

# WORLD TRADE ORGANIZATION

RESTRICTED

**G/RO/M/9**

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## **Committee on Rules of Origin**

### MINUTES OF THE MEETING OF 6 FEBRUARY 1997

Chairman: Mr. C. OSAKWE (Nigeria)

The agenda proposed for the meeting, circulated in WTO/AIR/481/Rev.3 was adopted by the Committee as follows:

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1. Observer status for international intergovernmental organizations in the Committee (G/RO/W/19/Rev.1)

1.1 The Chairman recalled that at its meeting of 18 July 1996, the General Council had approved the "Guidelines on Observer Status for International Intergovernmental Organisations" (Annex 3 of document WT/L/161). However, there had been one issue pending concerning the finalization of the Agreements with the World Bank and the IMF which was finally resolved in December 1996. Document G/RO/W/19/Rev.1 contained a list of the international intergovernmental organizations having observer status on an *ad hoc* basis in the Committee on Rules of Origin and others whose requests for observer status were pending.

1.2 Based on consultations the Chairman had held with Members on this issue, the Committee agreed as follows:

"The Committee reviewed applications by the international intergovernmental organizations with ad hoc observer status in the Committee, namely the IMF, ITCB, OECD, UNCTAD, World Bank and the WCO, as well as the African Caribbean and Pacific (ACP) Group, the European Free Trade Association (EFTA) and the Inter-American Development Bank.

It noted that in the case of the IMF and World Bank, their observer status in the WTO and its various bodies was already covered by the Agreements concluded between the WTO, and the IMF and the World Bank.

It decided to accord observer status to the ITCB, OECD, UNCTAD, and the WCO on the basis that they already had ad hoc observer status with the Committee.

Following consultations and recommendations by the Chairman, it was agreed that the Committee would also accord observer status to the ACP, EFTA and the Inter-American Development Bank on the basis of the content of their applications.

It was agreed that all observer status would be granted on the basis of full reciprocity."

2. Update of the Integrated Negotiating Text for the Harmonization Work Programme (G/RO/W/13/Rev.2)

2.1 The Chairman recalled that at its meeting on 10 May 1996, the Committee on Rules of Origin had decided to establish an Integrated Negotiating Text for the Harmonization Work Programme that is the common working document and reference point for the Committee on Rules of Origin and the Technical Committee on Rules of Origin. The first draft Integrated Negotiating Text was contained in document G/RO/W/13. Since then the document had been periodically updated. The latest update was circulated in document G/RO/W/13/Rev.2, reflecting work done by the Committee, at its meeting on 11 October 1996, and the Technical Committee during its Fifth Session from 16 to 27 September 1996 in Brussels. The text would be conveyed to the Technical Committee and the Chairman's letter conveying the revised Integrated Negotiating Text to the Technical Committee would be circulated in the near future.

2.2 The Representative of Switzerland expressed concern with the volume of the next update of the Integrated Negotiating Text, which had already reached about 500 pages at present, and, without taking a final decision on this issue, suggested circulating only subsequent additions to the current text, taking into consideration that no changes would be made to the text, only additions, until the Basket 2 discussions in the Technical Committee are further advanced.

2.3 The Committee took note of Switzerland's suggestion as a possible approach in managing the volume of text and agreed to revert to this issue at a subsequent meeting.

3. Origin of goods obtained or produced on vessels, factory ships, structures and installations outside a country (G/RO/M/8, G/RO/10)

3.1 The Chairman noted that at the last meeting, the Committee had narrowed down four draft proposals into a one-option proposal which was contained in paragraph 3.3 of document G/RO/M/8. An information paper by the Philippines concerning the International Seabed Authority was circulated in document G/RO/10.

3.2 Based on the conclusions reached by the informal Working Group on this matter and the statements made in the meeting, the Committee agreed as follows:

"The informal Working Group reviewed yet again the one-option proposal by the Chairman as adopted by the Committee at its meeting on 11 October, 1996. There was consensus on the main body of the text of definitions 2(i), 2(ii) and 2(iii). There was also agreement on the text of the note. The consensus text adopted and recommended by the informal Working Group is as follows:

Definition

2(i) Products of sea-fishing and other products taken from the sea outside a country are considered to be wholly obtained in the country of registration of the vessel that carries out those operations.

(ii) Goods obtained or produced on board factory ships are considered to be wholly obtained in the country of registration of the factory ships, provided that those goods are manufactured from the products referred to in subparagraph (i) originating in the same country.

