

# WORLD TRADE ORGANIZATION

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## REPORT OF THE COMMITTEE ON RULES OF ORIGIN

### SECTION A - BACKGROUND

#### Introduction

1. This report covers the years 1995 and 1996. It addresses the work undertaken by the Committee on Rules of Origin (the Committee) in respect of the implementation of the built-in mandate for the harmonization of non-preferential rules of origin (Harmonization Work Programme); implementation of the Agreement on Rules of Origin (the Agreement) in general; and the identification of issues arising in the Harmonization Work Programme. As foreseen in the Agreement (Articles 4.1, 4.2 and 9.2(b)), the Harmonization Work Programme is being jointly undertaken by the Committee and the Technical Committee on Rules of Origin (the Technical Committee) established under the auspices of the World Customs Organization.

2. Multilaterally agreed rules of origin are indispensable for the unrestricted flow of international trade. They provide for predictability and transparency. Second, they eliminate obstacles to the free flow of trade, created by the existence of different national rules of origin with sometimes contradictory methods for the attribution of origin. Finally, under conditions of globalization in which goods are decreasingly being produced in one country there is an urgent necessity to agree to a common set of rules for the conferment of origin on goods. Discussions under the Work Programme illustrate these difficulties and challenges.

3. Members have recognized and reaffirmed that the negotiations for the harmonization of non-preferential rules of origin should establish rules that can be applied in an impartial, transparent, predictable, consistent and neutral manner. The essential objectives and principles of the Harmonization Work Programme are contained in Article 9.1 of the Agreement. Annexed to the Agreement is a common declaration with regard to preferential rules of origin which sets out certain disciplines to be followed in the application of such rules.

#### Work of the Committee on Rules of Origin

4. In the period under review, the Committee held eight formal meetings which were preceded by extensive informal consultations (see Annex II for minutes). The Committee elected Mr. Chiedu Osakwe (Nigeria) as Chairman and Mrs. Anikó Ivanka (Hungary) as Vice-Chairperson for 1995 and re-elected them for 1996.

5. Participation in the Committee is open to all WTO Members. In addition, Governments granted observer status by the WTO General Council, as well as representatives of the IMF, OECD, UNCTAD, WCO and the World Bank attended Committee meetings as observers.

6. At its meeting of 16 November 1995, the Committee adopted its rules of procedure, which were approved by the Council for Trade in Goods.

## **SECTION B - STATUS REPORT OF THE COMMITTEE'S WORK**

### **Implementation of the Agreement**

#### **(i) Harmonization Work Programme**

7. The Harmonization Work Programme was officially launched on 20 July 1995 and is scheduled for completion by 20 July 1998. The Programme is divided into three Phases:

- (i) Definitions of Goods Wholly Obtained, and Minimal Operations or Processes;
- (ii) Substantial Transformation - Change in Tariff Classification; and
- (iii) Substantial Transformation - Supplementary Criteria.

8. From the initiation of the Harmonization Work Programme, in July 1995, to the present, the Committee has received and considered four Reports from the Technical Committee on Rules of Origin (see Annex 2). According to the Agreement on Rules of Origin, the Technical Committee should submit quarterly results of its work to the Committee. At the time of submitting this Report to the Council for Trade in Goods, the Fifth Report from the Technical Committee had been received, but had not yet been circulated for consideration. Consequently, inputs from that Report were not available for inclusion in this Report.

9. At its meeting of 16 November 1995, the Committee began consideration of the First Report of the Technical Committee concerning the definition of wholly obtained goods (Annex A) and the definition of minimal operations or processes that do not by themselves confer origin to a good (Annex B). At that meeting, it approved definitions 1(a), 1(b) and 1(e) of Annex A, and definitions 1(a), 1(b) and 1(c) of Annex B. The Committee decided to request the Technical Committee to refine definitions of 1(c), 1(d) and 1(g) in Annex A. The Committee agreed to request the Technical Committee to forward a general format establishing the overall architectural design within which the results of the different phases of the Harmonization Work Programme will be finalized. On the problem of the definition of the term "country", the Committee decided to request the Technical Committee to fully proceed with the Harmonization Work Programme in the absence of an abstractly constructed definition of the term "country", and to forward to it unresolved practical issues relating to the definition of the term "country", for a final determination.

