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Committee on Rules of Origin

MINUTES OF THE MEETING OF 15-16 OCTOBER 2018

CHAIRPERSON: MRS. THEMBEKILE MLANGENI (SOUTH AFRICA)

Subjects Discussed[1]

The Committee on Rules of Origin (CRO) adopted the agenda as reproduced in document WTO/AIR/RO/8 with the inclusion of the following two items under Other Business: (i) "Determination of non-preferential origin for hot-rolled coil by Indonesia" – statement by Kazakhstan; and (ii) dates of the next CRO meeting.

[1] The agenda of the meeting was circulated in document WTO/AIR/RO/8.

1 IMPLEMENTATION OF THE BALI AND THE NAIROBI MINISTERIAL DECISIONS ON PREFERENTIAL RULES OF ORIGIN FOR LEAST DEVELOPED COUNTRIES

1.1. The Chair proposed, as indicated in the agenda, to discuss first all matters related to preferential rules of origin for LDCs and the implementation of the Bali (WT/L/917) and of the Nairobi (WT/L/917/Add.1) Ministerial Decisions. He therefore asked preference-granting Members to report any new developments related to both Decisions.

1.1 Report by Members about measures being taken to implement the Decisions

1.1.1 Report by the European Union about the implementation of the "REX System" of registered exporters

1.2. The representative of the European Union (EU) recalled that the certification aspects of the EU's GSP rules of origin had changed. Since 2017, the EU had implemented "self-certification" for registered exporters (presentation (RD/RO/71). Certification of origin was now based solely on a statement by the exporter, with no need for a third-party certificate of origin. Such a statement could be based on any commercial document. This was a very trade-facilitating measure for LDC exporters. However, she added, to benefit from these simplified procedures, exporters had to first register in a database. Registration was free of charge and consisted of a one-time only operation. Through the registration, the competent authorities in LDCs assigned a REX number to their exporters with which they could use the REX system in their trade operations. The information was transmitted to the EU and included in a public database of the EU's DG-TAXUD. Consignments of a value of less than €6,000 were exempted from that obligation. In addition to the registration system, beneficiary LDC authorities needed to complete two simple administrative pre-requisites. First, LDC governments had to sign a memorandum of understanding regarding administrative cooperation with the EU (in case of a verification of origin). Second, LDCs had to inform the contact details of the authorities competent for managing their registration system. The EU representative indicated that an identical regime was being implemented by Norway and Switzerland. As a result, completing these procedures also triggered an automatic recognition by both countries.

1.3. The objective of the EU, she said, was that all exports to the EU from LDCs would use the REX self-certification system by 30 June 2020. After that date, Form A certificates of origin would no longer be accepted. However, the EU realised that transitioning to this new system could prove challenging for some governments. For that reason, the Commission had envisioned a transitional period. She reported that 25 LDCs would apply the REX system from January 2017, but eight had not completed the two pre-requisites: Central African Republic; Chad; Democratic Republic of Congo; Djibouti; Liberia; Somalia; South Sudan; and Timor-Leste. Another eleven LDCs had to apply the system from January 2018, but seven had not provided the prerequisites to the EU: Afghanistan; Eritrea; The Gambia; Guinea; Mozambique; Niger and Sudan. The EU Commission organized regular training sessions in Brussels and in LDCs for governments that needed assistance.

1.4. The representative of Afghanistan asked whether exporters had to register at the national level, with local governments, or with the EU Commission. He also wondered whether there were any conditions that had to be met by exporting companies. Finally, he asked about the trainings and how to make sure his government could benefit from such opportunities.

1.5. Likewise, the representative of Senegal sought to clarify whether there were any checks made by the EU on applying companies. He asked, in addition, about the time it would take companies to complete registration procedures. Finally, he wondered whether there had been any evidence that the new system had facilitated the export process for companies and countries already using it.

