TABLE RONDE 1: « ORIGINE NON PRÉFÉRENTIELLE »

Négociations à l'OMC pour l'harmonisation des règles d'origine non-préférentielles

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WTO AGREEMENT ON RULES OF ORIGIN:

- Facilitate international trade
- Clear and predictable rules
- "neutrality" and "impartiality" of rules
- Common (harmonized) rules of origin
- Work Programme for the Harmonization of non-preferential rules of origin

ARTICLE 1.2

COMMON RULES THAT WOULD BE USED IN ***NON PREFERENTIAL*** COMMERCIAL POLICY INSTRUMENTS, SUCH AS:

- Anti-dumping and countervailing duties;
- Safeguard measures;
- MFN treatment (import duties);
- Origin markings;
- Quantitative restrictions or tariff quotas;
- Government procurement; and,
- Trade statistics

- Establishment of a "**work programme**" for the harmonization of Non Preferential ROO
- Initiated as soon as possible, completed within 3 years
- WTO-CRO and WCO-TCRO collaborate
- Rules based on the country where a product was wholly obtained or where the last substantial transformation occurred (defined as ***change in tariff classification*** and supplemented with other criteria if necessary
- **Results (harmonized rules) will be an Annex to the WTO Agreement0**
- **"Transitional" disciplines:** ROO must not be used as instruments to pursue trade objectives
- either directly or indirectly (no restrictions or distortions to international trade

WORK PROGRAMME FOR THE HARMONIZATION OF NON-PREFERENTIAL RULES OF ORIGIN

- 1995- 2002: product specific rules negotiated and endorsed (55% of rules completed)
- 2002: list of 94 “core policy issues” to the General Council for a decision (G/RO/52)
- After consultations, the Chairperson of the Committee proposed additional rules:
    - 2006: package of product-specific proposals (JOB(03)/132/Rev.11)
    - 2007: package for machinery and other technical issues (JOB(07)/73 and 84)
- 2007: “*recognizing the insurmountable difficulties*” the CRO should suspend its work on 2 core policy issues and pursue its work on technical questions
- Since then, the work of the CRO has lost substance and relevance

"CORE POLICY ISSUES"

- Referred by the CRO to the General Council for discussion, decision and guidance (G/RO/52).

  - **Implication Issues (1 issue)**
  - **Dual rule for machinery (9 issues)**
  - **Product Specific rules (84 issues)**

- "Status update" summarizes the process and reflects the status of product specific rules to date (Part II and Part III: endorsed rules, rules that remain contentious, rules where there are objections, etc. JOB/RO/1/Rev.1)

"IMPLICATIONS" or "scope of application" of the Harmonised Rules

- Divergence of interpretation in the obligation to "apply rules of origin equally for all purposes set out in Article 1" (ARO, Art. 3(a))
- The scope of the rules could alter the way in which Members approach the negotiation of the rules and the HWP

EX: COFFEE

IF HARMONIZED RULE OF ORIGIN = *THE ORIGIN OF COFFEE IS THE COUNTRY WHERE THE BEANS WERE ROASTED OR OTHERWISE SUBSTANTIALLY TRANSFORMED*

IF COFFEE WAS GROWN AND HARVESTED IN **COLOMBIA** AND EXPORTED TO THE **U.S.** WHERE THE BEANS WERE ROASTED AND GROUND, CAN THE COFFEE BEAR THE MARK ***"100% COLOMBIAN COFFEE"*** IN THE U.S. MARKET?

<u>Argument 1</u>: no, because HRO also apply to “marks of origin” (GATT Article IX). If option 2 was used to determine the origin of the coffee (roasting), the origin of the coffee is the U.S. and a mark “100% Colombian coffee” would be misleading and fraudulent.
<u>Argument 2</u>: 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).

Also…
Registration of a Trademark / Geographical Indication: should a country refuse or invalidate the registration of a trademark which contains a geographical indication (“100% Colombian Coffee”) which is not the same as the “country of origin” (U.S. according to the HRO)?
Application of a Sanitary and Phyto-Sanitary measures: would a country restricting the importation of coffee grown in Colombia (certain pesticides) *automatically* restrict imports of coffee imported from the U.S.?
Anti-dumping measures, etc.

