NON-PREFERENTIAL RULES OF ORIGIN: Transparency and Notification

Darlan F. Martí

Secretary, WTO Committee on Rules of Origin

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Objectives of this presentation

1. Brief overview of existing notification obligations in the Agreement on Rules of Origin – focus on “non-preferential” RO
2. Overview of compliance (notifications submitted and information available)
3. Examples of notifications
4. Information gaps
Current Notification Obligations:
Agreement on Rules of Origin
## Transparency: 2 aspects

<table>
<thead>
<tr>
<th>Publication</th>
<th>Notification</th>
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<tr>
<td>- Publication, domestically, through an official instrument</td>
<td>- Submission of trade-related information to the “WTO Secretariat”, or to a specific WTO Committee</td>
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<td>- <strong>Article X - GATT</strong>: laws, regulations, judicial decisions and administrative rulings related to imports or exports “shall be published promptly” to enable governments and traders to become acquainted with them</td>
<td>- <strong>Agreement-specific</strong></td>
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<td>- No enforcement without prior official publication</td>
<td>- One off vs. periodic notifications</td>
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<td>- <strong>Article 1 - TFA</strong>: publication in easily accessible manner, through the Internet, WTO official language, enquiry points</td>
<td>- Full legislation, summary of legislation, questionnaire, standardized format, etc.</td>
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<td>- Periodicity of submissions and exact content or format may be specified in the Agreement or in a subsequent decision by the Committee</td>
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<td>- Follow-up also depends on each case: take note, examination, written Q&amp;A, etc.</td>
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Notifications: Article 5 ARO

1. **Each Member** shall provide to the **Secretariat, within 90 days** after the date of entry into force of the WTO Agreement for it, **its rules of origin**, judicial decisions, and administrative rulings of general application relating to rules of origin in effect on that date.

   If by inadvertence a rule of origin has not been provided, the Member concerned shall provide it immediately after this fact becomes known.

   Lists of information received and available with the Secretariat shall be circulated to the Members by the Secretariat.

2. Members introducing **modifications** to their rules of origin or introducing new rules of origin **shall publish a notice** to that effect at least 60 days before the entry into force of the modified new rule.
Some features of Art.5

- Each Member: all Members must notify, including those that do not apply any non-preferential RO
- Notifications made “to the Secretariat”
- No guidance regarding format, content
- No guidelines regarding language: But: G/RO/1 Committee Decision that if a notification were to be made in a language other than one of the WTO working languages, such notification should be accompanied by a summary in one of the WTO working languages.
- No details about the type of follow-up for notifications: examination in the CRO? Q&A? etc.
- No explicit obligation to notify modifications
Notifications by year
Current status of notifications

- Have not submitted a notification under Ar.5 of the ARO: 22.6% of Members
- Have notified that they apply Non-Preferential R.O.: 35.8% of Members
- Have notified that they do NOT apply Non-preferential RO: 41.6% of Members
Illustrations of some notifications
2. As of 5 May 1995, notifications relating to non-preferential rules of origin have been received from the following Members:

<table>
<thead>
<tr>
<th>Country</th>
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</tr>
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<tbody>
<tr>
<td>AUSTRALIA</td>
<td>KOREA, REPUBLIC OF</td>
<td>JAPAN</td>
</tr>
<tr>
<td>CANADA</td>
<td>NEW ZEALAND</td>
<td>HONG KONG</td>
</tr>
<tr>
<td>COLOMBIA</td>
<td>ROMANIA</td>
<td>USA</td>
</tr>
<tr>
<td>EC</td>
<td>SLOVAK REPUBLIC</td>
<td></td>
</tr>
</tbody>
</table>

3. The following Members have notified that they do not have non-preferential rules of origin:

<table>
<thead>
<tr>
<th>Country</th>
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<tbody>
<tr>
<td>COSTA RICA</td>
</tr>
<tr>
<td>MAURITIUS</td>
</tr>
<tr>
<td>THAILAND</td>
</tr>
<tr>
<td>INDIA</td>
</tr>
<tr>
<td>VENEZUELA</td>
</tr>
</tbody>
</table>

The notifications are available for consultation in the WTO, Centre William Rappard (Office 2016).
協定税率を適用する場合における輸入物品の原産地の認定については、次のようにある。

