The WTO Agreement on Rules of Origin and the harmonization of non-preferential rules of origin

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Content of the presentation

Some background about the conditions that led to Agreement on Rules of Origin

Overview of the objectives of Agreement and the mandate given to the CRO

Overview of the negotiations for the harmonization of non-preferential rules of origin (“HWP”)

Main stumbling blocks and latest state of play

Rules of origin in international trade

- No need for Rules of Origin in international trade if all imported goods received identical treatment! However, it is common for different trade policy measures to apply (or not apply) to goods being imported *depending* on their origin:

More favourable treatment:	*Less* favourable treatment:
Trade preferences (regional trade agreements, non-reciprocal preferential arrangements)	Trade remedies (anti-dumping; countervailing or safeguard measures); quotas; sanitary restrictions
Preferential rules of origin	Non-Preferential rules of origin

- Therefore, it is necessary to identify a "country of origin"

Technical and neutral instrument enabling the correct implementation of other trade measures

Why adopt international disciplines in this area?

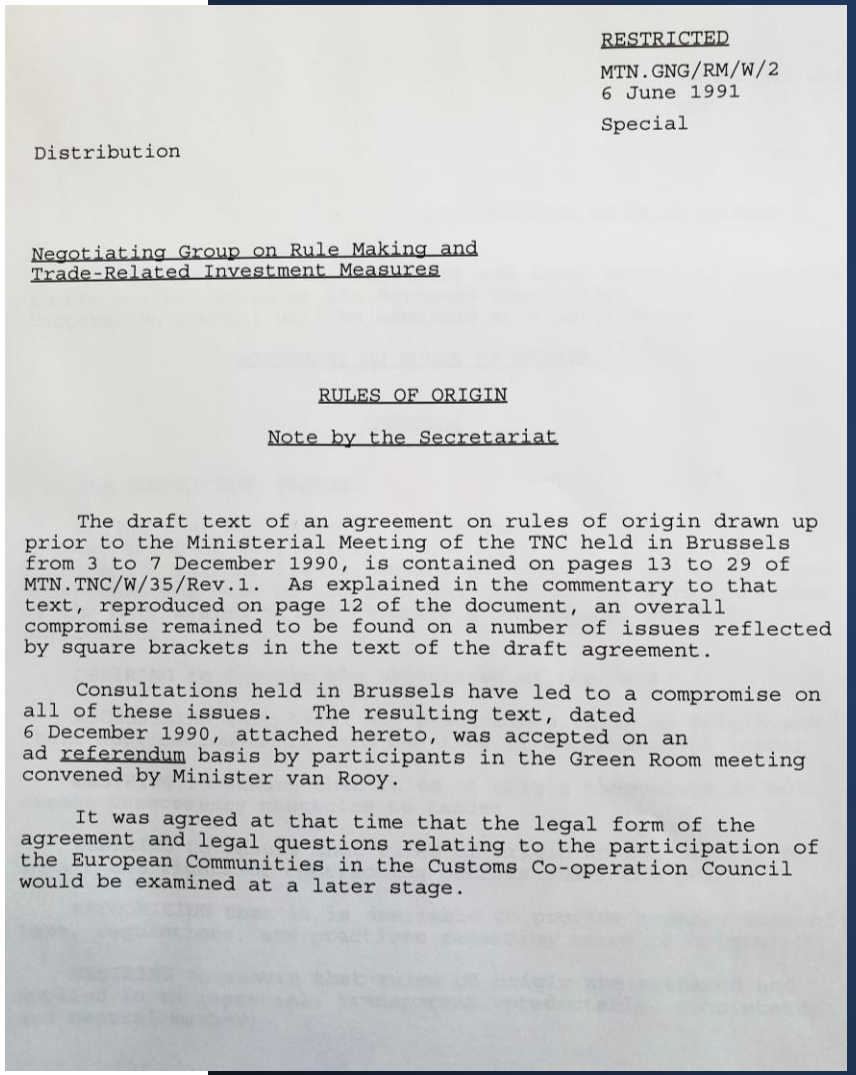
- Problems identified since the 1940-50s already (e.g. burden and costs of marking of origin for businesses)
- Arbitrary application: case-by-case determinations
- Inconsistent results: an identical good could be attributed different origins depending on the importing country
- Lack of transparency and lack of predictability: frequent changes or differences of interpretation
- Complexity from the growing diversity of RO: different preferential RO (RTAs and PTAs) + non-preferential RO (quotas, trade remedies)
- Lack of any recourse: national courts in case of grievance
- Growing uncertainties and growing compliance costs for businesses

