

The complexity of rules of origin as well as the effort involved in proving preferential origin determine whether companies use a trade agreement, i.e. make use of the preferential tariff rates agreed therein. In order to give the importer a tariff preference, the exporter must provide a preferential declaration of origin. Despite the overall positive influence of trade agreements on the development of European and German exports and imports, many companies are still not taking full advantage of the opportunities that trade agreements offer. According to the EU Commission for Trade, only 68% of the companies used preferential tariffs when exporting goods from the EU into partner countries in 2018. This means that almost one third of EU exports continue to be subject to full WTO tariffs at the import spot, even though the goods are entitled to reduced tariffs on the basis of EU trade agreements.

[1] DIHK Position Paper on International Trade Policy: For a Modern Trade Policy – Against Protectionism

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In order to further increase the utilisation rate of preferential tariff rates, the DIHK calls for the following aspects to be taken into account when revising existing or negotiating new trade agreements:

RULES OF ORIGIN:

1. Provide a rules of origin calculation programme

Small and medium-sized enterprises (SMEs) face the same challenges in international trade as large enterprises but have far fewer resources. They need additional support to exploit the new potential of modern trade agreements. To enable SMEs to benefit from tariff preferences outlined in trade agreements, we encourage the EU to provide a calculation programme. This could be integrated into the Market Access Database and complement the existing information on rules of origin there. This calculation programme would provide SMEs with important assistance in preference calculation and intensify the practical use of trade agreements.

2. Harmonise rules of origin across different trade agreements

The rules of origin in the EU's trade agreements were largely harmonised. Unfortunately, this changes with every new agreement. Businesses are suffering from the unmanageable diversity of rules of origin. In order to increase the overall rate of use of preferential tariffs, it is urgently necessary to harmonise the rules of origin across all trade agreements. At the same time, the practicability of the rules of origin must be regularly reviewed.

3. Provide for simple horizontal rules of origin as an additional alternative to product-specific processing rules

In EU trade agreements, rules of origin are often defined at the level of individual products in great detail. So-called product-specific processing rules determine which specific steps of a production process have to be passed through in order for the manufactured product to be considered an "originating product". The degree of detail of the respective processing steps often makes a general statement on the preferential origin impossible.

Taking future trends in manufacturing processes into account, the various EU-trade agreements should therefore define uniform “trans-product” rules of origin. This can be, for example, a value added rule or a rule for changing the tariff heading on the basis of the Harmonised System. These horizontal “trans-product” rules of origin should generally be agreed as an alternative option to the product-specific processing rules. This freedom of choice facilitates the use of preferential origin for both new entrants as well as companies with advanced experience in this area.

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In addition, in an increasingly digitised environment, the alternative horizontal rules of origin must be able to be determined automatically using software programs. Rules concerning a certain increase in value or weight or a change in tariff position are again better suited for such an automatized determination.

4. Limit differentiation along the HS code

The less specific rules of origin are and the more they are consistent across different EU agreements, the greater the degree of utilisation. The aim should therefore be to ensure that the rules are not too detailed. Larger product groups should be grouped according to the first four digits of the customs tariff number of the Harmonised System (HS). Further differentiation along the first six HS digits increases the risk of companies unintentionally applying incorrect rules of origin.

5. Allow use of moving average price

Methods permitted under tax and commercial law for valuing inventories are not yet allowed for when determining preferential origin in the context of value-added rules of origin. Instead, the exact price at the time of purchase must be assessed for each material used. In case of several deliveries and changing prices, the determination of this price is possible only with considerable effort. Companies therefore often determine the preferential origin on a worst-case-basis: They apply the highest price paid for a delivery in a certain period of time to their entire stock of non-originating goods. This in turn significantly reduces the possibility of reaching preferential origin. The moving average price (usually calculated automatically by enterprise resource planning systems, ERP), as well as all other stock valuation methods permitted under tax and commercial law, should be allowed for as an alternative to today's time-specific method of preference calculation. Here the economic operator should have the freedom of choice.

6. Accounting segregation also for trading-goods

The separate storage of interchangeable originating and non-originating materials entails considerable costs and difficulties. Trade agreements should therefore provide for the unrestricted possibility of accounting segregation of these materials, whether they are inputs for further manufacturing or pure trading-goods. Accounting segregation should be possible automatically and without the need for an authorisation. This would significantly reduce storage costs for manufacturers and traders.

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7. Increase and standardize tolerance thresholds regarding a change in tariff position as well as concerning sets

Where the rule of origin is based on a change of tariff position, EU trade agreements usually contain tolerance thresholds for materials which do not comply with this rule of origin. This general tolerance threshold should be increased from 10% to 15% for all products. Special rules for textiles and clothing should be dropped. For goods put together in sets, the tolerance limit should be at least 20%. These increases prevent, that the realization of preferential origin fails only because of a few input materials not matching the rule.