1.6. In response, the representative of the EU clarified that only when all steps had been completed, would self-certification under REX be implemented for any given LDC. The steps, as she had explained, consisted of: (1) the registration of exporters with national authorities; (2) the conclusion of a memorandum of understanding between participating LDC governments and the EU Commission for administrative cooperation in case of an origin verification; and (3) the communication of the names and details of the competent local authorities. The registration of companies was made directly with national authorities, who themselves checked that applications were valid and complete. The registration could be completed electronically or on paper. The time needed to complete these procedures depended on national authorities alone. She argued, however, that the process could be

quick since the elements of the application were simple. Moreover, operators could start using the system from the moment they had requested registration and obtained an individual exporter number. They did not need to apply for any further procedures. Every consignment should simply mention the new individual exporter number. She clarified, furthermore, that it was the obligation of national authorities to monitor the application of the REX system. In case of irregularities, a company could be withdrawn from the system. Finally, regarding implementation, the EU had not received any complaints from LDCs. Several countries were already using the system successfully, including under some of the EU's free trade agreements (FTA). In conclusion, she invited delegations with further questions to approach the EU delegation in Geneva to make sure they could benefit from the system as quickly as possible.

1.7. The Committee took note of the report and of the statement made.

1.1.2 Report by other preference-granting Members

1.8. The representative of China reported that his government had granted trade preferences to LDCs with diplomatic relations with China since January 2005. The preferences had been gradually expanded and now covered more than 8,200 commodities and 43 LDCs. This meant that beneficiary LDCs could benefit from duty-free treatment on 97% of tariff lines. In 2017, he added, imports under the preferential treatment had reached 11.7 billion Yuan. Imports had been recorded on 403 8-digit tariff lines, consisting mainly of sesame, shelled peanuts, jute and non-alloyed nickel. Imports of these commodities had preference utilization rates of 99.8%, 99.8%, 100% and 89% respectively. In 2017, 93% of imports had originated from ten countries: Bangladesh; Ethiopia; Sudan; Tanzania; Senegal; Madagascar; Niger; Mauritania; Mozambique; and Togo. He reported, in addition, that China had taken various measures to continuously promote the implementation of the Bali and Nairobi Ministerial Decisions. First, it had reformed its rules of origin through five customs decrees and ten announcements and regulations. Second, it had sought to ensure better coordination and communication with LDC members. China had organized four training programmes on rules of origin and issuance of certificates of origin for more than 20 countries since 2005. More than 120 senior officials from customs and certificate-issuing authorities had been trained. Third, China had sought to optimize customs management methods through, in particular, a new Internet-based system for the issuance of certificates, to be implemented by the end of 2018. The system would improve the quality and efficiency of certificates of origin and help achieve paperless customs clearance under the preferences.

1.9. The representative of the World Customs Organization (WCO) reported that the WCO Secretariat had developed a practical guide on the implementation of the Nairobi Decision for LDCs. The Guide, published in June 2018, consisted of a practical guide, meant for customs administrations but also for the private sector. The guide was publicly available at the WCO website in English, French and Spanish and could be presented in further detail at the request of Members.

1.10. The representative of Tanzania thanked China for its efforts to implement the Ministerial Decisions. He had been impressed with the utilization rates mentioned and asked the delegation of China to consider submitting its preferential import statistics to the WTO Secretariat. This would allow the Secretariat and the LDCs to have a more comprehensive overview of China's preferential trade with LDCs.

1.11. In response, the representative of China said that his delegation had been preparing China's preferential tariffs and imports and that it would submit the information to the Secretariat over the coming days.

1.12. The Committee took note of the report and of the statement made.

1.2 Developments regarding methods using a Change of Tariff Classification (CTC) criterion to determine substantial transformation

1.13. The Chairperson recalled that, according to Paragraph 1.9 of the Bali Decision (WT/L/917), one of the objectives of the Committee was to monitor the implementation of the Ministerial Decisions and, in doing so, promote an exchange of experiences and identify and mainstream best practices. In this regard, at the last meeting of the CRO, it had been proposed to use a thematic approach to take that work forward. She therefore proposed to initiate that work by focusing on

paragraph 1.2 of the Nairobi Decision, that is, an examination of current practices and rules of origin based on the change of tariff classification (CTC) criterion. For that, she proposed to hear presentations by the WTO Secretariat and by the LDC group.

