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

RoO in the Multilateral Trading system

Stefano Inama

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.

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."

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.

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

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.

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.

UNITED NATIONS
UNCTAD

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.

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

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?

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 2017.