WTO OMC

25th anniversary of the WTO Agreement on Rules of Origin: overview

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This presentation

Some background about the conditions that led to the adoption of the Agreement on Rules of Origin, 30 years ago

Overview of the objectives Agreement

Disciplines

Presentation of the work of the Committee, in particular in relation to the harmonization of non-preferential rules of origin

Rules of origin in international trade

- No need for Rules of Origin in international trade if all products receive identical treatment! That is, if identical MFN duties and other trade measures apply to all like products
- However, different trade policy measures apply to products, leading to:

More favourable treatment:	Less favourable treatment:
Preferential trade agreements (regional trade agreements, customs unions, preferential arrangements)	Anti-dumping duties and countervailing measures; import quotas (by country); SPS restrictions…

- Not only necessary but also desirable to be able to identify a “country of origin”

Technical and neutral instrument allowing the implementation of other trade measures

Why regulate this area?

- Practice:
  - Wholly obtained goods: a single country of manufacture
  - Substantially or sufficiently transformed goods: last transformation economically justified leading to a new product (new use, new name, new tariff classification, etc.).
- Problems…: Identified as early as the 1940s (original GATT); 1950s (GATT “recommendations”); 1970s (Kyoto Convention); 1970s (GSP) and 1980s (leading to Uruguay Round negotiations)

Problems

- Arbitrary application of national rules: lack of consistency or uniformity, case-by-case determinations
- Inconsistent results: the same product might have a different origins depending on the country that is importing it
- Changes: since RO are autonomous legislation, may be changed at any time
- Lack of transparency and lack of predictability: differences of interpretation between the importing and the exporting country
- Diversity: different RO for different purposes: preferential RO (RTAs and PTAs) and also non-preferential RO (bilateral quotas, anti-dumping)
- Complexity: restrictive processes identified to confer origin and effect on third-country suppliers and, when linked to marking (labelling) impose disproportionate costs
- Administrative aspects: calculation of percentages, certification, verification
- Lack of any recourse: only national courts in case of grievance

Illustrations

- 1950s: multiplication of national legislations requiring country-of-origin markings (“made in…” labels)
- EC-EFTA Agreement: the US asks for consultations (1973) with the EC to discuss the effects of the EC-EFTA RO, judged too stringent, on third countries
- 1984 - quotas for sweaters in the US: knitted pieces imported from China and assembled and finished in Hong Kong, China no longer qualified for quotas into the US under the Multi-Fibre Agreement
- Photocopiers: photocopiers exported from Japan to the European Communities (EC) were subject to anti-dumping duties. Identical goods were exported from a factory in the US [circumvention by moving the assembly or operations (a) to the importing country or (b) to a third country]
- US semiconductors: assembly and testing confers origin for semiconductors for purposes of duty assessment, quotas and marking (labelling) but not for antidumping
- 1984: the USTR, on behalf of the President, requested the US International Trade Commission to institute an investigation pursuant to section 332(g) of the 1930 Tariff Act, as to the effect of origin rules on the competitive position of US imports and exports (discriminatory effects).

Growing consensus that international regulation was needed in this area

- Ensure the rules remained technical and neutral
- Reduce the diversity in origin determinations (avoid unilateral origin determinations)
- Reduce the number of different rules
- Curtail the possibility of manipulation of the rules by governments to support trade protection
- Favourable elements
  - GATT Tokyo Round “NTM Codes”
  - Harmonized System for tariff nomenclature (1988)
  - US/Canada FTA; NAFTA negotiations and strong consensus in the US for the “rationalization” and simplification of RO
  - GATT dispute settlement mechanism: consultation
  - Uruguay Round negotiations