10. At its meeting of 1 February 1996, the Committee agreed that the Explanatory Notes to the definitions in Annexes A and B of the First Report should be legally binding. It was also agreed that the Committee should request the Technical Committee to revisit the Explanatory Notes on the basis that they will be legally binding. At this meeting, the Committee examined the issue of "scrap and waste" and identified three separate concepts: scrap and waste; articles that can no longer perform their original purpose; and parts recovered from the said articles. The Committee recognized that the issue of parts as an independent issue had not been addressed by the Technical Committee and consequently agreed to refer it to the Technical Committee. On the question of draft definition 2 of Annex A, including the origin of goods obtained or produced on vessels, factory ships, structures and installations outside a country, an alternative draft text was formulated as a possible basis for an agreed definition. However, at subsequent discussions on the issue at the May meeting, different views expressed by Members produced four alternative draft texts as a further possible basis for an agreed definition.

11. At its meeting of 10 May 1996, the Committee approved definitions 1(a), 1(b), 1(c), 1(d), 1(e) and 1(f) and the legally binding notes to those definitions in Annex 2 to the Third Report. With reference to definition 1(i), it was agreed that the Technical Committee should be requested to examine the meaning of the terms "produced" and "solely". The Committee determined the need to transmit

to the Technical Committee the request to further examine and clarify with a view to possibly defining the following terms when used in the context of wholly obtained or produced: processing, further processing and manufacturing. The Committee noted that the draft definitions of minimal operations or processes will be re-examined throughout the Harmonization Work Programme.

12. The Committee also considered the recommendation from the Technical Committee on the general rules for interpreting and applying the rules of origin and the general format establishing the overall architectural design of the harmonized rules of origin. It was agreed that the draft submitted to the Committee presented a valid basis for the continuation of the Harmonization Work Programme, and that the draft needed to be further developed, consistent with the Agreement, as work progresses.

13. The Committee established an Integrated Negotiating Text (INT) for the Harmonization Work Programme which provides a status report and factual account of all stages of the negotiations, including all reservations by Members (see Annex II). It is the common working document and reference point for the joint work of the two Committees. In establishing the INT, it was noted that the aim of such a text would be to enhance efficiency and discipline in the negotiating process, assist delegations, particularly in their capitals, in assessing progress in the negotiations and problems that exist and, finally, also assist in building a bridge of understanding between the two Committees.

(ii) Notification of non-preferential rules of origin

14. Notifications relating to non-preferential rules of origin have been received from 51 Members of which 22 Members notified that they do not have non-preferential rules of origin (see Annex I). This constitutes 46 per cent of Members of the WTO. 59 Members or 54 per cent have not notified.

(iii) Notification of preferential rules of origin

15. Notifications relating to preferential rules of origin have been received from 51 Members, of which one Member notified that it does not have preferential rules of origin (see Annex I). This constitutes 46 per cent of WTO Members. 59 Members have not yet notified their preferential rules of origin (see Annex I), constituting 54 per cent of WTO Members.

16. The Committee repeatedly expressed concern that a number of Members had not yet complied with the notification requirements, and urged those Members who have not yet done so to submit their notifications without further delay.

(iv) Other issues related to implementation of the Agreement

17. Further to the notifications, the Committee also discussed additional issues linked to the implementation of the Agreement. In this regard, concern was expressed by some Members on the need to avoid unilateral changes in rules of origin that create uncertainty and have adverse effects on international trade.