(iii) Products taken from the seabed or subsoil beneath the seabed outside a country are considered to be wholly obtained in the country that has the rights to exploit that seabed or subsoil.

Note

The term "registration" in definitions 2(i) and (ii) includes registration that a country grants to chartered vessels or factory ships, provided that this registration is in accordance with the requirements of that country.

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Argentina proposed an alternative text on the scope of the term "country" as follows:

Definition 2(i): Products of sea-fishing and other products taken from the sea outside the territorial sea and maritime zones over which the coastal state has jurisdiction are considered to be wholly obtained in the state of registration of the vessel that carries out those operations.

Definition (iii): products taken from the area of the seabed and ocean floor and subsoil thereof outside national jurisdiction, as defined in accordance with the provisions of the United Nations Convention on the Law of the Sea, are considered to be wholly obtained in the state that has the exploitation rights, in conformity with the provisions of that Convention and the Agreement relating to the Implementation of Part XI of that Convention of 28 July 1994.

In response to the Argentine proposal, most delegations strongly expressed the view that the definition of the term "country" should continue to focus on practical issues having a bearing on the assignment of origin on products produced or obtained either within a country or outside a country. In this regard, it was agreed that the Argentine proposal required further consultations."

3.3 The representative of New Zealand stated that New Zealand's understanding of the Note was that in definition 2(i) and (ii) the products and goods in question were considered to be wholly obtained in a country that granted registration to chartered vessels or factory ships, provided that this registration was in accordance with the requirements of that country.

3.4 The representative of Japan recalled that Japan had proposed, during the informal consultations, a footnote to definition 2(i) to Appendix 1 as follows: "further consideration should be given to the scope of the term "country" if necessary, in the course of the harmonization work programme". The representative of Venezuela supported the Japanese position.

3.5 The Committee took note of the statements made.

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Based on consultations the Chairman had held with Members, the Committee reviewed the Fifth and the Sixth Reports of the Technical Committee, i.e. agenda items 4 and 5, together.

4. Fifth Report by the Technical Committee on Rules of Origin to the Committee on Rules of Origin (G/RO/9)

The Chairman noted that in conformity with paragraph 2(c)(ii) of Article 9 of the Agreement on Rules of Origin, the Technical Committee on Rules of Origin had submitted to the Committee on Rules of Origin its Fifth Report. The Report was contained in document G/RO/9. The Report pertained to:

- (a) the results of the continuing work under Phase II of the Harmonization Work Programme; and
- (b) responses to the requests raised by the Committee on Rules of Origin (G/RO/W/14, G/RO/7 and 8).

5. Sixth Report by the Technical Committee on Rules of Origin to the Committee on Rules of Origin (G/RO/11)

5.1 The Chairman noted that in conformity with paragraph 2(c) of Article 9 of the Agreement on Rules of Origin, the Technical Committee on Rules of Origin had submitted to the Committee on Rules of Origin its Sixth Report contained in document G/RO/11. The Report covered the results of the continuing work under Phase II of the Harmonization Work Programme and reflected the progress of work in the Technical Committee through the Sixth Session held in Brussels from 16 to 20 December 1996.

5.2 Mr. Janeczko, the Chairman of the Technical Committee, stated that details of the work accomplished at the Fifth and Sixth Sessions were contained in the Technical Committee's Reports. He emphasized that this year would be critical because the deadline for the work was approaching rapidly. As the Technical Committee was progressing through its work on product-specific rules, it was getting to a stage where issues that went beyond purely technical considerations should be transmitted to the

Committee for consideration at a trade policy level, possibly after the meeting of the Technical Committee in May. The Technical Committee, at its forthcoming meeting, would discuss a management plan to ensure that its work could be finished this year. It was intended to have four formal meetings and possibly two informal meetings. Some of the work would be done by telephone correspondence and other ways of contact. The Technical Committee would also consider indicating in the third column of the Product Specific Rules the substance of the debate rather than just codes and terms like "CTSH" or "basket 2", so that anybody reading the document could understand how discussions in the Technical Committee on these items had progressed.