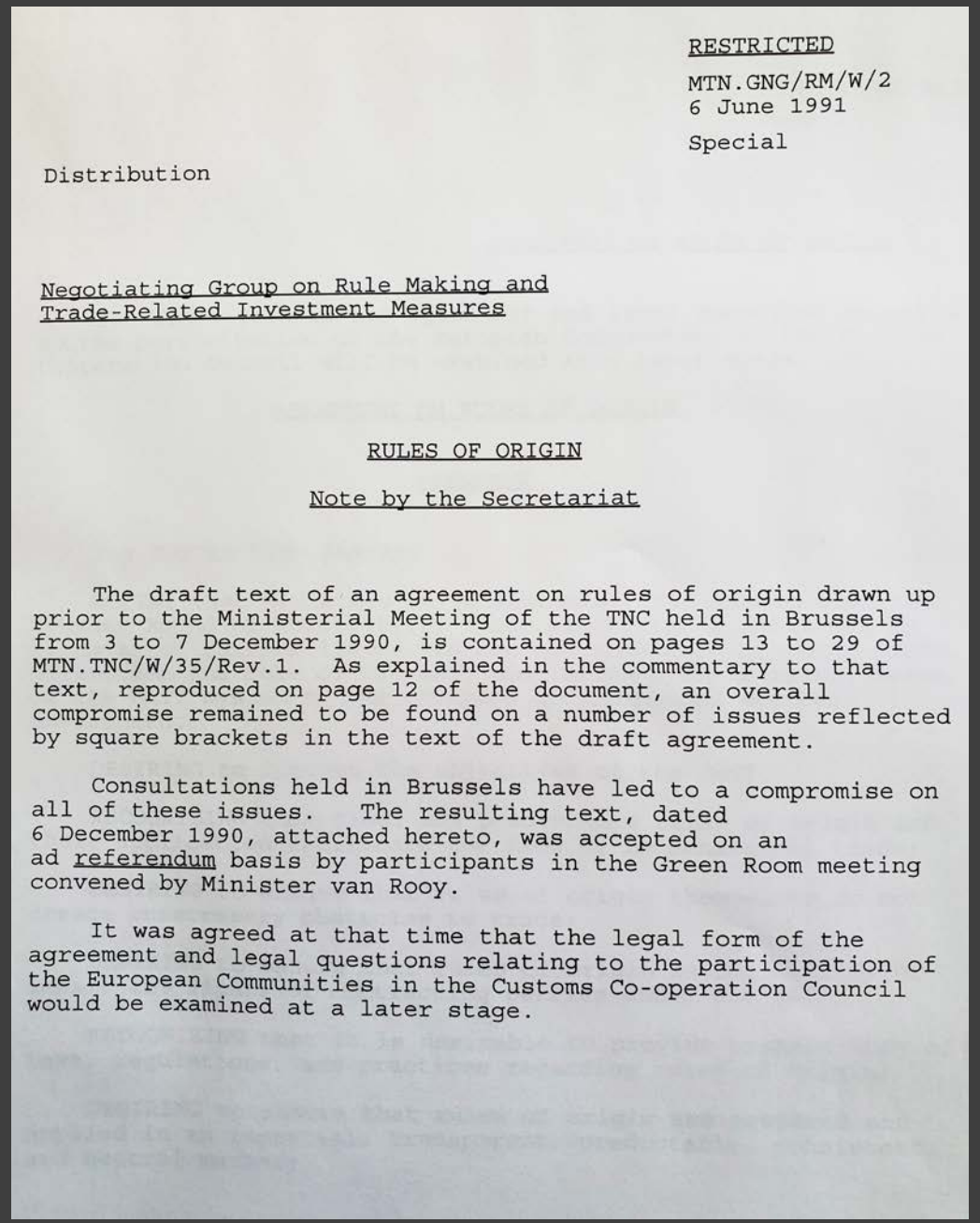
International legal framework

- GATT Art.I (Note) and Art.IX: acknowledge but does not regulate RO
- 1952: International Chamber of Commerce request to GATT contracting parties to standardize rules of origin and adopt a common definition of the nationality of manufactured goods
- 1958: GATT recommendations on marks of origin (keep to a minimum and standardize)
- 1974: (Kyoto) International Convention on the simplification and harmonization of Customs procedures
- 1979 US request to establish a Working Party to analyse the effects of RO on the world trading system
- 1982: GATT Ministerial Conference requests the Council to undertake studies on RO and decide what further action might be needed (L/5424)
- 1986: Ministers launch the 8th Ministerial Conference (Punta del Este, Uruguay)
- 1988: The GATT Negotiating Group quested a background note on the administration of rules of origin (MTN.GNG/NG2/W/12, June 1988)

Finalization of the text of the WTO Agreement on Rules of Origin

- 6 December 1990: Uruguay Round (draft) text on RO (MTN.TNC/W/35/Rev.1 p.13-29; MTN.GNG/NG2/W/85) after the Brussels Ministerial Conference (that should have concluded the Uruguay Round)

- 15 December 1993: Conclusion of the Uruguay Round



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MTN.GNG/RM/W/2
6 June 1991

Special

Distribution

Negotiating Group on Rule Making and
Trade-Related Investment Measures

RULES OF ORIGIN

Note by the Secretariat

The draft text of an agreement on rules of origin drawn up prior to the Ministerial Meeting of the TNC held in Brussels from 3 to 7 December 1990, is contained on pages 13 to 29 of MTN.TNC/W/35/Rev.1. As explained in the commentary to that text, reproduced on page 12 of the document, an overall compromise remained to be found on a number of issues reflected by square brackets in the text of the draft agreement.

