WORLD TRADE ORGANIZATION

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

Submission from New Zealand

The following communication, dated 24 June 2002, has been received from the Permanent Mission of New Zealand.

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Introduction

This paper contains observations about harmonised rules of origin (ROO) and their possible implications on other WTO agreements. It attempts to clarify the implications of the harmonised ROO on:

(a) ROO applied by a Member for imports and exports (marks of origin).
(b) The criteria used to determine the origin of goods produced and sold on the domestic market (domestic labelling requirements).
(c) ROO used for the purposes of the WTO Agreement on Technical Barriers to Trade (TBT Agreement).

New Zealand hopes discussions on these issues will assist in advancing the work of the Committee on Rules of Origin (CRO) and hopefully encourage members to take an approach to harmonising ROO that takes into full account the objectives and principles of the Agreement on Rules of Origin (ARO).

(a) Marks of origin – Article IX of the General Agreement on Tariffs and Trade 1994

Under Article 1.2 of the ARO, the ROO from the harmonisation work programme (HWP) include the ROO used in the application of origin marking requirements under article IX of the General Agreement on Tariffs and Trade (GATT) 1994. Article IX applies to marks of origin requirements used in relation to imports and exports. The explicit reference to marks of origin in Article 1.2 of ARO indicates that the ROO eventuating from the HWP should be used to determine the country of origin to be marked on goods. For a particular member, this means that where they are exporting to a country that has origin marking requirements, they will need to apply the HWP to determine how they mark such goods. Such exporting members would then have to amend their ROO (applied to imports and exports) to establish consistency with the ROO that emerge from the HWP.

Another consideration is that Article IX.2 of the GATT 1994 requires that any difficulties and inconveniences caused by enforcing marks of origin requirements to be reduced to a minimum, with due regard being given to the necessity of protecting consumers against fraudulent or misleading

indications. (Once the HWP is completed these ROO will form the basis for determining origin under any origin marking requirements).

Article IX.6 states members should cooperate to ensure trade names are not used in a way that "misrepresents" the true origin of a product to the detriment of distinctive regional or geographical names of the products of a territory of a member. Does Article IX.6 mean that trade names cannot be used if this misrepresents the origin of a product as defined by the HWP ROO? Will the HWP ROO facilitate this co-operation or make it more difficult?

(b) Domestic labelling requirements

Article 1.2 of the ARO states that ROO from the HWP will apply for marks of origin applied pursuant to Article IX of the GATT. These Article IX marks of origin are the marking requirements that a Member may place on goods from other members. Accordingly, Article IX does not apply to domestic labelling for goods made and consumed within the territory of a member, so domestic labelling is not immediately within the scope of Article 1.2.

However, Article 2(d) of the ARO states that, until the HWP is completed Members shall ensure that the ROO they apply to imports and exports are not more stringent than the ROO used to determine whether or not goods are domestic. This means that the ROO applied to determine whether or not a product can be considered "domestic", must be at least as liberal as the ROO being applied to imports and exports. In order to label a product as domestic, members will have to apply the HWP ROO or at least apply ROO that are no more stringent than the HWP ROO. This discipline on determining whether goods are domestic and can be labelled as such will also be in place after the HWP is completed[1].

All this suggests that the ROO currently used by members to determine origin for imports and exports cannot be more stringent than those used to determine whether or not goods are 'domestic'. Conversely, it could also be argued that the ROO used by members for domestic labelling purposes cannot be any less stringent (or more favourable) than the ROO used for determining the origin of export and imports.

This indicates that, before and after the HWP is completed, if members apply ROO to imports and exports that are more stringent than the ROO they use to determine whether or not goods are domestic, they will need to either:

- change their ROO for exports and imports so they are not more stringent; or
- change the ROO they use to determine whether or not goods are domestic so they are not less stringent; or
- decline to enforce the ROO that result from the HWP, if these are more stringent than the ROO used to determine whether goods are domestic or not.

The provisions of GATT Article III also warrant consideration in this regard, since they further underline the need to avoid any discrimination between regulations applicable to domestic and imported products.

[1] Article 3(c) ARO.

(c) WTO Agreement on Technical Barriers to Trade

The definition of technical regulation in Annex 1 of the TBT Agreement expressly includes any 'marking or labelling requirements'[2]. Accordingly, any technical regulations relating to labelling must be developed and applied consistently with the provisions of the TBT Agreement. The TBT Agreement is not expressly listed in Article 1.2 of the ARO, but we have already established that Article IX 'marks of origin' do fall within the ambit of the ARO. This seems to create potential difficulties in determining which disciplines to apply when developing mandatory country of origin labelling, and whether or not when developing such requirements to ensure consistency with the TBT Agreement or the ARO or both.

For example, under Article 2.4 of the WTO TBT Agreement, if a member applies a technical regulation requiring the country of origin to be labelled on goods, they should use existing relevant international standards as the basis for their technical regulation. In the case of prepackaged food, an international standard exists in the form of the Codex Alimentarius General Standard for the Labelling of Prepackaged Foods[3]. Under section 4.5 of the general standard, country of origin is required to be labelled on prepackaged food if its omission would mislead or deceive the consumer. This general standard further provides that where production of goods involves two or more countries, the country of origin is where the "nature of the product is changed".

The HWP on the other hand provides the ROO to be used in the determining of origin for origin marking requirements applied by members to imported goods. The criterion in ARO provides that where production of goods involves two or more countries, origin is determined by where the "last substantial transformation" takes place. If a Member requires the country of origin to be labelled on prepackaged food, this requirement could fall under Article IX of the GATT 1994 as a mark of origin and therefore be subject to the ROO referred to in the ARO. However under the TBT Agreement, the relevant international standard must be applied. Would the ARO ROO override the directive in section 4.5 of the General Standard? Could they be read consistently or is it fair to say that the provisions in the TBT agreement and the ARO appear to be at odds with each other?

Conclusion

The purpose of this paper has been to encourage a greater assessment of the potential implications of harmonised ROO on other WTO agreements. There is need for the coherence exercise mandated in the ARO to include further discussion of this issue. As mentioned in a previous paper[4], tabled jointly by New Zealand and Australia, we believe that the work of the CRO would be facilitated considerably by closer reference to the objectives and principles in the ARO.

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[2] Annex I of the TBT Agreement: - technical regulations include labelling requirements as they apply to products

[3] CODEX STAN 1-1985 (Rev. 1-1991), Codex Alimentarius

[4] G/RO/W/83.