At the same time, this takes account of the fact that even small and medium-sized enterprises are increasingly integrated into global value chains.

8. Cross-border cumulation of value-added shares

A further instrument for increased usage of preferential tariff rates could be the introduction of a "bilateral supplier declaration for products without preferential origin". So far, such a declaration exists almost only within the EU (see Annexes 22-17 and 22-18 Implementing Regulation (EU) 2015/2447 for the Union Customs Code, UCC-IA). With such a declaration, a value added, that has not led directly to an “originating” product within the territory of one of the two parties to the agreement, could be passed on to a company in the territory of the other party to the agreement and credited there in a subsequent production process. As a result, the finished product would then qualify for a preferential customs tariff.

9. Preferential tariff treatment also for reimports

If goods of EU origin return to the EU after being exported to a trade agreement partner country, the normal non-preferential customs duty is payable on reimportation, even if there is proof of preference for these goods. Customs justify this measure with the fact that preferential duties only apply to goods originating in the partner countries themselves, but not to goods originating in the EU. The payment of customs duties can only be avoided in a few cases. For example, if the goods are dispatched directly as returned goods. For this purpose, however, the goods must be returned to the original exporter, who must be able to prove that they were exported at a previous point in time. Such a practice is difficult to communicate to the business community. Why should the preferential status of a product be lost after only one export or import transaction? Instead, it would make more sense to base the granting for reduced preferential tariffs solely on compliance with the agreed rules of origin at the time the goods are manufactured. The goods in question should then be able to be exported or imported indefinitely at preferential rates between the EU and the respective trade partner country over their entire life cycle.

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10. Granting preferences retrospectively

Companies that already have an existing trade relationship with a new agreement partner may not be immediately aware of the exact rules of origin and tariff concessions at the time of entry into force of new trade agreements. As a result, especially in the case of new agreements, many exports/imports are made at the beginning without taking advantage of the possible tariff advantages. In order to achieve high utilisation rates, the possibility of submitting preferential proofs of origin retrospectively should therefore be included in all agreements, so that preferential tariffs can also be applied "ex post".

11. Principle of "non-manipulation/non-alteration" instead of "direct transport".

The "principle of direct transport" is a classic component of many EU trade agreements. It states that, in principle, the preferential treatment provided for in the agreement applies only to originating products, when they are transported directly between the contracting parties or – in the case of transport via or storage in third countries – remain under customs supervision. However, the EU's various trade agreements should take into account the modern transport structures of a globalised economy. It is therefore necessary to develop the principle of direct transport further towards a principle of "non-manipulation/non-alteration". According to this principle, products transported through other territories, in addition to transhipment or temporary warehousing in those territories, could retain their preferential status even if they were split into partial consignments – presumed that customs supervision is maintained. This would reflect the trend towards regional distribution centres. These are regularly supplied with large consignments from the EU, which are then delivered to the various local markets in small partial consignments at short notice.

PROOF OF ORIGIN:

12. Freedom of choice between document-based evidence founded on formal certification by customs authorities and databank-based evidence founded on self-certification by companies

In order to take advantage of tariff reductions, the preferential origin of a product must be proven at import customs clearance. If the value of the goods is less than 6,000 euros, a (self-)declaration of origin from the exporter is sufficient. For values over 6,000 euros, various types of proofs are possible. In most EU trade agreements there is the document-based consignment specific proof or origin in form of an EUR.1, which must be examined and confirmed by the customs authorities of the export country. Alternatively, there is the option for an economic operator of being certified as an "Approved Exporter" (AE) by customs and thus being eligible to make out declarations of origin even for goods worth more than 6,000 euros. The agreement with South Korea does not provide for an EUR.1 at all: Here the AE-authorisation is the only option for values over 6,000 euros. However, the effort of obtaining an AE authorisation from customs is very high. Especially for companies with few

consignments this effort is often not worthwhile. The result: the theoretically possible custom tariff advantage remains practically unused.

Against this background, the DIHK supports the intention of the EU to anchor alternative proof possibilities to the document-based proof and the AE in the revision of existing and the elaboration of new trade agreements. It is right to strengthen the principle of "self-certification" of companies and in future to offer alternatives to the customs certification of individual export consignments (e.g. EUR.1) or a customs authorisation of exporters (AE).

All exporters - irrespective of the value of the consignment - should be able to "register" for the use of preferential customs duties in as simple a procedure as possible and then be able to make out declarations of origin in their commercial documents on their own responsibility. The databank-driven instrument of the "Registered Exporter" (REX) offers this possibility. REX is already in force in the agreements with Canada, Japan and under the GSP. The integration of this simplified proof of origin into other trade agreements would greatly facilitate the use of preferential customs tariffs.