Consultations held in Brussels have led to a compromise on all of these issues. The resulting text, dated 6 December 1990, attached hereto, was accepted on an ad referendum basis by participants in the Green Room meeting convened by Minister van Rooy.

It was agreed at that time that the legal form of the agreement and legal questions relating to the participation of the European Communities in the Customs Co-operation Council would be examined at a later stage.

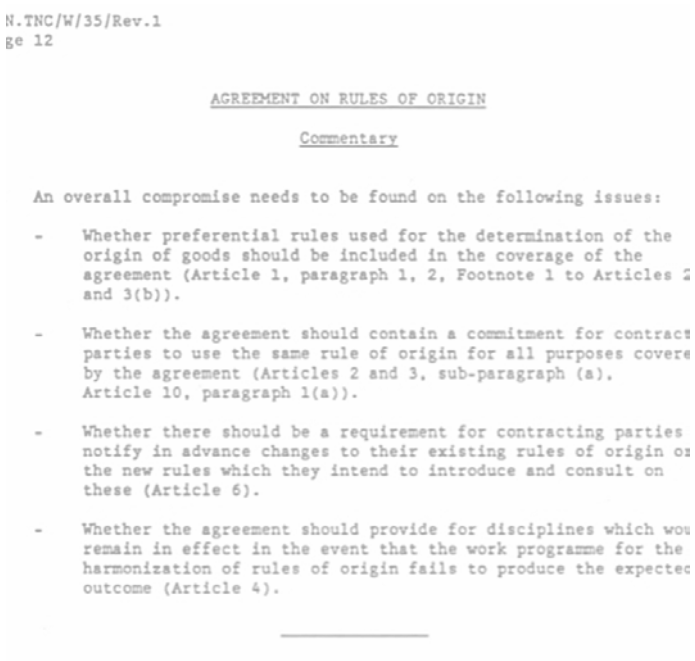
Objectives (preamble) of the Agreement

"Members,

- Noting that Ministers on 20 September 1986 agreed that the Uruguay Round of Multilateral Trade Negotiations shall aim to "bring about further liberalization and expansion of world trade", "strengthen the role of GATT" and "increase the responsiveness of the GATT system to the evolving international economic environment";
- Desiring to further the objectives of GATT 1994;
- Recognizing that **clear and predictable rules of origin and their application facilitate the flow of international trade**;
- Desiring to ensure that **rules of origin themselves do not create unnecessary obstacles to trade**;
- Desiring to ensure that rules of origin do not **nullify or impair the rights of Members under GATT** 1994;
- Recognizing that it is desirable to **provide transparency** of laws, regulations, and practices regarding rules of origin;
- Desiring to ensure that rules of origin are **prepared and applied in an impartial, transparent, predictable, consistent and neutral manner**;
- Recognizing the availability of a **consultation mechanism** and procedures for the speedy, effective and equitable resolution of disputes arising under this Agreement;
- **Desiring to harmonize and clarify rules of origin…**"

The Uruguay Round is concluded successfully in Geneva on 15 December 1993.

Last pending issues before the Agreement could be finalized



N.TNC/W/35/Rev.1
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AGREEMENT ON RULES OF ORIGIN

Commentary

An overall compromise needs to be found on the following issues:

- Whether preferential rules used for the determination of the origin of goods should be included in the coverage of the agreement (Article 1, paragraph 1, 2, Footnote 1 to Articles 2 and 3(b)).

- Whether the agreement should contain a commitment for contracts parties to use the same rule of origin for all purposes covere by the agreement (Articles 2 and 3, sub-paragraph (a), Article 10, paragraph 1(a)).

- Whether there should be a requirement for contracting parties notify in advance changes to their existing rules of origin or the new rules which they intend to introduce and consult on these (Article 6).

- Whether the agreement should provide for disciplines which wou remain in effect in the event that the work programme for the harmonization of rules of origin fails to produce the expected outcome (Article 4).

Whether or not preferential rules of origin should also be included in the harmonization effort

Whether harmonized rules of origin should be utilized for all purposes (trad policy measures)

Whether Members should submit their new rules of origin to advance notification for comments before such rules could be introduced

Whether disciplines should be included in case the harmonization work programme could not deliver the expected outcomes

Results

- Two pronged approach:
  1. Disciplines relating to the way RO should be implemented by WTO Members to ensure that RO do not act as an obstacle to trade (before and after the transition period)
  2. Ambitious three-year programme for the harmonization of non-preferential rules of origin to be used in non preferential commercial policy instruments, “such as” those listed in Art.1 (MFN tariffs, Art. I, II, III, quantitative restrictions, anti-dumping and countervailing duties, origin markings, etc....)