1. 当該物品の原産地とは、当該物品につき次のいずれかに該当する生産、加工又は製造を行った国（外国産品等に関する統計基本通則別紙第１（統計国名符号表）の国名欄に掲げる国別に分ける。）をいう。ただし、下記1.2に掲げる物品を除く。
   1. 当該物品につきその全部を生産した国
   2. 当該物品の生産が二国以上にわたる場合には、実質的な変更をもたらし、新しい特性を与える行為を最後に行った国
2. 定率法別表（以下「関税率表」という。）の第37.04項から第37.06項までに属する物品（第37.04項の写真用の紙、板紙及び紡績用繊維を除く。）については、当該物品を製作した者の生産の国をもって原産国とする。
3. 次の物品は、それぞれ次に掲げる一の国においてその全部が生産されたものとする。
   1. 一の国（その大陸間を含む。）において採掘された礦物性生産品
   2. 一の国において収獲された植物性生産品
   3. 一の国において生まれ、かつ、成長した動物（生じているものに限る。）
   4. 一の国において生産された物品
   5. 一の国において採集又は漁獲により得られた物品
   6. 一の国において運輸により得られた物品
   7. 一の国において保管されている物品
   8. 一の国において販売されている物品
   9. 一の国において製造された物品
   10. 一の国において加工された物品
   11. 一の国において使用される物品
   12. 一の国において除く国の物品
4. 「実質的な変更をもたらし、新しい特性を与える行為」とは、次のいずれかに該当する加工又は製造をいう。ただし、下記1.2に掲げる行為のものによる加工又は製造を除く。
   1. 当該物品の該当する関税率表の項が当該物品の製造に使用した国産以外のすべての原料又は材料の属する同条の項と異なることとなる製造（加工を含む。以下同じ。）
   2. 自国産以外の原料又は材料を用いて力で行われる製造で上記イに該当しないもののうち、次に掲げる製造
5. 天然研磨材について、その原石を粉砕し、かつ、粒度をそろえる加工
6. 塩類、油脂、ろう又は化学品について、その用途に変更をもたらし、又はその用途を特定化するような精製
7. 関税率表の第6部又は第7部の物品について、化学的変換を伴う製造
Illustration 2

G/RO/N/25 of 13 April 1999

LATVIA

- Article 162 of Customs Law.

QATAR

(Notification in English)

- Customs Code No. 5 of 1998; and
- Decision of the acting Minister of Finance and Oil No. 2 of 1991.
STATE OF QATAR
Customs & Ports General Authority

CUSTOMS LAW
&
EXECUTIVE REGULATIONS

2005 Version
Illustration 3

G/RO/N/78 of 16 April 2012

BRAZIL

(Notification in English)

Legal provisions for non-preferential rules of origin are regulated by Articles 28 to 45 of Law No. 12.546 of 14 December 2011.

The full text of the Law is available at the following link (Portuguese only):

A PRESIDENTA DA REPÚBLICA Faço saber que o Congresso Nacional decreta e eu sanciono a seguinte Lei: (Vigência)

Art. 1º É instituído o Regime Especial de Reintegração de Valores Tributários para as Empresas Exportadoras (Reintegra), com o objetivo de reintegrar valores referentes a custos tributários federais residuais existentes nas suas cadeias de produção.

Art. 2º No âmbito da Reintegra, a pessoa jurídica produtora que efetuou e exportação de bens manufaturados no País poderá apurar valor para fins de recurso parcial ou integralmente os resíduos tributários federal existente na sua cadeia de produção.

§ 1º O valor será calculado mediante a aplicação do percentual estabelecido pelo Poder Executivo sobre a receita de montante da exportação do bem produzido pela pessoa jurídica referida no caput.

§ 2º O Poder Executivo poderá fixar o percentual de que trata o § 1º entre zero e 3% (três por cento), bem como poderá diferenciar o percentual aplicável por setor econômico e tipo de atividade exercida.

§ 3º Para os efeitos deste artigo, considera-se bem manufaturado no País aquele:
I - classificado em código da Tabela de Incidência do Imposto sobre Produtos Industrializados (IPI), aprovado pelo Decreto nº 6.096, de 28 de dezembro de 2006, relacionado ao ato do Poder Executivo; e
II - cujo custo dos insumos importados não ultrapasse o limite percentual do preço de exportação, conforme definido em relação discriminada por tipo de bem, constante do ato referido no Inciso I deste parágrafo.

§ 4º A pessoa jurídica utilizará o valor apurado para:
I - efetuar compensação com débitos próprios, vencidos ou vincendos, relativos a tributos administrados pela Secretaria da Receita Federal do Brasil, observada a legislação específica aplicável a matéria; ou
II - solicitar seu ressarcimento em espécie, nos termos e condições estabelecidos pela Secretaria da Receita Federal do Brasil.

§ 5º Para os fins deste artigo, considerar é exportação a venda direta ao exterior ou à empresa comercial exportadora com o fim específico de exportação para o exterior.

§ 6º O disposto neste artigo não se aplica a:
I - empresa comercial exportadora,
II - bens que tenham sido importados.

§ 7º A empresa comercial exportadora é obrigada ao recolhimento do valor atribuído à empresa produtora vendedora se:
I - revender, no mercado interno, os produtos adquiridos para exportação; ou
II - no prazo de 180 (cento e oitenta) dias, contado da data da emissão da nota fiscal de venda pela empresa produtora, não houverem efetuado a exportação dos produtos para o exterior.

