
Committee on Rules of Origin

MINUTES OF THE MEETING OF 3 OCTOBER 2003

Chairman: Mr. Stefan Moser

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I.	REPORT OF THE WORK OF THE TECHNICAL COMMITTEE ON RULES OF ORIGIN	

1.1 The representative of the WCO, Mr. P-P. de Vaucher, stated that the last session of the Technical Committee on Rules of Origin (TCRO) was held at the WCO headquarters in Brussels from 24 to 25 February 2003, under the Chairmanship of Mr. Stefan Moser (Switzerland).

A. FOURTH PERIODIC REPORT ON TECHNICAL ASPECTS OF THE OPERATION AND STATUS OF THE AGREEMENT

This Report, which covered the period from 1 January to 31 December 2002, described the work of the Committee on Rules of Origin (CRO) and the TCRO, the technical assistance activities undertaken at the request of Members, and the various studies carried out by the Secretariat at the request of the TCRO (practical guidance on the implementation of the Agreement on Rules of Origin (the Agreement), comparative study on systems of certification, proposed mechanism for the amendment of the non-preferential rules of origin). The Report had been adopted by the TCRO.

B. FOURTH ANNUAL REVIEW ON TECHNICAL ASPECTS OF THE IMPLEMENTATION AND OPERATION OF PARTS II AND III OF THE AGREEMENT

This Annual Review covered the same period as the Periodic Report. No specific problems or questions relating to Part II of the Agreement were reported to the TCRO. With regard to Part III of the Agreement, the TCRO discussed and endorsed the studies conducted by the Secretariat (practical guidance on the implementation of the Agreement, and comparative study on systems of certification). The TCRO also discussed and adopted a document entitled "Proposed mechanism for the submission of the views of the Technical Committee on Rules of Origin to the Committee on Rules of Origin for amendments to the harmonized non-preferential rules of origin". Finally, in an informal session, Members exchanged views and opinions on a working document concerning technical rectifications.

C. PROPOSED TIMELINE FOR THE IMPLEMENTATION OF THE HARMONIZED NON-PREFERENTIAL RULES OF ORIGIN

At the request of the TCRO, the Secretariat presented an indicative timetable for the practical implementation of the Agreement. In that timetable, the steps to be taken for the implementation of the Agreement were set out chronologically:

- Checking on the legal possibility of using international legal instruments (the Harmonized System, for example) and national legal instruments (control, investigation)
- Organization and setting up of the services responsible for origin matters
- Informational activities aimed at the international trading community
- Training activities for those involved with non-preferential rules of origin (customs officers, Chamber of Commerce employees)
- Use of the appropriate media to publicise the entry into force of the Agreement

This timeline, which was optional and was intended merely to provide practical guidance, was welcomed by the TCRO.

D. TERMS OF REFERENCE AND WORK PLAN OF THE TCRO

In June 2002, the WCO adopted a Decision under which each WCO body must have simple terms of reference and work plans, to be updated regularly, and must report on their implementation. The draft terms of reference were based on the Agreement on Rules of Origin, and the Rules of Procedure of the TCRO. The aim of the plan was to provide complete transparency where the work of the TCRO was concerned (evaluation of progress and outcomes of the work of the TCRO). After some discussion, the texts presented were endorsed as a whole by the TCRO.

E. OTHER MATTERS

Position regarding Members and observers of the Committee on Rules of Origin:

- Armenia had become a new Member of the TCRO.
- The Kingdom of Bhutan had become a new Member of the WCO.
- The name of the Federal Republic of Yugoslavia had been changed to Serbia and Montenegro.

1.2 The CRO took note of the report and expressed appreciation for the TCRO's continued valuable work.

II. NOTIFICATIONS UNDER ARTICLE 5 AND PARAGRAPH 4 OF ANNEX II OF THE AGREEMENT ON RULES OF ORIGIN (G/RO/N/39-41)

2.1 The Chairman recalled that since the last meeting the Secretariat had circulated three documents informing delegations of notifications submitted by Armenia, the Dominican Republic, Japan and the Kyrgyz Republic. To date, 84 Members had made notifications of non-preferential rules of origin and 89 Members had made notifications of preferential rules of origin.

2.2 The Chairman expressed concern that a number of Members had not yet complied with the notification requirements. He urged Members who had not yet notified to do so as early as possible.