18. Members of the Committee commented also on notifications of national legislation submitted by some Members. Several significant issues were raised. For instance, views were expressed that complex procedures for certificates of origin and exclusive language requirements, in particular in relation to the application of anti-dumping duties, should be avoided; the view was also expressed that certificates of origin could constitute useful instruments in preventing practices aimed at concealing the actual origin of goods. To this end, simplicity of procedures and confidentiality of producer information were emphasized. However, on certificates of origin, the view was expressed that such instruments are not covered by the provisions of the Agreement. On the issues raised, the Committee

did not come to a common view. In the end, the Committee agreed that rules and procedures in domestic legislation must be compatible with GATT 1994 rules, and any changes before the conclusion of negotiations should be consistent with disciplines governing the transition period.

## **SECTION C - CONCLUSIONS AND RECOMMENDATIONS**

### Implementation of the Agreement in general

19. The Committee focused on the implementation of the Agreement, particularly on the Harmonization Work Programme.

20. A procedure was adopted by the Committee to deal with queries by Members in respect of notifications of national legislations. This procedure will serve to ensure a proper and coordinated examination of such notified legislation and to ensure conformity with disciplines established in the Agreement. The Committee recommends adherence by Members to the guidelines established for the treatment of notifications by Members.

21. The Committee recognized that notifications are indispensable for the effective and credible functioning of the WTO Agreement. Low rates of notification restrict the ability of the Committee to assess the global status of rules of origin, and consequently the effectiveness of new disciplines once they are concluded. The Committee calls on all Members that have not yet notified either their non-preferential or preferential rules of origin to do so without further delay.

### Harmonization Work Programme

22. The Harmonization Work Programme presents a mixed picture of progress and problems. The Work Programme is divided into Phases I, II and III as provided for in Article 9 of the Agreement. Phase I is largely completed, although two issues remain unresolved.

23. First, the origin to be attributed to parts recovered from articles in a country different from the country where the articles were used (consumed) raised several issues.

24. The key pending issue refers to parts recovered from used articles not fit for their original purpose and not capable of being restored or repaired, imported, *inter alia*, for recycling purposes. On this issue, environmental policy considerations were raised by some Members, that trade in such articles and parts should not be used to "dump" scrap and waste, toxic, hazardous and radioactive materials in other countries. The Committee recognized these concerns as valid. At the same time, most Members endorsed the view that the Committee should restrict its work to the attribution of origin to goods, and exclude extra-origin considerations which risk jeopardizing the work of the Committee.

25. The second unresolved question refers to the origin to be attributed to goods obtained or produced on vessels, factory ships, structures and installations outside a country. This question raised several complex issues of international law and public policy linked, in particular, with the practical application of the term "country" in relation to goods which should be considered as being wholly obtained. There are long-standing national positions at issue. Resolution of this problem will be possible only by constructive and mutual compromises and understanding by Members. To this end, the Committee is proceeding with the Harmonization Work Programme on the basis of addressing issues related to the term "country" only to the extent where there are practical consequences for the attribution of origin to specific goods, in the interest of achieving the objectives of this Agreement.

26. The Committee recommends that attention should strictly focus on the conferment of origin to goods, and that extra-origin considerations be excluded from its work. While it is recognized that

harmonization negotiations cannot be undertaken in a vacuum, related issues arising should be referred by the Committee to the relevant Committees.

27. While substantial progress has been made in Phase II of the Harmonization Work Programme, the Phase is behind schedule due to the complexities involved. Notwithstanding these delays, the Committee considers that the Harmonization Work Programme should be completed within the three-year time frame. To this end, additional steps need to be taken, in accordance with the provisions of the Agreement, to ensure adherence to the time frame. Note should be taken of the ongoing efforts to further improve the efficiency of the joint work by the Committee and the Technical Committee. In addition, the Integrated Negotiating Text for the Harmonization Work Programme is a significant and useful document that will facilitate the Harmonization Work Programme. It provides the basis for measuring the progress and the efficiency of the negotiations, as well as the coherence of the rules that are being established.