G/RO/W/65

SOLUTIONS PROPOSED FOR THE ADOPTION OF THE PACKAGE:

“Selective application”

HRO to be used whenever there is a mandatory legal requirement in a WTO Agreement

Each Member, in accordance with its rights and obligations under the provisions of the WTO Agreements to decide whether rules of origin are used in its non-preferential commercial policy instruments

The WTO Secretariat would be notified about Members’ practices

“Guidelines”

HRO as they are would be applied as “guidelines”, that is, a set of non binding rules as best practice (Decision, Recommendation, Declaration?)

The HWP would continue in parallel (which is why some also referred to an “early harvest”

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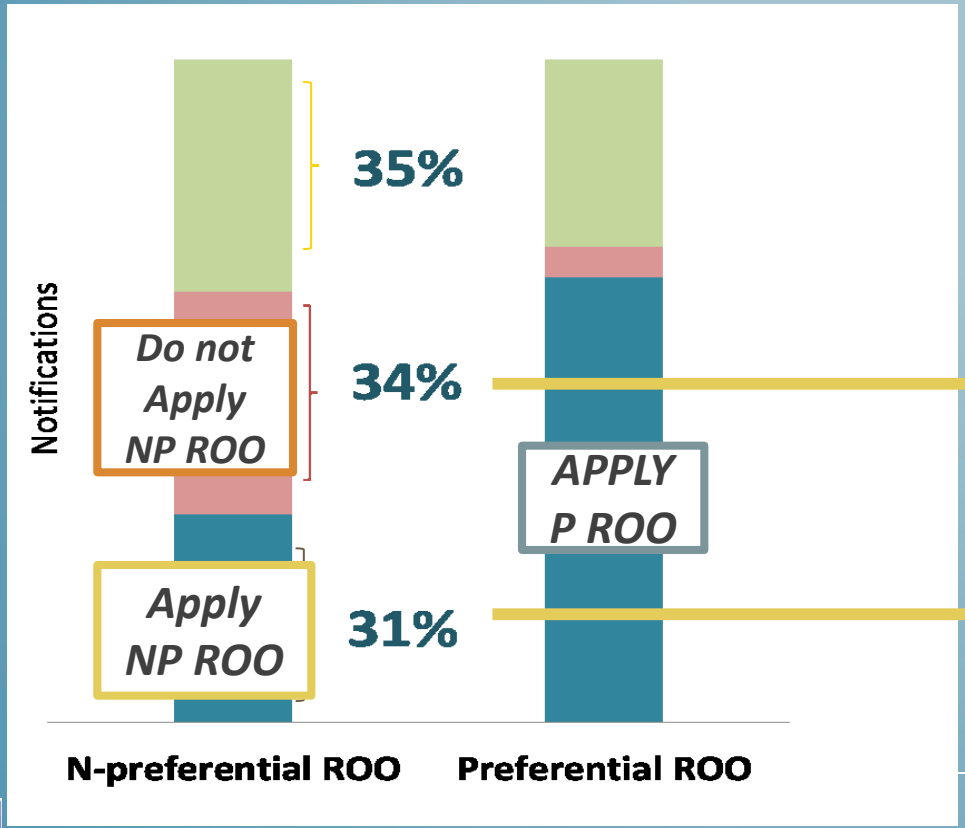
ORIGINE DES MARCHANDISES ? ORIGIN OF GOODS?



As of 23 August, 87* Members had notified Rules of Origin to the CRO

A third of WTO Members have non-preferential rules of origin in effect (41 Members).

Another third of Members do not (44 Members)

*Total 131 Members. The EU(28) is counted as one member

Question… is it still relevant to conclude the work? I.e. Would the adoption of harmonized rules of origin still facilitate trade?

- For some Members, concluding the HWP is no longer a political priority
- No demand from industry
- No need to distinguish NP origin at customs (attention is on preferential origin)
- Products now are globally produced, so the concept of national origin lost its significance
- The Committee should concentrate on other areas (at best, transparency)

- For some Members, the application of harmonized rules of origin would facilitate trade
- Non-preferential rules of origin might have lost importance for tariff treatment, but remain important in trade statistics, government procurement, labelling, anti-dumping, etc.
- Non-harmonized rules create uncertainties for exports because producers might not know which regulations, inspections or border measures will apply.
- Full negotiations or at least technical work should resume