1.14. The Secretariat presented a background note which summarized and described Members' current practices on the use of CTC rules (G/RO/W/178). Paragraphs 1.1 and 1.2 of the Bali Ministerial Decision did not recommend the use of a single type of rules of origin. It recognized, instead, that different methods could be used to determine substantial transformation and the origin of goods, including the change of tariff classification criterion. In addition, the Bali and the Nairobi Decision contained a series of provisions to ensure that, when used, such rules were simple and transparent. The Decision contained four specific aspects:

a. Paragraph 1.2 encouraged Members to use a simple change of tariff heading (CTH) or change of tariff sub-heading (CTSH);
b. It asked Members to eliminate restrictions and exceptions in their rules (paragraph 1.2(b));
c. It asked Members to refrain from using rules which imposed a combination of requirements (paragraph 1.4); and
d. It asked Members to introduce a tolerance (de minimis) allowance in their CTC rules.

1.15. Based on these requirements, the Secretariat noted that the following preference-granting Members applied the CTC as a general rule: China (CTH as an alternative to the *ad valorem* criterion); India (CTSH in combination with the *ad valorem* criterion); Japan (CTH); Norway (CTH); and Switzerland (CTH). The EU applied the CTC criterion only in its product specific rules of origin (CTH, either separately or in combination/alternation with the *ad valorem* percentage criterion). The Secretariat also noted that these six preference-granting Members, with the exception of China and India, had introduced tolerance allowances in their rules.

1.16. The representative of Tanzania made a presentation on behalf of the LDC Group (RD/RO/72) recalling the Nairobi Decision benchmarks related to CTC rules. The presentation, he said, sought to identify preference-granting Members who applied CTC rules; Members who had exceptions in their rules; Members who applied CTC rules in combination with other requirements (double requirements); and Members whose rules could be considered as possible best practices. In connection with these questions, he noted that China; the EU; India; and Japan were the only preference-granting Members using the CTC method in their preferential rules or origin for LDCs (although, he noted, that several other Members used this method in their FTAs). In the case of exceptions, he noted that the rules of the EU and Japan contained several exceptions which resulted in restrictive product-specific rules of origin and which hindered market access. He noted, furthermore, that only India and Japan applied the CTC method in combination with other requirements. Finally, he provided illustrations of rules which could be seen as best practices, such as that for shoes in the EU GSP. He asked those Members whose rules and practices had been identified in the presentation, to consider simplifying their requirements whenever possible.

1.17. The representative of Chad delivered a statement on behalf of the LDC Group. He said that LDC delegations welcomed the progress made in the implementation of the Ministerial Decisions in the CRO. He acknowledged that implementation was a continuous process and asked preference-granting Members to continue simplifying their origin requirements to facilitate exports from LDCs, and help LDCs integrate international trade. He recalled that the Istanbul Programme of Action (IPoA) chartered out the international community's vision and strategy for the sustainable development of LDCs for the next decade, with a strong focus on developing their productive capacities. One of the objectives of the Programme of Action was to double the exports of LDCs by 2020. In that sense, the IPoA and the UN Sustainable Development Goals created a framework for collective commitment, which should guide preference-granting donors in their efforts to implement the Ministerial Decisions. Moreover, he said that the Group had been pleased with the high level of engagement by preference-granting Members on transparency and notifications. He noted, however, that some important Members had not yet notified their preferential import statistics. He asked all Members to notify the necessary tariff and import data so that the Committee could continue its work on preference utilization.

1.18. The European Union thanked the LDC Group and the Secretariat for their presentations and highlighted the importance of building the capacity of economic operators on preferential rules of origin. Better communicating and understanding of preferential origin requirements was key to achieving higher utilization of trade preferences. In relation to CTC rules, she said that the EU's 2010

reform of its preferential rules of origin had aimed at simplifying rules of origin for the EU's GSP but also for the EU FTAs. Extensive consultations with different stakeholders had pointed to the need to offer a choice of rules to economic operators. In this sense, the general objective of the reformed European origin system was to propose the choice between CTH or value-added. While some operators could fulfil the CTH criterion, others might have been more comfortable with a value-added requirement. As part of that reform, the EU had also eliminated double requirements (e.g. concomitant CTH and value-added requirements). Regarding some of the restrictions which appeared in the presentation, she said that they reflected the fact that the EU had moved away from more restrictive, wholly-obtained rules. Some of these limitations had in fact been thought of as a relaxation of the previous requirements. Finally, she said that the EU had a more general interest on the impact of rules of origin on preference utilization and that it stood ready to discuss best practices, whether in GSPs or FTAs.