5.3 Based on consultations the Chairman had held with Members on this issue and statements made at this meeting, the Committee agreed to mandate the Chairman to communicate the following conclusions on this matter to the Chairman of the Technical Committee on Rules of Origin:

"The Committee carefully considered the Fifth Report of the Technical Committee on Rules of Origin to the Committee on Rules of Origin, contained in document G/RO/9, and the provisional Sixth Report, contained in document G/RO/11. The consideration of the detailed reports were prefaced by an introductory overarching statement by Mr. Janeczko, the Chairman of the Technical Committee, in the course of which he highlighted several issues of key importance and outlined the continuing work of the Technical Committee in Phase II of the Work Programme. These issues were as follows:

- a) the proposed management plan to be introduced at the Seventh Session of the Technical Committee for the treatment of the outstanding items under Phase II of the Work Programme;
- b) a list of the outstanding issues to be considered by the Technical Committee on Rules of Origin as follows:
  - initial discussions of origin rules proposed for Chapters 34 (part) - 40, 52-63, and 82-90;
  - completion of Basket 2 discussions of product specific rules for all chapters;
  - completion of Phase III discussions of product specific rules for all chapters;
  - completion of architectural design and general rules of interpretation;
  - final elaboration of the definitions of goods considered as being wholly obtained in a single country and minimal operations or processes that do not by themselves confer origin to a good; and
  - assembly of the Annex;
- c) the intention of the Chairman of the Technical Committee to raise with the Technical Committee the issue that draft specific rules for particular products and product sectors, where the technical possibilities had been exhausted and a resolution needed to be found at a policy level, should be transmitted to the Committee on Rules of Origin for consideration;
- d) concern about reservations by Member states on particular products and product sectors which have implications for the completion of Phase II of the Work Programme.

Members expressed their views on the issues raised by the Chairman of the Technical Committee. Whilst welcoming his report and commending him for the statement made, Members agreed with him that much needed to be done in order to adhere to the time-frame of the

Harmonization Work Programme. Several points were emphasized, including the necessity of focusing on the last substantial transformation and the need for consistency of draft product specific rules, the simplicity of rules, as well as the need for the horizontal consistency of rules.

In considering the details of the Fifth and Sixth Reports, under the Fifth Report the Committee noted the continuing elaboration of draft product specific rules under Phase II of the Work Programme, the development of the overall architectural design, as well as the continued elaboration of general rules and common terminology. In this regard, Members welcomed and encouraged every effort that could be made to guarantee the timely completion of the Harmonization Work Programme. In both Reports, the elaboration of draft product specific rules under Phase II of the Work Programme was noted, in addition to the fact that supplementary criteria which were supposed to be examined under Phase III of the Work Programme were practically being touched upon.

Finally, following a suggestion by the Chairman of the Technical Committee, the Committee welcomed his proposal to forward to the Committee on Rules of Origin draft specific rules for particular products and product sectors where the technical possibilities had been exhausted and a resolution needed to be found at a policy level."

5.4 The Representative of Japan stated that Japan intended to host an informal meeting in Tokyo in the second half of April this year in order to consider the specific rules relating to particular products and product sectors, such as watches, where Members had found some technical difficulties in reaching a consensus.

5.5 The Committee took note of the statements made.

6. Meaning of the word "obtained" in Definition 1(i) of Appendix 1 to the Harmonized Rules of Origin (G/RO/M/8, Paragraphs 6.1 and 6.2)

6.1 The Chairman recalled that the representative of Canada had raised the question of the meaning of the word "obtained" in the context of goods wholly obtained in Definition 1(i) of Appendix 1 at its meeting on 11 October 1996.

6.2 Based on consultations the Chairman had held with Members, the Committee agreed to mandate the Chairman to communicate the conclusions on this matter to the Chairman of the Technical Committee on Rules of Origin as follows:

"The Committee reviewed a proposal made by the delegation of Canada regarding the need for the clarification of and precision in the word "obtained" when used together with the word "produced" in the context of definition 1(i) of Appendix 1 of the Integrated Negotiating Text, on goods considered as being wholly obtained in one country. Several views were expressed. The view was also expressed that clarification of and precision in the use of the word "obtained" were contained, to a large extent, in the notes to the definition in Appendix 1. Nonetheless, it was agreed that in order to avoid confusion and misunderstanding, particularly in the implementation of agreed harmonized Rules of Origin in the future, it was necessary that the Technical Committee should revisit the two terms in the context of the requests of the Committee on Rules of Origin of 21 May and 16 September 1996 related to the meaning of the term "produced", with a view to achieving greater precision and clarity."

7. Proposal by the United States pursuant to Article 9.3(a) of the Agreement on Rules of Origin (G/RO/W/15)

7.1 The Chairman recalled that at its meeting on 11 October 1996, the Committee had agreed to revert to the proposal made by the United States regarding a specific "starting point" to be undertaken as a new approach by the Technical Committee in its work in the second Phase of the Work Programme. This proposal was contained in document G/RO/W/15.