CRO and TCRO

- January 1995: establishment of the World Trade Organization
- 6 February 1995: the WCO Technical Committee on Rules of Origin held its first meeting
  - *"for the first time, rules of origin will be placed under a specific set of multilateral disciplines"* - opening statement by **J.W. Shaver, WCO Secretary General**
  - *"At the end of the exercise we shall have a single set of rules of origin for non-preferential trade: this will mean that, under non-preferential trading conditions, for any single good, the same rule of origin will apply in all countries and under all circumstances. It does not need me to elaborate on the merits of such an achievement for international trade as a whole, and for individual traders and customs administrations in particular"* - **Peter Sutherland, WTO Director General**
- 4 April 1995: first meeting of the WTO Committee on Rules of Origin

- Mr. Chiedu OSAKWE (Nigeria), 1995
- Ms. Lourdes BERRIG (Philippines), 1996
- Mr. Ric WELLS (Australia) 1997
- Mr. Andrew (Sandy) MOROZ (Canada), 1998-99
- Mr. Sándor SIMON (Hungary), 2000
- Mr. AHN Ho-young (Korea), 2001
- Mr. Stefan MOSER (Switzerland), 2002
- Mr. Syed Habib AHMED (Pakistan), 2003
- Ms. Vera THORSTENSEN (Brazil), 2004-2009
- Ms. Jasmine QUAH ZUBAIR (Singapore), 2010
- Mr. Daniel OWOKO (Kenya), 2011
- Mr. Changsheng LI (China), 2012
- Mr. Marhijn VISSER (Netherlands), 2013
- Mr. Ken CHEN (Chinese Taipei), 2014
- Mr. Christian WEGENER (Denmark), 2015
- Mr. Chih-Tung CHANG (Chinese Taipei), 2016
- Mr. Gerald PAJUELO (Peru), 2017
- Ms. Thembekile MLANGENI (South Africa), 2018
- Ms Uma Shankari MUNIANDY (Singapore), 2019

CRO Chairs

WTO Committee on Rules of Origin

Mr. Eki KIM, first Secretary to the CRO

Mr. Chiedu OSAKWE, first Chair

WTO CRO Chairs

Mr. Ric WELLS

Vera THORSTENSEN, 2004-09!

WTO CRO Chairs

Gerald PAJUELO and Thembi MLANGENI

Uma MUNIANDY

Work of the CRO:
The Harmonization Work Programme

- Draft harmonized rules discussed and recommended by the Technical Committee on Rules of Origin (TCRO)
- Endorsed or further negotiated by the Committee on Rules of Origin (CRO)
- Substantial transformation based on a change of tariff classification, complementary use of value controversial (e.g. machinery)
- Draft harmonized rules: agreement on a majority of the package (JOB/RO/1; consolidated in G/RO/W/111/Rev.6 and transposed to more recent versions of the HS in JOB/RO/5)
- Use of harmonized rules for other trade policy instruments: “Implications issue”
- Latest state of play: 2013 CRO annual report (G/L/1047)

THE “IMPLICATIONS” ISSUE

Illustration Anti-dumping – Circumvention

- If HRO is: *the origin of vehicles is the country where they were assembled.*
- After investigations, Country A imposes anti-dumping duties on automobiles assembled in Country B.
- The firm in country B, in order to avoid or "circumvent" the newly imposed anti-dumping duties, changes its operations and sends parts and components to Country C where they are assembled and exported to Country A.
- If the harmonized rule of origin states that "assembly" confers origin for automobiles, the origin of the automobile should now be conferred to Country C.

- Can Country A *automatically* extend the anti-dumping duty to Country C in order to avoid the firm circumventing its anti-dumping action?