1.19. The representative of Japan also thanked the LDC Group and Secretariat for the presentations. She understood that LDC exporters could face difficulties in obtaining originating status for some products. She recalled that the preferential rules of origin of Japan foresaw the possibility of considering specific requests. She therefore encouraged LDCs to engage with her government to discuss any specific difficulties they faced.

1.20. The representative of Tanzania thanked the European representative for sharing the EU's experience in reforming its rules of origin. He said that it would be equally useful to learn more about the European experience improving the utilization of its FTAs. The Tanzanian delegate also thanked Japan for its readiness to discuss the specific difficulties of the LDCs and said that the LDC presentation had highlighted a number of product-specific rules of origin, which were restrictive and could create difficulties for LDC exporters. He invited the Japanese delegation to assess those cases and consider reforming those rules.

1.21. The representative of Senegal supported the statements made by other LDCs during the meeting and stressed that the presentations offered very specific examples of restrictive rules of origin. These illustrations offered a roadmap for preference-granting Members to reform their rules of origin and facilitate the participation of LDCs in world trade. Product-specific rules of origin which contained exceptions were particularly complex and restrictive, he said.

1.22. Likewise, the representative of Burkina Faso called on Members who had not yet reassessed their preferential rules of origin in light of the Nairobi Ministerial Decision, to do so as soon as possible. He suggested that preference-granting Members could, as a first step, examine their product-specific rules of origin and the extent to which exceptions to the rule were needed or not. Similarly, he invited Members who applied combination rules to examine the need for such rules. India was one of the Members using extensive combination rules. He therefore wondered whether the government of India was considering specific reform to simplify its rules and facilitate imports from LDCs. He also said that India could consider implementing technical assistance programmes to build the capacity of LDC operators about market access opportunities in India. Finally, he asked the EU and Japan to clarify why stricter origin criteria were needed for specific products, instead of the more lenient general rules of origin.

1.23. The representative of Yemen recalled that the LDCs had been arguing for simpler rules of origin for some time, and noted that several preference-granting Members applied more flexible rules of origin in their FTAs than in their preferences for LDCs. He asked the Committee to further examine such trade-facilitating rules with a view to identifying best practices. He argued that an intention to establish trade creating rules of origin should guide the reform of LDC preferential schemes.

1.24. In conclusion, the Chairperson thanked the Secretariat, the LDC Group and other delegations for their engagement in these discussions. She said that a thematic approach to examining existing rules of origin and practices had proved useful, as it had allowed for more focused discussions among Members. She therefore proposed to continue this approach. She also encouraged Members to share experiences that could help the Committee identify and promote best practices.

1.25. The Committee took note of the statements made and agreed to proceed accordingly.

1.3 Notification of Preferential Rules of Origin for LDCs – Update by the Secretariat

1.26. The Chair recalled that the Committee had adopted in 2017, a template for the notification of preferential rules of origin for LDCs, which had proved a very successful tool in obtaining standardized and comparable information about current origin requirements. He invited the Secretariat to report on this issue.

1.27. The Secretariat explained that document G/RO/W/163/Rev.4 contained a detailed list with the latest notifications available in the three relevant areas. In fact, work on preferential rules of origin for LDCs in the CRO, relied on the availability of information notified under three types of requirements. First, notifications to the Committee on Trade and Development (CTD), contained information about the specific list of tariff lines for which trade preferences were available, the duration of preferences, the precise list of LDC beneficiaries and the eligibility requirements. Second, notifications to the CRO allowed Members to identify the specific criteria used to determine and certify the origin of goods obtained or manufactured in the LDCs. Third, annual notifications to the Integrated Database (IDB), allowed the identification of tariff lines on which preferences were available, the rates of preferential duties (zero, most of the time, but not always), and values of imports from each LDC under PTAs at the tariff-line level. While coverage of information about rules of origin for LDCs had significantly improved thanks to the template agreed by Members (G/RO/84), a few Members had still not notified their preferential rules of origin to the Secretariat, namely: Armenia; Iceland; Kyrgyz Republic; Montenegro; Tajikistan; and Turkey. Moreover, preferential tariffs and preferential imports were still missing from several Members in the IDB, namely: China; Iceland; India; Kyrgyz Republic; New Zealand; the Russia Federation; Tajikistan; and Turkey.

1.28. Having heard this report, the Chair asked the Secretariat to get in touch with the delegations for whom some notifications were missing, to ensure that these delegations understood what was expected from them. She asked the Secretariat to assist these delegations as necessary, to make sure they could prepare such notifications. She asked the Secretariat to report back to the Committee on such efforts at the next meeting of the Committee.