§ 8º O recolhimento do valor referido no § 7º deverá ser efetuado até o décimo dia subsequente ao vencimento do prazo estabelecido para a efetivação da exportação, arrecadação de multa de mora ou de ação e de juros equivalentes à taxa referente para títulos federais, acumulados mensalmente, calculada a partir do primeiro dia do mês subsequente ao da emissão da nota fiscal de venda dos produtos para a empresa comercial exportadora até o último dia do mês anterior ao do pagamento, e de 1% (um por cento) ao ano, calculada conforme o parágrafo único do artigo 1º da Medida Provisória nº 2.199-14, de 24 de agosto de 2007, e o art. 5º do Decreto-Lei nº 1.593, de 21 de dezembro de 1977, nos termos que
ZIMBABWE

Zimbabwe informs WTO Members about Section 88 of the Customs and Excise Act (Chapter 23:02) which provides for the determination of the country of origin for non-preferential purposes.

The Act provides that the country of origin of any manufactured goods shall be the country in which the last process of manufacture has been performed.
Determination of origin of manufactured goods

For the purposes of this Act, the country of origin of any manufactured goods shall be the country in which the last process of manufacture has been performed.

Specified country content of goods subject to lower rates of duty than in customs tariff

(1) Subject to subsection (3), where goods which are grown, produced or manufactured in any country are, because of their origin, subject under the provisions of this Act to rates of duty which are lower than those set out in Part II of the customs tariff, such lower rates shall be allowed only—

(a) in the case of unmanufactured goods, where such goods have been wholly grown or produced in that country;

(b) in the case of manufactured goods, where such goods have been subjected to their last process of manufacture in that country and—

(i) have such local content in relation to that country as may be prescribed; or

(ii) have been subjected in that country to such process of manufacture as may be prescribed in relation to the class of goods to which such goods belong.

(2) Regulations made for the purposes of subsection (1) may provide for the manner in which or the authority by whom the determination of the local content of manufactured goods shall be made and the information to be supplied by importers in relation thereto.
With reference to the Agreement on Rules of Origin Article 5.1 and paragraph 4 of Annex II to the same agreement, we hereby inform about adopted amendments regarding preferential and non-preferential rules of origin which entered into force 4 March 2016. The amended Customs Act and Regulations have been translated into English.

An English version of the amended Customs Act, Section 8, can be found by following the link:

MONGOLIA

Mongolia applies non-preferential rules of origin for imported goods as provided under Chapter 7 of the 2014 "Law of Mongolian on Customs Tariffs and Duties". The law is available in the following Internet link:


According to the requirements of the Law of Mongolia on Customs Tariffs and Duties as amended on 9 December 2016, all products being imported into the Mongolian territory must be accompanied by a statement of origin, namely one of the following:

- 31.7. The documentary evidence of origin of goods shall have the following types:
  - 31.7.1. a declaration of origin of goods which is an invoice or bill of lading, having an information on goods origin stated by manufacturer, seller or exporter;
  - 31.7.2. a certified declaration of origin of goods which is a declaration of origin certified by a competent authority of the relevant country; and
  - 31.7.3. a certificate of origin of goods which is a certificate officially issued in a special form by a competent authority of the relevant country to certify the origin of goods.
- 31.8. A list of goods requiring a certificate of origin shall be adopted by the Government.

The amendments are available in the following Internet link (in Mongolian only): http://customs.gov.mn/2012-03-14-03-12-51/2017-12-12-03-51-09 www.legalinfo.mn/law/details/208
KOREA

Foreign Trade Law and sub-legislation:
(a) Foreign Trade Law, Chapter 3 and Section 5 (Country of Origin Marking):
- Article 33 Country of Origin Marking for Exported or Imported Goods
- Article 34 Determining Country of Origin
- Article 35 Criteria for Determining Origin of Domestic Products That Include Imported Materials
- Article 36 Submission of Country of Origin Certification for Imported Goods
- Article 37 Issuance of Country of Origin Certification With Respect to Export Goods
- Article 38 Prohibitions on Misrepresenting Foreign Goods as Domestic Goods
(b) Enforcement Decree of the Foreign Trade Law, Chapter 3 and Section 5 (Country of Origin Marking):
- Article 55 Goods Subject to Country of Origin Marking
- Article 56 Country of Origin Marking Methods for Exported or Imported Goods
- Article 57 Verification of Country of Origin Marks
- Article 58 Corrective Measures for Goods with Inaccurate Country of Origin Marking
- Article 59 Payments and Imposition of Fines
- Article 60 Fines and Finable Offenses
- Article 61 Criteria for Determining Country of Origin for Imported Goods
- Article 62 Prior Determination of Country of Origin for Imported Goods
- Article 63 Complaint Procedures
- Article 65 Submission of Certification of Country of Origin for Imported Goods
- Article 66 Criteria for Issuance of Certification of Country of Origin
- Article 67 Simple Processing Activities
Scope of application: no clarity regarding the trade policy measures for which the rules notified apply: Quotas? Labelling? Etc.

Scope of application: do the RO apply to all products? only some sectors?

No information about certification requirements (are certificates mandatory? In all cases? Must be presented in a prescribed form?)

Are advance rulings delivered? Who should requests be addressed to? What are the procedures to have recourse to this instrument (Art.2(h))? 

Most notifications were submitted in 1995-96: is the information notified still up to date? Should new legislation be notified?

No guidelines regarding the work of the Committee: Q&A? examination?
Thank you for your attention!