2.3 The CRO took note of the statement.

III. TRANSITIONAL REVIEW UNDER PARAGRAPH 18 OF THE PROTOCOL OF ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA (WT/L/432, WT/ACC/CHN/49, G/RO/53 AND G/RO/W/99/REV.1)

3.1 The Chairman noted that in accordance with paragraph 18 of the Protocol of Accession of the People's Republic of China, the CRO was to report to the Council for Trade in Goods on the outcome of the Review which would then report to the General Council. The Committee had conducted its first Review at the last meeting, where China had explained the implementation of its commitments with regard to rules of origin and responded to the questions raised. He then invited China to make a general presentation on China's implementation of the Agreement on Rules of Origin this year.

3.2 The representative of China stated, as the first point, that no new rules and regulations or administrative measures relating to non-preferential rules of origin had been promulgated or amended since 11 December 2002. The legislations currently effective concerning rules of origin had been notified to the Committee and circulated in document G/RO/53.

3.3 The second point concerned current rules of origin. China's laws and regulations on rules of origin, and the way China implemented them, were in full conformity with the WTO Agreement on Rules of Origin. China had never used rules of origin as an instrument to pursue trade objectives directly or indirectly. As concerned "review of the pre-determination of origin", she explained that in accordance with Article 8 of Announcement No.17, 2001 of the General Administration of Customs, the party dissenting to the decision made by the Customs may apply for administrative review or bring a suit before a people's court. In accordance with Article 6, the review had the right to change

or annul specific pre-determination of origin made by the Customs. The application of administrative or judicial review was based on Administrative Review Law of the People's Republic of China, Provisions for the Implementation of Administrative Review Law of the Customs of the People's Republic of China, and Administrative Procedure Law of the People's Republic of China. She further explained "punishment rule for false declaring of origin". Actions such as false declaring of country or faking certificate of origin were dealt with by Customs according to relevant stipulations of Customs Law of the People's Republic of China and the Rules of Administrative Penalties for the Implementation of the Customs Law. As concerned "method of calculating value-added criterion mentioned in Article 3, Subparagraph 2, of Provisional Regulations Concerning the Rules of Origin of the Customs General Administration", the method applied was that the value-added component was more than 30 per cent in the total value of a new product, the calculation of which was that the CIF value of non-original component was 70 per cent or less in FOB value of the product after being processed. As concerned "confidentiality of information for origin pre-determination", in accordance with Article 9 of Announcement No.17, 2001 of the General Administration of Customs, the Customs would not disclose the information for origin pre-determination without the specific permission of the person concerned, except to the extent that it may be required to be disclosed in the context of judicial proceedings. As concerned " non-preferential rules of origin for exports", China's existing non-preferential rules of origin for exports were promulgated on 8 March 1992 and came into effect on May 1, 1992. The rules were applied in issuing Chinese certificate of origin for non-preferential exports upon request of consignee of the export and had no binding on importing side. There was no origin declaration requirement by Customs for exports.

3.4 The third point concerned the adoption of harmonized non-preferential rules of origin. She stated that the WTO harmonization of non-preferential rules of origin, in technical terms, had been concluded to date. However, 94 unresolved core policy issues had been submitted to the General Council for political consideration. China pledged to fulfil its commitment in its Protocol of Accession to the WTO that the harmonized non-preferential rules of origin would be adopted and applied fully in China as soon as the harmonized work on rules of origin came to a close.

3.5 The Chairman drew attention to document G/RO/W/99/Rev.1 containing questions from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu.

3.6 The representative of Chinese Taipei had noted China's considerable effort over the last year to meet its accession commitments in the area of rules of origin and appreciated very much the informative presentation made by the Chinese delegation at this meeting. He believed that the smooth and faithful implementation of China's Protocol of Accession was in the best interests of all Members. However Chinese Taipei would be equally appreciative if the statement made by China could be circulated to all Member. He stated that Chinese Taipei had no further questions.

3.7 The CRO took note of the statements made, and agreed that the Secretariat prepare a short factual report under the Chairman's responsibility, together with the minutes of the meeting for further detail, to be sent to the Council for Trade in Goods.

IV. ANNUAL REVIEW OF THE IMPLEMENTATION AND OPERATION OF THE AGREEMENT ON RULES OF ORIGIN (G/RO/W/97)

4.1 The Chairman noted that the Secretariat had circulated, in document G/RO/W/97, the draft Review of the Implementation and Operation of the Agreement.