1.29. The Committee took note of the report and agreed to proceed accordingly.

1.4 Utilization rates under Preferential Trade Arrangements (PTA) for Least developed countries (LDCs)

1.30. The Chair recalled that, based on the Paragraph 4.3 of the Nairobi Decision, the Secretariat may calculate utilization rates to contribute to improving Members' understanding about origin requirements and their effects on the ability of LDCs to use trade preferences. She asked the Secretariat to present the updated report on the issue (G/RO/W/179). She also informed Members that the LDC Group would also be making a presentation under this agenda item.

1.4.1 Presentation by the WTO Secretariat (RD/RO/69)

1.31. The Secretariat presented a background note on preference utilization rates (G/RO/W/179). Unlike the first note on the matter (G/RO/W/168/Rev.1), the current note had taken a new approach and focused on underutilization. In fact, a high utilization of preferences necessarily indicated that preferential rules of origin could be complied with and were not an obstacle to trade. Non-utilization of trade preferences, on the contrary, indicated that preferential rules of origin could be hindering trade. For this reason, identifying "pockets" of non-utilization or underutilization could provide Members with a more adequate tool to identify restrictive rules of origin. The note therefore contained underutilization rates for specific LDCs, specific PTAs, and specific sectors. The Secretariat explained that underutilization concerned all sectors and all LDCs, but seemed to be of greater concern for some specific countries, some schemes, or some sectors. For instance, about half of all exports of fruits and vegetables from the LDCs did not utilize trade preferences (49.3%). This was surprising as these were products which were subject to simple rules of origin (presumably wholly obtained products). If the rule itself could not explain low utilization rates, further research was needed to identify other possible causes, such as certification requirements or the obligation of direct shipment. Other possible causes could be that there was no incentive to utilize the preference (e.g. MFN rate of zero) or the existence of other trade preferences (e.g. a FTA). Annex 1 of the note showed more disaggregated figures for each LDC and each PTA.

1.32. The representative of Djibouti expressed concern over the figures on utilization of trade preferences shown in the Secretariat report. She asked Members to examine the causes of underutilization of trade preferences, with the support of the Secretariat. She also encouraged preference-granting Members to work for an effective and fuller use of the GSP.

1.33. The representative of Tanzania thanked the Chair on behalf of the LDCs and appreciated the work done by the Secretariat. He commented that the Secretariat report confirmed that restrictive rules of origin created market access hurdles for the LDCs. He was particularly concerned to learn that agricultural products were, in some cases, not utilizing trade preferences. Unprocessed agricultural goods, one would think, should easily comply with wholly obtained rules of origin. However, low utilization rates could be an indication that other requirements, such as the obligation to ship goods with a through bill of landing, the requirement to indicate the name of end buyers in the documents or to present a certificate of non-manipulation could be affecting trade of those products. He suggested that Members should continue analysing these issues in greater detail.

1.34. The representative of Nepal pointed out that the presentation had confirmed that there was room for improving utilization of trade preferences, and therefore conducting further work to understand all factors impacting preferential trade. She recalled that LDCs represented less than 1% of global trade, despite being amongst the most open and trade dependent countries in the world. She further recalled that the Hong Kong Ministerial Declaration had established the commitment to provide duty-free and quota-free preferences to all products originating in the LDCs. It mentioned, furthermore, that preferential rules of origin should be as transparent, simple and objective as possible, as further elaborated upon in the Bali and Nairobi Ministerial Decisions. In her view, effective trade preferences should lead to export diversification, enhancement of the productive capacities and increase in exports from the LDCs. Preferential rules of origin and other origin requirements played a central role in shaping trade preferences to achieve such objectives.

1.35. The representative of Switzerland noted that while over 90% of exports from LDCs entered Switzerland on a duty-free basis, only about 50% of trade on dutiable lines utilized trade preferences. He agreed that this was not satisfactory. He shared the same view expressed by the representative of Djibouti that Members had not sufficiently explored the causes of underutilization. He asked if the Secretariat could deepen its analysis by studying more specific products and trade between two Members. A more specific examination could perhaps help identify the causes of low utilization rates. In addition, he commented that one of the possible causes of low utilization rates for Switzerland might be certificates of origin. To solve the problem, Switzerland, Norway and the EU had reformed their origin certification system to move towards self-certification and the REX System since 2018.