### Annex I

#### 1. Members that have notified Non-Preferential Rules of Origin

Argentina (G/RO/N/2 & 10)	Korea (G/RO/N/1)	Senegal (G/RO/N/10)
Australia (G/RO/N/1)	Madagascar (G/RO/N/11)	Slovak Republic (G/RO/N/1)
Canada (G/RO/N/1)	Malta (G/RO/N/4)	Slovenia (G/RO/N/5 & 7)
Colombia (G/RO/N/1)	Mexico (G/RO/N/12)	South Africa (G/RO/N/3)
Cuba (G/RO/N/3)	Morocco (G/RO/N/2)	Switzerland (G/RO/N/4)
Czech Rep. (G/RO/N/2)	New Zealand (G/RO/N/1)	Tunisia (G/RO/N/7)
EC (G/RO/N/1)	Norway (G/RO/N/8)	Turkey (G/RO/N/8)
Hong Kong (G/RO/N/1)	Peru (G/RO/N/4 & 5)	US (G/RO/N/1 & 6)
Hungary (G/RO/N/2)	Poland (G/RO/N/8)	Venezuela (G/RO/N/1 & 10)
Japan (G/RO/N/1)	Romania (G/RO/N/1)	

#### 2. Members that have notified that they do not have Non-Preferential Rules of Origin

Bolivia (G/RO/N/9)	Iceland (G/RO/N/5)	Philippines (G/RO/N/6)
Brunei Darussalam (G/RO/N/5)	India (G/RO/N/1)	Singapore (G/RO/N/3)
Chile (G/RO/N/6)	Israel (G/RO/N/13)	Thailand (G/RO/N/1)
Costa Rica (G/RO/N/1)	Jamaica (G/RO/N/4)	Trinidad & Tob. (G/RO/N/7)
Dominican Rep. (G/RO/N/9)	Kenya (G/RO/N/9)	Uganda (G/RO/N/13)
El Salvador (G/RO/N/10)	Malaysia (G/RO/N/6)	United Arab Emirates (G/RO/N/13)
Honduras (G/RO/N/3)	Mauritius (G/RO/N/1)	Uruguay (G/RO/N/12)
	Nicaragua (G/RO/N/10)	

**3. Members that have not notified Non-Preferential Rules of Origin**

Antigua and Barbuda	Gabon	Namibia
Bahrain	Gambia	Nigeria
Bangladesh	Ghana	Pakistan
Barbados	Grenada	Papua New Guinea
Belize	Guatemala	Paraguay
Benin	Guinea Bissau	Qatar
Botswana	Guinea, Rep. of	Rwanda
Brazil	Guyana	Saint Kitts and Nevis
Burkina Faso	Haiti	Saint Lucia
Burundi	Indonesia	Saint Vincent and Grenadines
Cameroon	Kuwait	Sierra Leone
Central African Republic	Lesotho	Solomon Islands
Chad	Liechtenstein	Sri Lanka
Côte d'Ivoire	Macau	Suriname
Cyprus	Malawi	Swaziland
Djibouti	Maldives	Tanzania
Dominica	Mali	Togo
Ecuador	Mauritania	Zambia
Egypt	Mozambique	Zimbabwe
Fiji	Myanmar	

