

## **IMPLICATIONS OF THE IMPLEMENTATION OF THE HARMONIZED RULES OF ORIGIN ON OTHER WTO AGREEMENTS**

### Submission from Australia and New Zealand

The following communication, dated 9 April 2002, has been received from the Permanent Missions of Australia and New Zealand.

#### Purpose

This paper contains observations on the Harmonization Work Programme (HWP) and its implications, and the need to ensure that the product-specific rules developed under this programme are consistent with the trade-facilitating objectives and principles of the WTO Agreement on Rules of Origin (ARO).

The objective of this paper is to refer to the original aims and principles of the HWP, and suggest ways these could be used to facilitate the committee's further work.

#### Background

The ARO was negotiated during the Uruguay Round, in light of the aim to "bring about further liberalization and expansion of world trade"<sup>1</sup> to benefit all countries.

When the ARO was concluded in 1994 it was envisaged that the exercise of harmonizing non-preferential rules of origin would be completed in no more than three years. This deadline has been extended several times, which indicates the complexity of harmonising rules of origin (ROO).

#### Objectives and principles of the HWP

The objectives and principles set out in article 9(1) of the ARO explicitly provide the basis for the HWP, and the characteristics of the harmonised rules resulting from it: Origin should be determined by where goods are wholly obtained or, if more than one country is involved in the production of the goods, where the "last substantial transformation" has been carried out.

Harmonised ROO "should not be used as instruments to pursue trade objectives directly or indirectly", and "should not themselves create restrictive or disruptive effects on international trade" or "impose unduly strict requirements ... as a prerequisite for the determination of the country of origin".

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<sup>1</sup> Agreement on rules of origin, preamble.

It should be possible to administer these rules in a “consistent, uniform, impartial and reasonable manner”.

The rules of origin should be coherent.

The HWP should be undertaken consistent with the objective of providing “more certainty in the conduct of world trade”.

The whole ARO stems from the recognition by WTO members that “clear and predictable rules of origin and their application facilitate the flow of international trade”, and their desire “to ensure that rules of origin themselves do not create unnecessary obstacles to trade”<sup>2</sup>.

#### The current decision-making process for specific products

The ARO provides that where production of goods involves two or more countries, origin is determined by where the last substantial transformation takes place<sup>3</sup>. In the CRO members are currently considering two options for most issues, with a chairman’s recommendation of the most suitable option.

The onus now appears to be on members supporting a minority option or the option that is not the chairman’s recommendation to provide technical information to justify their position, or to develop a ‘special package’ of trade offs where they undertake to concede their position on a product-specific issue of lesser importance to secure a favourable position on an issue of more importance.

This “special packages” approach may produce results that are at odds with the last substantial transformation criterion provided for in the ARO. For this reason members should consider this point very carefully before basing any rules of origin on the weight of numbers or a package of trade offs. The “burden of proof” should not automatically be placed on members with a position that is supported by the minority, but on those proposing a rule that deviates from the criterion of last substantial transformation.

#### Relationship between rules of origin and other WTO agreements

There appears to be some uncertainty among members about the relationship between other WTO agreements and the rules of origin resulting from the HWP. For instance, questions have been raised about whether the rules must be used in the application of sanitary and phytosanitary measures, consumer labelling, geographical indications, origin-marking requirements and anti-dumping<sup>4</sup>. There may also be uncertainty as to whether considerations in these areas of trade policy should impact on the design and implementation of origin rules under the HWP. These questions may be slowing the HWP.

We note that the rules developed in the HWP should be applied for the purposes set out in article 1 of the ARO<sup>5</sup>. Discussion and agreement on the relationship between the rules of origin developed under the HWP and other WTO agreements not listed in article 1 of the ARO might help facilitate progress in the HWP.

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<sup>2</sup> Agreement on rules of origin, preamble.

<sup>3</sup> Article 9(1)(b) states: “rules of origin should provide for the country to be determined as the origin of a particular good to be either the country where the good has been wholly obtained or, when more than one country is concerned in the production of the good, the country where the last substantial transformation has been carried out”.

<sup>4</sup> For example, Japan’s G/RO/W/74 and the USA’s G/RO/W/65.

<sup>5</sup> Article 9(1)(b) states: “rules of origin should be applied equally for all purposes as set out in Article 1”.

### Coherence

The HWP should produce rules of origin that are coherent: “logical and consistent, holding together to form a whole”<sup>6</sup>.

Some of the proposed rules of origin in the latest integrated negotiating text seem to ignore capital-intensive manufacturing processes as sufficient to confer origin, while other proposed rules regard relatively light manufacturing processes as sufficient, despite similarities in the process and the final product.

