United Nations Conference on Trade and Development
Division for Africa, Least Developed Countries and Special Programmes (ALDC)

5th Meeting of the Continental Free Trade Area Technical Working Group on Rules of Origin

Overview of rules of origin in the Multilateral Trading System

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Rules of origin in GATT 1947

- During the second session of the GATT Preparatory Committee in 1947, a Sub-Committee considered: "it is to be clear that it is within the province of each importing member to determine, in accordance with the provisions of its law, for the purpose of applying the most-favoured-nation (MFN) provision whether goods do in fact originate in a particular country".

- Only later – in 1951 and 1952 – were the first attempts made (without success) to address the question of harmonization of RoO.

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Kyoto Convention 1974 and 2000

- **The Convention identified two kind of products:**

  - Wholly obtained products-Products that does not contain non-originating materials
  - Products where more than one country was involved in the manufacturing: substantial transformation criterion;

"Means the criterion according to which origin is determined by regarding as the country of origin the country in which the last substantial manufacturing or processing, deemed sufficient to give the commodity its essential character, has been carried out."

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Kyoto convention 1974

- In practice the substantial transformation criterion can be expressed:
  - by a rule requiring a change of tariff heading in a specified nomenclature, with lists of exceptions and/or ;
  - by a list of manufacturing or processing operations which confer, or do not confer, upon the goods the origin of the country in which those operations were carried out, and/or
  - by the ad valorem percentage rule, where either the percentage value of the materials utilized or the percentage of the value added reaches a specified level.

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Kyoto convention 2000

- **Recommended Practice**
  - Where two or more countries have taken part in the production of the goods, the origin of the goods should be determined according to the substantial transformation criterion.
- **Recommended Practice**
  - In applying the substantial transformation criterion, use should be made of the International Convention on the Harmonized Commodity Description and Coding System.
- **Recommended Practice**
  - Where the substantial transformation criterion is expressed in terms of the ad valorem percentage rule, the values to be taken into consideration should be:
    - for the materials imported, the dutiable value at importation ….
    - for the goods produced, either the ex-works price or the price at exportation, according to the provisions of national legislation

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The technical choices of the ARO in Drafting RoO

- Upon completion of the work under subparagraph (ii) for each product …**where the exclusive use of the HS nomenclature does not allow for the expression of substantial transformation**, the Technical Committee:
- shall consider and elaborate upon, on the basis of the criterion of substantial transformation, the use, in a **supplementary or exclusive manner**, of other requirements,
- including **ad valorem percentages** and/or **manufacturing or processing operations**

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A first attempt to discuss preferential rules of origin at multilateral level: The UNCTAD Working Groups on Rules of Origin

- At the outset of the GSP, drafting a uniform set of rules of origin was the principal aim of the UNCTAD Working groups from 1974 to 1993.

- However, in the OECD Trade Committee on Preferences in 1970, the preference-giving countries stated that they were free to decide on the RoO as preferences are unilateral.

- Thus different sets of RoO applied according to each national GSP scheme.

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Rules of Origin prior to the ARO

- Basically a no man's land. No multilateral rules before the ARO.

- ARO broke new ground in several respects:

  - A set of harmonized rules of origin to be applied for all purposes.

  - However, no clear disciplines on preferential rules of origin.

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WTO Agreement on RoO

- Members undertake to apply non preferential rules of origin equally for all purposes art 9.1(a) of ARO.
- Harmonization work program (HWP) based on change of tariff classification and supplementary criteria (percentage criterion and specific working or processing).
- Technical Committee on Rules of origin (TCRO) in WCO and Committee on Rules of Origin in WTO (CRO).
- Work should have been concluded in 1999.
- Preferential rules of origin subject to a Common Declaration with no binding rules.

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The results of the HWP should be used for "Equally for all purposes…

- Antidumping and ASCVM
- Quotas
- Marks of origin
- SPS and TBT
- Statistics and public procurement
- Issue of implications of the HWP on other WTO Agreements has been the stumbling block

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The Bali Ministerial decision on preferential rules of origin for LDCs (December 2013)

- The 2005 WTO Ministerial decision to grant DFQF treatment to LDCs called for simple and transparent rules of origin.
- Since 2006 the LDCs tabled three full- fledged proposals for implementing such commitment.
- Initially discussed in NAMA till 2008 it was included in LDC package on the road to Bali.
- From a structured legal text to a Ministerial Decision.
- What is the future of such Decision?
  How will it influence RoO drafting ,if any?

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The annexed Nairobi Ministerial decision on preferential rules of origin for LDCs (December 2015)

- After the Bali Decision of 2013 WTO the LDCs have initiated a process in the Committee on rules of Origin to make it operational.
- CRO meetings of April 2014,October 2014,dedicated session of July 2015.
- A LDCs proposal in September 2015 containing binding language.
- The language of the Decision has been substantially diluted in the course of the negotiations to Nairobi.
- Resuming work in the CRO in 2018.