1.36. The representative of the European Union said that the EU Commission had recently conducted a study on the utilization of EU's FTAs. The study had examined utilization rates and revealed that some economic operators were not using preferences because they did not know where to find the relevant information. If they did, the study had shown that operators did not know how to read very complicated rules or had practical difficulties in applying the legal requirements. Without prejudice to the report, she considered that these additional elements should also be considered. She mentioned that communication and training for economic operators explaining how to apply for preferences and how to comply with origin requirements, would also be useful tools to improve utilization rates.

1.37. The representative of Tanzania appreciated that there seemed to be a growing consensus in the Committee that in some cases preference utilization rates were disappointing. He thought that LDCs and preference-granting Members could, nonetheless, address the challenges which lead to underutilization if they collaborated to better understand these matters. To that end, he appreciated Switzerland's proposal to carry out more specific studies between two Members to identify the possible causes of non-utilization of preferences. He recalled that Annex 1 of the note of the Secretariat, highlighted several countries and showed underutilization in specific markets. He highlighted, for instance, the case of India where the value of imports foregoing preferences and being imported under MFN conditions was very large and therefore a great cause of concern.

1.38. The representative of India thanked all the delegates who had made a useful contribution to this important discussion. In relation to low utilization rates, he recalled that there were obligations on both ends of trade preferences and both ends would need to be looked at to fully understand the hurdles that could lead to non-utilization. He recalled a study done by the International Trade Centre

(RD/RO/67) and he quoted that "among the difficulties reported, 77% related to origin procedures, for example certification, and 9% to rules itself" and "furthermore, 90% of the procedural delays and costs were caused by barriers in the exporting country itself". He suggested to examine these aspects further and try to find solutions to these problems.

1.39. The Secretariat clarified that underutilization rates (as opposed to utilization rates) was a more useful indicator of trade barriers which could be impacting the ability of LDCs to fully utilize trade preferences. Lack of utilization or underutilization constituted a missed opportunity from the point of view of the LDCs. The Secretariat agreed that more specific analyses would be useful, including by focusing on country pairs to try to find patterns that could be linked to specific rules of origin.

1.4.2 Presentation by the LDC Group (RD/RO/73)

1.40. The representative of Tanzania presented, on behalf of the LDC Group, further analyses on the utilization of PTAs by LDC countries. He explained that a recent study conducted by UNCTAD and the Swedish Board of Trade on the utilization of the EU's FTAs had highlighted a number of interesting factors. First, the direct transportation requirement seemed to have a negative impact on the utilization, for instance, of the EU-Korea FTA. Second, the stringency of product-specific rules of origin seemed to have a negative impact on the utilization of the EU-Mexico FTA. If both patterns were true of these agreements among advanced economies, the same patterns should certainly also negatively affect LDC exporters.

1.41. With relation specifically to LDC PTAs, a preliminary study of the trade statistics available confirmed a number of assumptions. First, underutilization and non-utilization concerned all preferential schemes. Sometimes, utilization rates were low across all products. In other cases, even when the overall utilization was high, there were "pockets" of low utilization in critical products. For instance, only 28% of suitcases (HS42.02) from LDCs had been granted preferences in the US. Similarly, only 1.1% of fish exports from LDCs (HS03.03) had received preferences in Japan. Similar examples could be found in the schemes of Canada; the EU; Switzerland and those of developing countries.

1.42. While further detailed analysis would be needed, the representative of Tanzania made some recommendations. First, he urged all preference-granting Members to comply with the transparency and notification obligations contained in the Bali and Nairobi Ministerial Decisions, in particular, those relating to import statistics as this would allow wider studies. Second, all preference-granting Members should strive to notify trade data for multiple years. A multi-year analysis would be more robust as it avoided annual trade variations. Finally, he recommended that the Committee continue discussing preferential utilization rates as an indicator of the restrictiveness of rules of origin.

1.43. The representative of Myanmar noted that the figures showed that his country was particularly vulnerable to underutilization of trade preferences. In 2015, for instance, only a tiny fraction of exports from Myanmar had been granted preferences in India; Korea; or Switzerland. This was a great concern. His delegation was ready to engage in further technical work with the Secretariat, UNCTAD and preference-granting Members to identify ways of reversing that situation.