For example the rules of origin recommended in the latest negotiating text would mean the processes of obtaining reconstituted milk, processed cheese, condensed milk and milk powders would not confer origin. Yet origin would be conferred for the processes involved in obtaining buttermilk and whey; milk products; milk solids; extracts or essences or concentrates; producing jams, fruit jellies, marmalades fruit or nut puree; and obtaining mustard from mustard flour and meal; distillation and obtaining margarine from fats or oils. Other inconsistencies concern obtaining meat from fish. The options recommended in the negotiating text suggest that obtaining fish meat does confer origin yet obtaining fish fillets does not. Inconsistencies are apparent in the textiles and clothing chapters of the integrated negotiating text, where the degreasing of wool is insufficient to confer origin but not the carding and combing of wool.

To help ensure that further consideration of the outstanding issues in the HWP is coherent, and consistent with the objectives of the ARO, it would be helpful if a summary of those rules already endorsed by CRO (or emerging themes) was articulated at the beginning of each chapter in the Chair’s text. This summary could provide a snapshot of the direction of negotiations to date. This information would usefully highlight any potential inconsistencies between those rules already endorsed under the HWP and rules still under consideration. This would be particularly useful prior discussion of the HWP in June 2002.

An integral part of the whole HWP is consideration of the result in terms of its overall coherence<sup>7</sup>. The CRO’s work on the HWP is not complete until this coherence review is completed. (Closely adhering to the principles of the HWP during the development of harmonised rules of origin will, of course, make this coherence exercise easier.)

The CRO might also wish to discuss how the coherence exercise mandated under the ARO will be carried out, and what the measure of coherence will be for the purposes of this exercise. Ways of addressing any lack of coherence in the rules could also be considered.

### Trade-facilitating effects

The ARO is predicated on the desire for harmonized rules of origin to be a tool for further liberalisation of trade, and not create unnecessary obstacles to trade. To achieve this, the results of the HWP must not add costs to international trade.

At present probably less than 5% of the world’s trade is subject to non-preferential ROO. If rules resulting from the HWP are applied generally in export markets, new documentation requirements will be imposed. There would be significant compliance costs on exporters and their

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<sup>6</sup> Concise Oxford Dictionary, 10th edition.

<sup>7</sup> Article 9(3): “On the basis of the principles listed in paragraph 1 ... upon completion of all the work identified in subparagraphs (i), (ii) and (iii) of paragraph 2(c), the Committee shall consider the results in terms of their overall coherence.”

suppliers, and possible trade distortions as stringent documentation requirements discourage trade and force exporters to change their source of raw materials or their export strategies.

There are also resource implications for the customs administrations in both the exporting and importing countries. Not all WTO members will be adequately resourced for this work. Further questions must be answered about how customs authorities would deal with certificates of origin. For instance, what are the legal implications if a certificate of origin cannot be provided or there is doubt about the authenticity of the document? Would this entitle the importing country to stop the transaction until a certificate is provided?

Any increased compliance costs for businesses and administrative burden on customs authorities are inconsistent with the efforts in the WTO to reduce the 'red tape' in moving goods across international borders.

It would be helpful for members to assess how the HWP in its emerging form will facilitate trade and add to the liberalising efforts of the WTO. To assist in this assessment members might outline how they would administer and enforce ROO, including clarification of exactly which classes of trade-related measures would be affected by the ROO.

### Conclusion

Ministers reiterated at Doha their desire to see the HWP completed. We feel that the work of the CRO in developing rules of origin under the harmonisation work programme would be facilitated by close reference to the objectives and principles in the ARO, especially by:

- close adherence to the principle of "last substantial transformation" where goods are produced in more than one country;
- consideration of whether each product-specific recommendation is objective, understandable, predictable, and trade-facilitating;
- a review of the coherence of the package of rules of origin, and consideration of whether they will be administrable in a consistent, uniform and reasonable manner.

Members might also find benefit in discussing and agreeing on how the results of the HWP might (or might not) relate to other WTO agreements, especially those not listed in article 1.

The success of the HWP will not and should not be measured by the fact of completion, though this would be a considerable achievement under the circumstances. The rules of origin must be measured by their practical impact on international trade. The HWP makes sense to the extent that it is consistent with the ARO and with the way business actually operates in the 21<sup>st</sup> century. The outcome of the HWP must be justified in terms of economic benefit, in terms of transparency and certainty in world trade, and a reduction (not increase) in compliance and transaction costs. Otherwise the international trading community has every right to question the fundamental benefits of the programme.

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