However, the possibility of such self-certification should be designed "optionally". Currently, the REX system is designed as a mandatory self-certification system. However, formal evidence should remain possible in parallel. On the one hand the recourse to a formal proof of preference certified by the customs authority can contribute to a stronger protection of confidential business data, especially in an environment of political uncertainty. On the other hand a formal, consignment-specific proof should be retained as a fall-back option in the event of a withdrawal of the REX or AE by customs. The choice which of the instruments is used to prove preferential origin of goods should first and foremost be left to the companies themselves. This guarantees flexibility and thus contributes to greater use of preferential tariff rates.

13. Keep declarations of origin simple and standardized across trade agreements

The wording of the declaration of origin should in principle be as simple as possible. In addition, the wording should be identical in all trade agreements in order to increase preference utilisation rates. Even minimal deviations can lead to the withdrawal of preferences, as in the EU-Ukraine agreement, for example. The recent tendency of the EU to enshrine different wordings in the various agreements runs counter to the objective of a high utilisation rate of tariff preferences. It is even more problematic to link the declaration of origin to additional information, such as the type of rule of origin used (see EU-Japan Agreement). These additional data elements increase the complexity of the declaration. In fact, this information is usually not available to the actual exporter, especially in cases of trading-goods that are passed on via a long chain of suppliers before they are finally being exported. The already complex verification system of supplier's declarations (paragraph 15) within the EU is not equipped for this either.

14. Increase the limit for the issuance of informal declarations of origin on commercial documents

The need to issue a formal proof of preference currently exists for goods worth 6,000 euros or more. The only exception exists for companies with the status of "Approved Exporter", which, however, requires an approval by customs. Below the threshold of 6,000 euros, a declaration of origin (instead of a Form A, EUR.1, EUR-MED) by the economic operator on his commercial documents is sufficient. This limit has been in place since 1992 and has not been adjusted for more than 25 years despite inflation. De facto, this simplification has been applied to fewer and fewer deliveries in recent years. Therefore, we call for an increase of this limit to a value of 10.000 euro up to which enterprises can make out a declaration of origin independently and without certification by the customs authorities on a commercial document.

15. Long-term proofs of origin (declaration of origin concerning multiple consignments of identical originating products)

The possibility of issuing a "long-term proof of origin" with a validity period of up to two years should be provided for regular consignments of goods whose originating status (is likely to) remain constant over a longer period. Within the EU such a possibility already exists. Here the proof of origin for this period can be covered by long-term supplier's declarations for goods having preferential origin status.

16. Simplify supplier's declarations within the EU

The documentation of preferential origin along the supply chain within the EU results in a great deal of bureaucracy. With the help of supplier declarations, manufacturers, dealers and exporters must provide complete proof that trading-goods or raw materials purchased from the EU originate in the EU. This is the only way to ensure a custom tariff reduced delivery to the destination country. However, the correct issuance, but also the checking, maintaing and correction of incoming supplier declarations confronts many companies with great challenges because the requirements are too complex and too detailed. The situation would be remedied if the requirements regarding country information, product descriptions and formal requirements were simpler. At the same time, minor formal errors should not automatically lead to the invalidity of the declaration as long as there is no doubt about the correctness of its content.

If, in addition, individual manufacturing stages within a production process take place outside the company, a simple declaration by the processing company about the value added achieved should suffice instead of the "supplier’s declaration for goods not having preferential origin status", which is formally intended for this purpose but often unsuitable in practice. This declaration allows the manufacturer to include the value added by the processing firm(s) in his calculation. Especially for companies that are part of a multi-tier manufacturing network, this would be a great relief.

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17. Storage and exchange of supplier's declarations in electronic form

Supplier's declarations must be signed or electronically authenticated in accordance with Article 63 of Implementing Regulation (EU) 2015/2447 on provisions for the implementation of the Union Customs Code (UCC-IA). Just like electronic authentication is permitted, the archiving of supplier's declarations in electronic form should also be guaranteed. Electronic storage should become the norm. This rule should apply to both electronic and paper records. In addition, with a view to the exclusive internal use of supplier's declarations within the EU, a uniform, standardised data set should be created throughout the EU for the purpose of automated exchange between companies and between companies and customs.

VERIFICATION OF ORIGIN:

18. No extraterritorial verification of proofs of preferential origin and limitation of the duration of verification requests

If the importing country has doubts as to the authenticity or correctness of the declaration of origin, only the customs administration of the exporting country should carry out an investigation. This is necessary with regard to the protection of confidential business data vis-à-vis foreign companies and foreign customs authorities. An extraterritorial verification of the proof of preferential origin by the respective importing countries must be excluded. In addition, the deadline for verification requests should generally be limited to twelve months after the import of the goods.

19. Involvement of external service providers

Companies should be able to use external service providers to manage and document preferences. This would not least support SMEs that are unable to maintain their own resources for preference calculation and proof of origin management. Furthermore, for a company to become an "Approved Exporter", it should not be a prerequisite to manage preference calculation in its own premises with its own employees.

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