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Getting traction at Multilateral / Megaregional level for simplification

- The Harmonization Work Program under the WTO Agreement on rules of origin has been unable to reach consensus for the last 20 years
- Negotiations in the CRO have stalled since 2007.No negotiations, educational workshops
- Evidence from business indicates that absence of harmonized non preferential rules of origin has a cost. Business lumps together Non-preferential and preferential
- Nevertheless major administrations led by US still blocking consensus in the CRO ,Other delegations are hesitant
- There is significant movement on RoO for LDCs:

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Comparative table among HRO, CETA and TPP: signs of convergence across models? Yes, in some sectors

HS Code	HRO	CETA	TPP	EU-KOR	US-KOR
28.50 Hydrides, nitrides, azides, silicides and borides, whether or not chemically defined, other than compounds which are also carbides of heading 28.49.	CTH	A change from any other subheading, or: A change from within any one of these subheadings, whether or not there is also a change from any other subheading, provided that the value of non-originating materials classified in the same subheading as the final product does not exceed 20 per cent of the transaction value or ex-works price of the product.	A change to a good of heading 28.50 from any other heading.	Manufacture from materials of any heading, except that of the product. However, materials of the same heading as the product may be used, provided that their total value does not exceed 20 % of the ex-works price of the product	A change to heading 28.10 through 28.53 from any other heading.

Stream three: Comparative table among HRO, CETA and TPP: signs of convergence across models? Yes, in some sectors

HS Code	HRO	CETA	TPP	EU_KOR	US-KOR
87.12 Bicycles and other cycles (including delivery tricycles), not motorized	CTH, except from heading 87.14; or 35% value added rule	A change from any other heading, except from 87.14; or A change from heading 87.14, whether or not there is also a change from any other heading, provided that the value of non-originating materials of heading 87.14 does not exceed 50 per cent of the transaction value or ex-works price of the product	A change to a good of heading 87.12 from any other heading, except from heading 87.14; or No change in tariff classification required for a good of heading 87.12, provided there is a regional value content of not less than: (a) 35 per cent under the build-up method; or (b) 45 per cent under the build-down method; or (c) 60 per cent under the focused value method taking into account only the non-originating materials of heading 87.12 and 87.14	Manufacture in which the value of all the materials used does not exceed 45% of the ex-works price of the product	A change to heading 87.12 through 87.13 from any other heading, except from heading 87.14; or, provided that there is a regional value content of not less than: (a) 35 percent under the build-up method, or (b) 45 percent under the build-down method.

Stream three: Comparative table among HRO,CETA and TPP: there are also signs of divergence across models…

HS Code	HRO	CETA	TPP	EU_KOR	US-KOR
16.04 Prepared or preserved fish; caviar and caviar substitutes prepared from fish eggs.	CTH	A change from any other chapter, except from Chapter 3	A change to a good of heading 16.05 from any other chapter.	Manufacture: -for animals of Chapter 1, and/or - in which all the materia1s of Chapter 3 used are wholly obtained	A change to heading 16.05 from any other chapter

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Stream three: Comparative table among HRO,CETA and TPP: but there are also signs of divergence across models…

HS Code	HRO	CETA	TPP	EU-KOR	US-KOR
6203.42 Mens Cotton Pants	[Change to goods of this split chapter provided that the goods are assembled in a single country in accordance with Chapter Note.]	Weaving accompanied by making up (including cutting); or Making up preceded by printing accompanied by at least two preparatory or finishing operations (such as scouring, bleaching, mercerising, heat setting, raising, calendering, shrink resistance processing, permanent fmishing, decatising, impregnating, mending and hurling), provided that the value of the unprinted fabric used does not exceed 47.5 per cent of the transaction value or ex-works price of the product.	A change to a good of heading 62.01 through 62.08 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12 or 54.01 through 54.02, subheading 5403.33 through 5403.39 or 5403.42 through 5403.49, or heading 54.04 through 54.08, 55.08 through 55.16, 58.01 through 58.02 or 60.01 through 60.06, provided the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.	Weaving accompanied by making-up (including cutting) or Embroidering accompanied by making up (including cutting), provided that the value of the unembroidered fabric used does not exceed 40 % of the ex-works price of the product or Coating accompanied by making up (including cutting), provided that the value of the uncoated fabric used does not exceed 40 % of the ex works price of the product or Making-up preceded by printing accompanied by at least two preparatory finishing operations (such as scouring, bleaching, mercerising, heat setting, raising, calendering, shrink resistance processing, permanent finishing, decatising, impregnating. mending and hurling), provided that the value of the unprinted fabric used does not exceed 47,5% of the ex-works price of the product	A change to subheading 6203.41 through 6203.49 from any other 4-20 chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, or 53.10 through 53.11, 54.01 through 54.02, subheading 5403.33 through 5403.39, 5403.42 through heading 54.08, or heading 55.08 through 55.16, 58.01 through 58.02, or 60.01 through 60.06, provided that the good is both cut and sewn or otherwise assembled in the territory of one or both of the Parties.

Convergence on ad valorem percentage :Evolution of the US use of percentage-based rule of origin

Regional Value Content	NAFTA	CHL-USA	CAFTA	USA-SIN	USA-AUS	USA-KOR	TPP
No. of PSRO	1,125	1,043	1,017	2,974	965	758	1,245
Net cost	323	0	6	0	0	6	22
Transaction	284	0	0	0	0	0	0
Build-up	0	164	146	239	148	147	398
Build-down	0	157	147	213	144	152	457

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Convergence and Simplify RoO :What can be done…

- **The "spell" over the lack of progress and meaningful discussions in rules of origin at multilateral level should be broken**
- The ongoing **discussion at the CRO on preferential rules of origin for LDC is an unique opportunity** to get some traction in WTO
- **Single transformation, whatever form expressed should be the rule of thumb for drafting RoO according to Global value chains, taking into account sensitive sectors…**
- The LDCs should aim at achieving progress in the CRO on the concept of single transformation, rather than insisting on binding language in WTO Ministerial decisions
- **Work on administrative aspects of RoO**

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