Growing consensus that international regulation was needed in this area

- Ensure that the rules remained **technical** and **neutral**
- **Reduce the diversity** in origin and reduce the problems linked with different interpretations of the same rule
- Curtail the possibility of manipulating the RO for protectionist purposes
- Therefore: **Agreement on Rules of Origin** added to the negotiating files during the Uruguay Round
- ***Premise***: build on the notion that the implementation of a single set of clearly defined rules of origin by all WTO Members would achieve the trade-facilitating objectives being sought (Preamble of the Agreement)

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.12-29; 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
- Focus on non-preferential rules of origin



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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.

Two pillars of the Agreement

Ambitious 3-year negotiations for the ***harmonization of rules of origin to be used for all non-preferential purposes*** *(Art. 1 of the Agreement)*

Few disciplines relating to the way RO are implemented - in the meantime - by WTO Members (***transition period***)

The Harmonization Work Programme

- Draft harmonized rules (product-specific origin criteria) discussed at the Technical Committee on Rules of Origin at the World Customs Organization (TCRO)
- Recommendations were sent to the WTO Committee on Rules of Origin for **endorsement** or further negotiations
- Endorsed harmonized rules were gradually compiled in a **draft consolidated package** (G/RO/W/111/Rev.6 and JOB/RO/1): 315 pages of a full package: definitions, list of wholly obtained goods, list of substantial transformation criteria for all entire harmonized system (change of tariff classification), primary and residual rules, interpretative notes…
- About 70% of all product specific rules had been agreed to.
- Countless negotiating weeks with the involvement of capitals and industry representatives
- Draft results were **transposed** to more recent versions of the Harmonized System (JOB/RO/5)

Stumbling blocks

- Disagreement on rules for some sectors (coffee, fish, certain textile products, machinery)
- Disagreement on whether or not to utilize "value-added" rules to complement the "tariff classification" method (tariff classification was the generally preferred method)
- But most importantly: disagreement about **how the new, harmonized rules would impact the implementation of other trade policy measures / WTO Agreements** ("*implications*");

  QUESTIONS ➔ Would the application of HRO change the manner in which certain trade policy instruments are implemented?

  Do WTO Agreements actually require Members to *"determine the country of origin of goods"* (in the sense of the ARO)? Or do they simply require the identification of a *"place of origin"*, a *"country of export"* or some *"concept of origin"*?