TRANSITIONAL PERIOD Disciplines *until the HWP is completed*

"Members shall":

a) **clearly define** their ROO

b) not use RO as instruments to **pursue trade objectives either directly or indirectly**

c) not use RO in a way that creates **restrictive, distorting or disruptive effects on international trade**

d) not apply ROO to import / exports that are more restrictive than the rules applied to domestic products or that are discriminatory

e) administer ROO in a **consistent**, **uniform**, **impartial** and **reasonable** manner

TRANSITIONAL PERIOD Disciplines *until the HWP is completed*

f) Shall base their ROO on a **positive standard** (negative standard for clarification or residual cases only)

g) Shall **publish promptly** their ROO – GATT Art. X

h) Advance rulings: upon request, shall issue determinations of origin in not more than 150 days. Decisions must remain valid for 3 years

i) Shall not apply changes retroactively

j) Shall make available an independent judicial, arbitral or administrative **review of decisions**

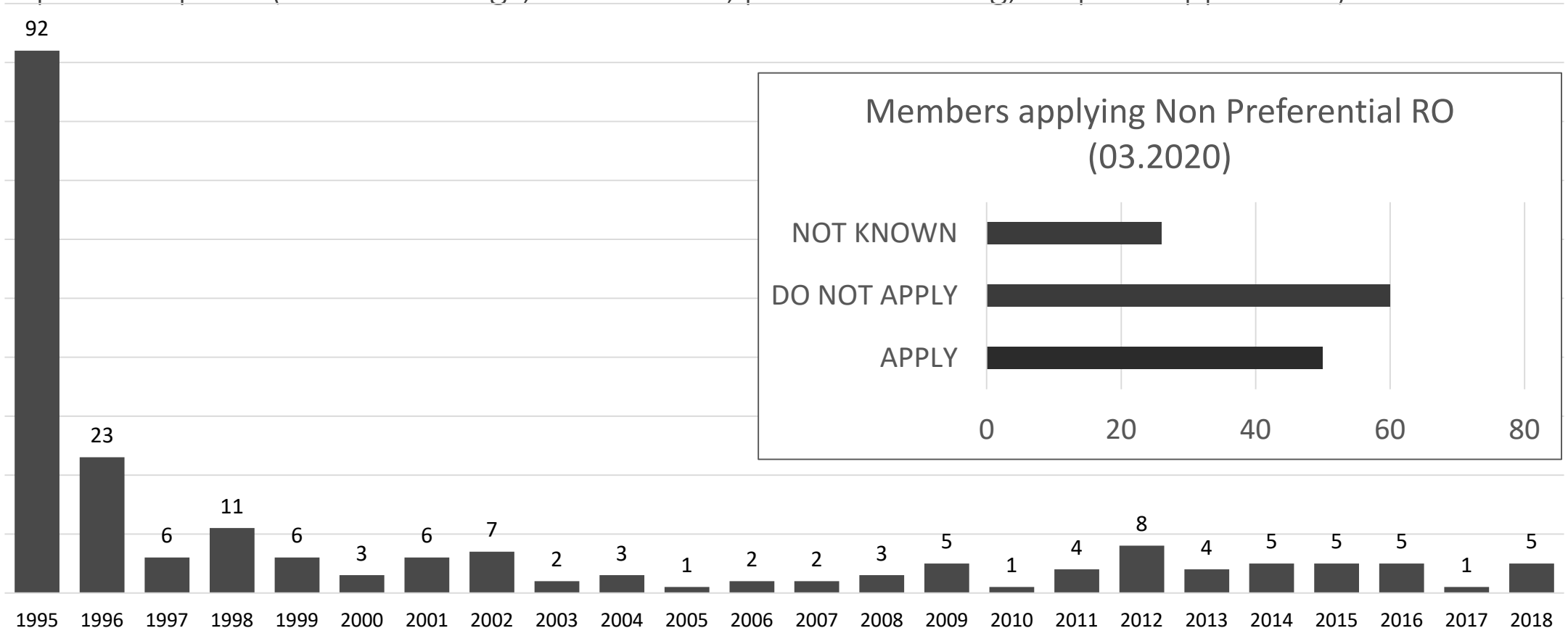
k) Shall treat all information confidentially

+ Also: GATT Articles VIII (Note); IX and provisions in the TFA

- But currently no monitoring mechanism in place

Transparency: notifications

- All Members apply preferential rules of origin (RTAs, PTAs, CU)
- 50 Members apply non-preferential rules of origin
- Specific aspects (advance rulings, certification, product-labelling, scope of application): not known



Implications

- 77 WTO Members have notified that they have established Anti-Dumping Investigation authorities (G/ADP/N/14/Add.52): some have notified that they do not implement non-preferential RO
- In a recent survey of over one hundred WTO Members, it was found that 23% applied a general requirement regarding origin markings ("made-in" labels); 71% applied a specific requirement and 6% did not apply any requirement
- According to a 2013 WCO survey, 8% of respondents require the presentation of a certificate of non-preferential origin in all cases and 80% in certain cases…

Thank you for your attention!

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World Trade Organization (WTO)

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