**4. Members that have notified Preferential Rules of Origin**

Argentina (G/RO/N/10 & 12)	Hungary (G/RO/N/2)	Paraguay (G/RO/N/12)
Australia (G/RO/N/1)	India (G/RO/N/1)	Peru (G/RO/N/1 & 12)
Bolivia (G/RO/N/1 & 12)	Indonesia (G/RO/N/4)	Philippines (G/RO/N/4)
Brazil (G/RO/N/12)	Israel (G/RO/N/13)	Poland (G/RO/N/8)
Brunei Darussalam (G/RO/N/4)	Jamaica (G/RO/N/4)	Senegal (G/RO/N/10)
Canada (G/RO/N/1, 6 & 8)	Japan (G/RO/N/6)	Singapore (G/RO/N/3 & 4)
Chile (G/RO/N/6)	Kenya (G/RO/N/9)	Slovak Republic (G/RO/N/1)
Colombia (G/RO/N/1 & 12)	Korea (G/RO/N/7)	Slovenia (G/RO/N/5 & 7)
Côte d'Ivoire (G/RO/N/11)	Madagascar (G/RO/N/11)	Switzerland (G/RO/N/6)
Cuba (G/RO/N/3)	Malaysia (G/RO/N/4)	Thailand (G/RO/N/1 & 4)
Czech Rep. (G/RO/N/2)	Malta (G/RO/N/4)	Trinidad & Tob. (G/RO/N/7)
Dominican Rep. (G/RO/N/5)	Mauritius (G/RO/N/1)	Tunisia (G/RO/N/7)
EC (G/RO/N/1)	Mexico (G/RO/N/12)	Turkey (G/RO/N/8)
Ecuador (G/RO/N/12)	Morocco (G/RO/N/2)	US (G/RO/N/1, 6 & 12)
El Salvador (G/RO/N/10&11)	New Zealand (G/RO/N/1)	Uganda (G/RO/N/13)
Honduras (G/RO/N/3 & 10)	Nicaragua (G/RO/N/10)	Uruguay (G/RO/N/5)
	Norway (G/RO/N/8)	Venezuela (G/RO/N/1 & 12)

**5. Member that has notified that it does not have Preferential Rules of Origin**

Hong Kong (G/RO/N/1).

**6. Members that have not notified Preferential Rules of Origin**

Antigua & Barbuda	Ghana	Pakistan
Bahrain	Grenada	Papua New Guinea
Bangladesh	Guatemala	Qatar
Barbados	Guinea Bissau	Romania
Belize	Guinea, Rep. of	Rwanda
Benin	Guyana	St. Kitts & Nevis
Botswana	Haiti	Saint Lucia
Burkina Faso	Iceland	Saint Vincent & Grenadines
Burundi	Kuwait	Sierra Leone
Cameroon	Lesotho	Solomon Islands
Central African Republic	Liechtenstein	South Africa
Chad	Macau	Sri Lanka
Costa Rica	Malawi	Suriname
Cyprus	Maldives	Swaziland
Djibouti	Mali	Tanzania
Dominica	Mauritania	Togo
Egypt	Mozambique	United Arab Emirates
Fiji	Myanmar	Zambia
Gabon	Namibia	Zimbabwe
Gambia	Nigeria	

**Annex II**

1. **Minutes of Meetings of the Committee on Rules of Origin**

- 4 April 1995 (G/RO/M/1)
- 27 June 1995 (G/RO/M/2)
- 16 November 1995 (G/RO/M/3)
- 29 November 1995 (G/RO/M/4)
- 1 February 1996 (G/RO/M/5)
- 10 May 1996 (G/RO/M/6)
- 13 September 1996 (G/RO/M/7)
- 11 October 1996 (G/RO/M/8)

2. **Reports of the Technical Committee on Rules of Origin**

- G/RO/1 (First Report)
- G/RO/4 (Second Report)
- G/RO/5 (Third Report)
- G/RO/6 (Fourth Report)
- G/RO/9 (Fifth Report - received but not yet considered)

3. **Letters from the Chairman of the Committee on Rules of Origin to the Chairman of the Technical Committee on Rules of Origin**

- Working languages of the Technical Committee on Rules of Origin (6 April 1995, G/RO/W/1)
- Initiation of the Harmonization Work Programme (20 July 1995, G/RO/W/4)
- Definition of the term "country": establishment of a drafting group (29 June 1995, G/RO/W/5)
- Harmonization of rules of origin (2 January 1996, G/RO/W/9)
- Harmonization of rules of origin (1 February 1996, G/RO/W/11)
- Integrated Negotiating Text for the Harmonization Work Programme (22 May 1996, G/RO/W/13)
- Harmonization of rules of origin (21 May 1996, G/RO/W/14)
- Integrated Negotiating Text for the Harmonization Work Programme (12 September 1996, G/RO/7)
- Harmonization of rules of origin (16 September 1996, G/RO/8)

4. **Integrated Negotiating Text for the Harmonization Work Programme**

- G/RO/W/13
- G/RO/W/13/Rev.1