1.44. The representative of the Democratic Republic of Congo also expressed concern over low utilization rates and suggested that, as proposed by Switzerland, the Committee should conduct a deeper analysis of trade flows to better understand these problems. An examination of bilateral trade flows could be a useful step forward. She said that, in addition to relaxing preferential rules of origin, Members should also work towards improving the information available about preferences. In her country, economic operators undoubtedly lacked information about preferential market access opportunities and the conditions attached to them. She proposed to hold information sessions on these preferences and help disseminate information among government officials and economic operators.

1.45. The representative of the European Union agreed that the presentation contained interesting figures. She highlighted the case of vanilla from Madagascar, a very simple product which was not being granted preferences. She would be curious to research further the reasons that could explain that paradox. A similar reasoning could apply to many other products, such as turbo chargers, with a rule of origin of "CTH or 70%". She said that the EU would be willing to collaborate fully with other

Members and the Secretariat to understand cases such as those. She recalled that the EU had indeed been conducting further research on the utilization of its FTAs. One of the aspects which had emerged was the fact that different countries had different methods of collecting trade data. This raised the question about the comparability of the statistics being used. Furthermore, she added, the EU had noted that an identical rule being applied to two different partners under two different agreements, could lead to different levels of utilization, suggesting that the rule alone was not an impediment to trade. She also said that direct shipment could be a challenge, which is why, in the case of the EU's preferences for LDCs, a more flexible "non-alteration" requirement was applied. EU studies had also pointed to additional complications, such as the importance of trade from free-trade zones or the availability of tariff suspensions. For instance, utilization of the EU-Chile FTA was very low and the reason seemed to be that the bulk of trade was taking place on products traded, for which duty-free treatment could be obtained under a tariff suspension regime. These arguments, she said, did not diminish the importance of rules of origin, but rather shed some light on how complex or nuanced these matters were.

1.46. The representative of Canada joined others in supporting more detailed work to explore the causes behind low utilization rates. She said that the Canadian government had granted preferences for over 30 years to promote economic development in the LDCs. Such preferences had rules of origin which aimed at ensuring that the benefits of such preferences actually accrued to the beneficiary LDCs. Canada had amended its rules of origin in 2017 to allow LDCs to use manufacturing inputs sourced and processed in an expanded list of countries in the production of garments, t-shirts and trousers. These changes were intended to better reflect the sourcing patterns and manufacturing capabilities of certain LDCs for these products. As a result, Canada stood ready to work with the LDCs and find solutions for any problems that may still persist.

1.47. In conclusion, the Chair proposed that the Committee took note of the Secretariat report and the presentations and statements that had been made. In addition, she encouraged Members to continue improving their understanding of the impact that origin requirements had on preference utilization. In that sense, the Secretariat should further its analyses to further assist Members in their discussions.

1.48. The Committee took note of the statements made and agreed to proceed accordingly.

1.5 Draft Report of the CRO to the General Council on preferential rules of origin for LDCs

1.49. The Chair asked Members to consider the Committee's draft report to the General Council (G/RO/W/180).

1.50. The representative of Norway pointed out that the first page should read "Members also took note of the status of implementation of the self-certification system for registered exporters being implemented by the European Union, together with Norway and Switzerland (Registered Exporter system, REX)"

1.51. The report was adopted with the changes proposed by Norway (G/RO/87).

2 EDUCATIONAL EXERCISE AND EXPERIENCE SHARING ABOUT NON-PREFERENTIAL RULES OF ORIGIN – INFORMATION SESSION ON "TRANSPARENCY AND AVAILABILITY OF INFORMATION"

2.1. The Chairperson recalled that the objective of the educational exercise was to help the Committee better understand the impact that existing non-preferential rules of origin had on international trade. In previous sessions, several speakers had complained about a lack of transparency on non-preferential origin requirements. Some had highlighted the difficulty to retrieve the applicable rules of origin (access to information). Others had mentioned problems with finding reliable or simple-language information (transparency). As a result, she proposed that the Committee focused its attention on better understanding "transparency and notification gaps". She therefore proposed to hear three presentations: by the WTO Secretariat, by the WCO Secretariat and by the International Trade Centre (ITC).