7.2 Based on consultations the Chairman had held with Members, the Committee agreed to forward to the Chairman of the Technical Committee on Rules of Origin the conclusion by the Committee as follows:

"1. The Committee considered the revised US proposal pursuant to Article 9.3 (a) of the Agreement on Rules of Origin as a starting point for Phase II of the Harmonization Work Programme. Although there was strong support by Members, the Committee did not reach a consensus in favour of the proposal.

2. The view was widely shared that the general approach of the US proposal appeared to be a confirmation of the approach being pursued by the Technical Committee, to use the change in tariff classification to express the last substantial transformation.

3. Nonetheless, it was recognized that consideration of other criteria provided for in the Agreement should be undertaken when deemed necessary, because the HS nomenclature does not allow for the exclusive expression of substantial transformation.

4. It was also agreed that the Committee's view on the US proposal should be conveyed to the Technical Committee for its further consideration in the context of Phase II of the Work Programme, at the same time as the Committee on Rules of Origin in Geneva continues with further consultations on the US proposal."

7.3 The Committee also agreed that the revised US proposal which had been distributed informally, should be circulated as a document in the G/RO/W- series.

7.4 The Representative of India stated that India considered the recent US proposal as a "starting point" for origin harmonization discussions. In this context, he noted that the Technical Committee had also been examining the rules of origin for particular products based on the principle of substantial transformation. Under this approach, the Harmonized System Nomenclature was being used to draw up the rules of origin. For instance, one of the principles which the Technical Committee was working on was to accord the origin wherever goods moved from one tariff sub-heading to another in the HS Nomenclature. Exceptions to the general rule as above were also being simultaneously discussed. In this context the Technical Committee had recognized that there would be some products where a value addition rule might have to be applied. In other words, the application of the "value test" would be considered as a last resort or as a residual and supplementary criterion.

India did not support the application of the value test on an across-the-board basis. Further, it did not favour the domestic content requirement of 45% proposed by some Members, since such a rule would act to the detriment of several export sectors in India. More significantly, if such a rule of origin should be applied in the electronics sector, it would be positively against India's interest. The value test would be complicated, non-transparent, and burdensome to administer. Moreover, it would entail substantial cost of administration as well as compliance. India, therefore, agreed with the analysis contained in the revised US proposal and supported the proposal.

7.5 The representative of Japan recalled that many Members had expressed the view that the scope of the value test as supplementary criteria under Phase III should be minimized because of the complexity and the lack of predictability. He also stated it was understood that the meaning of the "other criteria" in sub-paragraph 7.2.3 above included the value-added test.

7.6 The Committee took note of the statements made.

8. Notifications under Article 5 and paragraph 4 of Annex II of the Agreement on Rules of Origin (G/RO/N/12-15)

8.1 The Chairman recalled that since the last meeting the Secretariat had circulated four documents informing delegations of the notifications received (G/RO/N/12-15). To date, 51 Members had made notifications of non-preferential rules of origin and 54 Members of preferential rules of origin. He expressed concern that a number of Members had not complied with the notification requirements, and urged Members who had not yet notified to do so as early as possible.

8.2 The Committee took note of the statement.

9. Second Annual Review of the Implementation and Operation of the Agreement on Rules of Origin (G/RO/W/18)

9.1 The Chairman noted that the Committee had before it a background working document (G/RO/W/18) prepared by the Secretariat for the second review of the implementation and operation of the Agreement. No statement was made in this regard.

9.2 The Committee agreed that it had conducted its annual review of the implementation and operation of the agreement on the basis of the Secretariat background note (G/RO/W/18) and that the Secretariat should issue a revised document in the G/RO/-series, deleting the words within the bracket in paragraph 3 of document G/RO/W/18.

10. Election of Officers

10.1 The representative of the Secretariat informed the Committee that in accordance with the established guidelines for appointment of officers, the Chairman of the Council for Trade in Goods was carrying out informal consultations on a slate of names for the appointments of chairpersons of subsidiary bodies. To date, the consultations had not yet been completed.

10.2 In light of this situation the Committee agreed to postpone the election of the chairperson and vice-chairperson of this Committee and to take up the matter as the first agenda item at the next meeting.

11. Other Business

- Date of the next meeting

11.1 The Chairman proposed to have the next meeting of the Committee on 15 May 1997, preceded by informal meetings on 12 and 13 May 1997.