THE "IMPLICATIONS" ISSUE

Coffee beans
Harvested
Colombia

→

Coffee
Roasted, Ground
United States

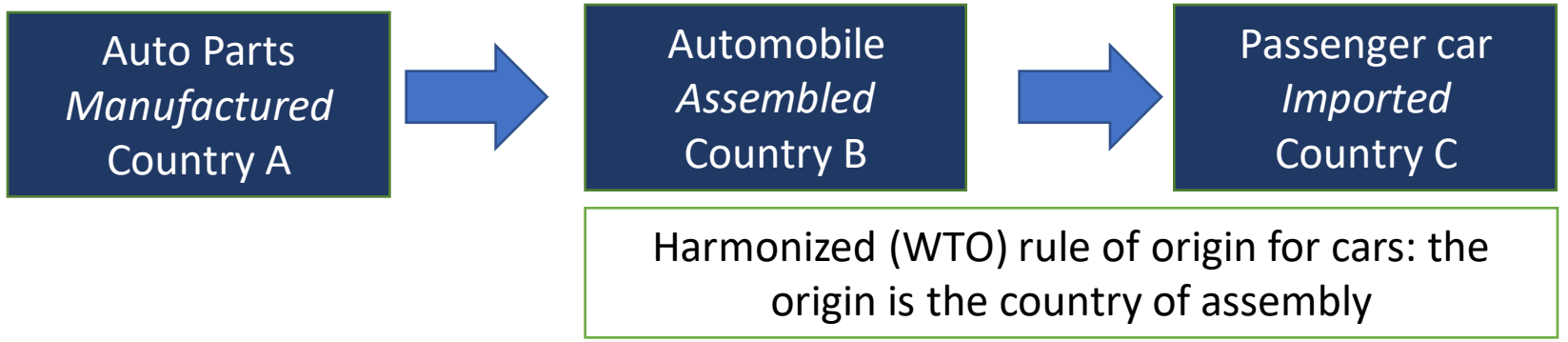
→

Coffee powder
Imported
Switzerland

Harmonized (WTO) rule of origin for coffee: the origin is the country where beans were roasted

- Coffee (G/RO/W/65): Swiss customs will deem this coffee to have originated in the U.S. (roasting)
- Can the coffee bear the mark ***"100% Colombian Coffee"*** after its importation in Switzerland?
  - Argument 1: no, because HRO also apply to "marks of origin" (GATT Article IX). A mark "100% Colombian coffee" would be misleading and fraudulent. Same for a trademark or for a label.
  - Argument 2: yes, it could as HRO would not apply to "marks of origin". Article IX of the GATT speaks about "true origin" of products but contains no obligation to "determine the country of origin" (ARO).
- Similar difficulties arise in the case of SPS restrictions on Colombian coffee beans: can the restrictions be automatically applied to US coffee since it could carry a sanitary risk

THE "IMPLICATIONS" ISSUE



- After investigations, country C imposes anti-dumping duties on country B. In response, the manufacturer assembles cars in country A (or in a third country D). If the WTO harmonized rule of origin states that "assembly" confers origin for automobiles, the origin of the automobile will then be country A or D, not country B.
- Can Country C *automatically* extend the anti-dumping duties to Country A in order to avoid the firm circumventing its anti-dumping action?
- **If the rule which confers origin is known to businesses… will business not always optimally locate their operations in a way to avoid restrictive measures (thus undermining the ability of governments to regulate)?**
- Uncertainty about **"implications" (circumvention?)** undermined the appetite for the harmonization of rules of origin

Some solutions proposed

“Selective application” by Members

- Each Member would decide whether t use or not the harmonized rules of origin in some of its commercial policy instruments. The WTO Secretariat would be notified about Members’ practices

“Guidelines”

- The harmonized rules would be adopted as simple “guidelines”, that is, a set of non binding rules (Decision, Recommendation, Declaration?)

State of play (Implications issue)

- "Core policy issues" sent to the General Council for instructions
- **2010**: China, India, Pakistan (WT/GC/W/622) "reminder" to the General Council (WT/GC/M/126)
- **2013-14:** Letter from the CRO Chair to the Chairman of the General Council seeking guidance: "*Members would wish the CRO to continue its work on all the issues as it deems necessary*"
- Polarized views among Members 2013 CRO annual report, G/L/1047):
  - World trade has continued to grow and non-preferential rules of origin are not a priority for businesses any more. Harmonization would not facilitate international trade. Preferential rules of origin are more commonly used and a greater priority.
  - While used only in specific cases, non-preferential rules of origin apply in sensitive cases. They continue to generate uncertainties and costs for businesses so they should be harmonized and simplified.
- **Since 2015:** "Educational exercise": understand the impact of existing rules on international trade and work to make existing requirements more transparent and more accessible

TRANSITIONAL PERIOD Disciplines *until the HWP is completed…*

…But currently **no monitoring mechanism** in place

"Members shall" (Article 2 of the Agreement on Rules of Origin):

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

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

+ GATT Articles VIII (Note)

+ GATT IX and

+ Different provisions in the WTO Trade Facilitation Agreement

Thank you for your attention!

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