Written Question

181/2021

Hon. Ro Filipe Tuisawau to ask the Minister for Commerce, Trade, Tourism and Transport – Can the Minister update Parliament on the progress of negotiations with Rules of Origin for the following trade agreements currently being negotiated

(a) EU-Pacific States Economic Partnership Agreement (EPA);
(b) Pacific Agreement on Closer Economic Relations (PACER) Plus;
(c) Melanesian Spearhead Group Trade Agreement (MSG TA); and
(d) Pacific Island Countries Trade Agreement (PICTA).

1.0 Introduction

1.1 In terms of international trade, the origin of a good is understood as the economic nationality of the good. All internationally traded goods are required to have an origin when they are declared to the customs at the point of import. Thus, Rules of Origin (RoO) enable customs authorities to classify the nationality of goods, thereby establishing if a particular good qualifies for preferential treatment or not. There are two types of origin: preferential and non-preferential.

1.2 Preferential origin is related to trade agreements, such as the European Union (EU)-Pacific Interim Economic Partnership Agreement (IEPA), Melanesian Spearhead Group Trade Agreement (MSGTA) and Pacific Island Countries Trade Agreement (PICTA), which grant the Fijian exports access to markets at preferential tariffs, and vice-versa.

1.3 Preferential RoO, therefore, determines whether the good qualifies for the preferential tariff offered under the trade agreement. They are a set of criteria that the goods need to comply with, in order to be considered originating in the territory of the trade agreement. The goods are checked against these criteria to establish whether they can be considered originating in a country when exported to a Free Trade Agreement (FTA) partner.

1.4 The rules are based on the Harmonised System (HS)[1] Classification and are, in most cases, product specific. This means that each HS code eligible for preferential tariff under a trade agreement has a rule of origin. They can be further set at different levels, meaning that some rules cover an entire HS Chapter, while some are specific to Headings or Subheadings.

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[1] The Harmonized Commodity Description and Coding System generally referred to as "Harmonized System" or simply "HS" is a multipurpose international product nomenclature developed by the World Customs Organization (WCO).

1.5 In certain cases, RoO can be defined at the commodity code or national tariff line level or even for a certain type of products within one HS or commodity code.

1.6 The RoO are negotiated separately for every FTA and are attached to the main agreement either in the form of a protocol, as in the case of the IEPA. Or attached as an Annex, as in the case of MSGTA and PICTA. As such, rules of origin vary significantly across different agreements.

1.7 Substantial transformation is a type of rule of origin that requires a good to undergo a certain process in order to be considered originating in a given country.

1.8 Substantial transformation can be expressed in three different ways:

i. **Change in tariff classification:** a rule that requires non-originating materials to have undergone a change in HS Classification in order to obtain originating status. In the MSGTA, a product is considered to have undergone substantial transformation when the product meets the minimum requirement in the course of its transformation, where there is a change in tariff heading of the HS code in the last two digits of the six-digit tariff heading. For example, rice in the form of husk (paddy or rough) may be imported into a MSGTA Member country and processed into semi-milled or wholly milled rice, whether or not polished or glazed. This process of transformation has successfully undergone a change in the last two digits of the six-digit code, hence qualifying for preferential treatment under MSGTA.

Rice:
1006.10 - Rice in husk (paddy or rough)
1006.30 - Semi-milled or wholly milled rice, whether or not polished or glazed

ii. **Value added calculations:** a rule that requires a certain percentage of the total value of the final product to be added in the FTA territory. The rules can be expressed in two ways, i.e., a maximum allowance for non-originating inputs or a minimum requirement for local content. For example, Annex I of PICTA sets out the condition that the result of the final process of manufacture performed in the territory of that Party, and the total expenditure on Originating Material costs, Labour costs and Overhead costs is not less than 40 per cent of the total expenditure on Material, labour and overheads (factory cost), whether or not incurred in the territory of that Party; and

iii. **Specific processing:** a rule that requires that a specific processing be undertaken at a particular stage of the production process. For example, for HS 0502 (Prepared pigs', hogs' or boars' bristles and hair) in the IEPA to be qualified for preferential treatment, the process of cleaning, disinfecting, sorting and straightening of bristles and hair, must take place.

1.9 While identifying the origin of goods is relatively simple in the case of raw materials and commodities, which are usually wholly obtained from one country, it is complicated in the case of goods that have been manufactured using inputs sourced from more than one country. Usually many high-value exports fall into the latter category.