4.2 Although Article 6.1 required that the CRO review annually the implementation and operation of Parts II and III of the Agreement, the CRO's main concern had been the work under Part IV of the Agreement namely the Harmonization Work Programme, to which the CRO's formal and

informal sessions were devoted up until the end of the previous year. After forwarding 94 core policy issues to the General Council for discussion and decision at that level, however, the CRO was mandated by the General Council to complete the remaining technical work only after resolution of those 94 issues by the General Council. This was the reason why the CRO had not held any meetings since November 2002. Nonetheless, the Chairman and Vice-Chairman, on behalf of the Chairman of the General Council, had conducted intense consultations on the 94 issues with Members this year, and the Chairman had made a progress report to the General Council thereon. For the benefit of Members the Chairman presented this same information on the outcome of the consultations as follows:

4.3 In order to bridge the existing gaps among Members concerning the 94 issues, following extensive, one-to-one small groups and open-ended consultations held with Members since the autumn, he had circulated a proposal intended as a balanced package, which was contained in document JOB(03)/132. Unfortunately, however, it had not been possible to reach consensus on this, and consequently the deadline for completion of this work had been missed for a fifth time. He summarised the state of play as follows: Concerning the implications issue, there had been a discussion about the understanding among Members on three notions: (1) that the harmonized rules of origin should be applied only for goods, not for services or intellectual property; (2) that the harmonized rules of origin should be applied equally for non-preferential commercial policy instruments, whenever a Member was required – or in the absence of such requirement, voluntarily decided – to determine the country of origin; and (3) that there were some non-preferential commercial policy instruments where an origin determination was not necessary.

4.4 It appeared that there was almost agreement on the first two notions, although some Members had raised a question as to whether any WTO agreement required a Member to apply rules of origin. However, Members had differing views on the third notion – that is, some Members argued that the text proposed by the Chairman for resolution of the implications issue should designate explicitly the specific commercial policy instruments for which an origin determination was irrelevant, such as marking and labelling requirements or SPS measures. Other Members were opposed to any carving-out of specific commercial policy instruments, as Article 3(a) of the Agreement did not create any new rights or obligations under the WTO Agreement. Due to these differing views, the implications issue remained unresolved but resolvable.

4.5 As for the 93 product-specific rules, there were several genuinely political issues, the resolution of which appeared impossible at the present stage, such as the issue of fish taken from the Exclusive Economic Zone, or the sugar issue. There were also other issues that were closely linked with other trade policy issues, such as circumvention of anti-dumping duties, export subsidy policies in agriculture, and textile quotas, the resolution of which appeared to be difficult unless the related issues were resolved in other bodies or sub-bodies of the WTO. However, many Members had considered the CRO Chair's proposal as a good basis for further work. There had been a discussion on the need for a possible new working methodology in order to facilitate the negotiations. This issue would be further discussed at the next consultations.

4.6 The representative of Brazil suggested revising paragraph 3.4 in order to say explicitly that the work on harmonizing rules of origin at present was in the hands of the General Council.

4.7 The Committee agreed to the suggested amendments and adopted the Annual Review of the Implementation and Operation of the Agreement on Rules of Origin contained in document G/RO/W/97. The document will be revised to include the agreed amendments and issued in the G/RO/- series.

V. ANNUAL REPORT (2003) TO THE COUNCIL FOR TRADE IN GOODS (G/RO/W/98)

5.1 The Chairman noted that the Secretariat had circulated a draft of the CRO's report to the Council for Trade in Goods, as required by Article 6.1 of the Agreement (G/RO/W/98), and that paragraph 5 should be revised as suggested by Brazil under agenda item IV.

5.2 The CRO adopted its revised annual report to the CTG (G/L/656).

VI. ELECTION OF OFFICERS

6.1 The CRO elected Mr. Syed Habib Ahmed (Pakistan) as Chairman of the CRO for 2003. The CRO agreed to postpone the election of Vice-Chairperson and to take up this matter at its next meeting.

VII. OTHER BUSINESS

A. DATES AND AGENDA FOR THE NEXT MEETING

7.1 The Chairman suggested that the dates and agenda for the next meeting be set in consultation with delegations and also in light of developments in the General Council.