1.10 It is important to note that the RoO differs between different FTAs as their definition is a key negotiating point. It is of utmost importance that a RoO regime is balanced. Restrictive RoO prevents sourcing of goods from outside the Free Trade Agreement (FTA) partners and can be used either to secure existing supply chains or even to act as barriers that prevent otherwise potentially competitive industries from emerging.

1.11 On the other hand, if the RoOs are too lax, it will simply lead to an increase in trans-shipment, whereby almost-finished goods are imported into the country and undergo minimal value-addition before being exported duty-free into an FTA partner country.

1.12 In addition to this, a RoO regime needs to be administratively simple, especially since the administrative burden of fulfilling the requirements fall on the private sector.

2.0 IEPA

2.1 Fiji initialled the Interim Economic Partnership Agreement (IEPA) in 2007 and subsequently signed in 2009. Fiji notified the EU of the provisional application of the IEPA, in July 2014. This was done to ensure continued access to the European Union market on preferential terms.

2.2 A long-term objective of Fiji has been the simplification of the RoO in the agreements like IEPA, which contains complicated product specific RoO. Such complex RoO increases the compliance cost of the meeting the rules, lessening the value of the preferential market access, and thereby acting as a deterrent to private sector investors.

2.3 Despite the fact that RoO negotiations have officially been concluded, the IEPA makes provision for a technical review of the RoO in the period of five years entry into force of the IEPA, to allow technical amendments and improvements. Any such modification or replacement shall be implemented by a decision of the Trade Committee. However, it is important to note that the IEPA has not entered into force as the parties are provisionally applying the agreement.

2.4 Fiji's goal remains to successfully conclude a development-friendly Comprehensive EPA, which would address contentious and outstanding concerns from the IEPA and be an Agreement that is easier to implement. The EU suspended negotiations on the Comprehensive EPA in 2015 for three years and announced to return to the negotiations after this period. Hence, following the culmination of this suspension period, Fiji, as the Chair of the Pacific ACP, transmitted a letter to the EU Commissioner for Trade to seek the views of the EU in commencing negotiations. The Pacific parties are awaiting a response to this letter.

3.0 PICTA

3.1 In the case of the PICTA, which is the only trade agreement amongst the Forum Island Countries, a review of its RoO is currently in progress after the Pacific Leaders agreed that the PICTA framework provides for deeper integration amongst the Forum Island Countries. The purpose of the review is to modernise and streamline processes to facilitate and increase intra-regional trade and investment flows. The Rules of Origin Committee currently is comprised of officials from Fiji, Niue, Samoa, Tuvalu and Vanuatu.

3.2 As the Chair of the Pacific ACP Trade Ministers Meeting, Fiji, has pushed for the implementation of the modernised RoO to make the implementation of the PICTA more effective and beneficial for the Forum Island Countries, especially as the region is working towards economic recovery.

4.0 MSGTA

4.1 The MSGTA or MSG Trade Agreement One (MSGTA1) came into effect in 1993. In 2004, the MSG Trade Agreement Two (MSGTA2) was negotiated and signed in 2005. It is one of the most operative regional trade agreements that has transformed the region. Through the implementation of the MSGTA2, members are able to take intra-MSG trade to another level by creating economic links between MSG member countries and also laying the foundation for a new era of trade, economic development and cooperation within the region.

4.2 In 2012, the parties to MSGTA2 decided to broaden the agreement that covered only trade in goods, to an MSG Plus Agreement, which would include trade in services, labour mobility and investments and would be referred to as the Melanesian Free Trade Agreement (MFTA).

4.3 The MSG members negotiated the MFTA with the view to strengthen all the provisions of the legal text, improve its clarity and provide an appropriate architecture that would accommodate the inclusion of trade in services, investment and labour mobility chapters. The negotiations on the MFTA concluded in 2016, and has since been signed by Fiji and Solomon Islands. The agreement will come into effect once it is ratified by at least two MSG member countries. Fiji is actively engaging with Papua New Guinea and Vanuatu to encourage the countries to sign the agreement.

5.0 PACER Plus

5.1 PACER Plus negotiations were concluded in April 2017, and the agreement entered into force on 13 December 2020. Fiji is not a party to the PACER Plus, however, participated in the negotiations of the agreement. Thus, Fiji had an input in the PACER Plus RoO, which is based on Product Specific Rules, as defined in paragraph 1.4 above. The RoO of this agreement, however, is not applicable to Fiji as Fiji is not a party to the PACER Plus.

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