2.2. The WTO Secretariat presented the existing notification obligations covering non-preferential rules of origin and highlighted some of the main information gaps related to such notifications.

The Secretariat explained that Article 5 of the Agreement on Rules of Origin contained these notification obligations. The more recent Trade Facilitation Agreement also contained transparency provisions however, those related to domestic publication and not to notification. He highlighted the following main features of Article 5:

a. All WTO Members had an obligation to submit a notification to the Secretariat, whether the Member applied non-preferential origin requirements or not;
b. Article 5 contained no guidance regarding the format to be used, the level of detail to be reported or the specific items (scope) to be notified;
c. Neither did Article 5 provide guidance on the language to be used. Members had, nevertheless, adopted a Committee Decision (G/RO/1), which required that a summary in one of the WTO working languages be used when the national legislation was not available in an official WTO language;
d. The Agreement did not contain any guidelines regarding the type of follow-up or examination of notifications; and
e. Finally, Article 5 did not oblige Members to notify modifications of their legislation (it only requested that any modifications be published domestically, but not that it be submitted to the Secretariat).

2.3. The Secretariat explained that many of these features and apparent gaps could be explained by the fact that the Agreement had been drafted on the premise that harmonized non-preferential rules of origin would be adopted. In other words, national non-preferential rules of origin were thought to be temporary as they would have been replaced by harmonized, multilateral rules. Such rules had not been finalized. As a result, interest for national legislation in this area had increased, putting notifications under greater scrutiny however, given the lack of guidance from the Agreement, current notifications presented the following problems:

a. The bulk of notifications available had been received over 20 years ago, in 1995-96. Since the Agreement did not require the notification of changes, it was impossible to know whether the sets of legislation notified were still correct or in force;
b. It was impossible to know the scope of application of Members' non-preferential rules of origin. There was no clarity regarding the trade policy measures for which the rules notified applied and whether the same rules applied in all cases;
c. Similarly, it was not clear from the notifications whether the rules applied across the board to all products or only to some sectors;
d. Inconsistent or insufficient information had been reported about certification and other procedural requirements. It was thus not possible to compare requirements across Members. Neither was it possible to identify the type of proof of origin used and whether a prescribed format of certificates of origin was required in some or all cases;
e. There was no information available about Members' procedures regarding advance rulings (Article 2(h)); and
f. Seldom had the original legislation been provided in full or referenced (through an Internet link).

2.4. The representative of the WCO Secretariat continued and explained that the lack of transparency regarding non-preferential rules of origin also affected the work of customs administrations. In fact, one of the essential functions of customs was to ensure correct revenue collection. To that end, customs officials needed certainty about the value, the classification and the origin of imported goods. Without any of these three elements, customs could not operate efficiently. Since there were no multilaterally harmonized non-preferential rules of origin, the applicable rules were those of the importing country. Different countries had different rules and practices which added to the already complex "spaghetti bowl" of preferential rules of origin. Complexity and lack of certainty also affected the ability of customs to offer predictability and trade-facilitating solutions (e.g. by offering advance rulings). Given this situation, she concluded, the WCO was working to develop guidelines and tools that could be used by Members to streamline and simplify their origin procedures.

2.5. The International Trade Centre (ITC) informed Members about a recently launched tool aimed at providing access to reliable information regarding tariffs and rules of origin. The WTO-WCO-ITC "Origin Facilitator" (https://findrulesoforigin.org) allowed users to find product-specific origin requirements. The Facilitator was being developed to display the origin-related rules and requirements contained in (reciprocal) FTAs, (non-reciprocal) PTAs and in non-preferential

legislation. He noted, however, that the team working on this tool were facing serious difficulties in accessing reliable information about non-preferential requirements. While the official text of FTAs and PTAs could often be easily accessed, non-preferential requirements relied on multiple, complex regulations which were not always easily available. Yet, rules of origin and origin procedures ranked among the top barriers faced by businesses. ITC surveys of businesses had revealed that rules of origin were seen as an impediment to trade by 8% of companies for the export of agricultural goods and in 23% of cases for manufactured goods. The problems reported concerned procedural and documentary difficulties (78% of cases), the stringency of the origin criteria (9%) or both (13%). These findings, he thought, called for work aimed at simplifying rules of origin and improving access to information about the relevant requirements.

2.6. The representative of Switzerland noted that the three presentations had highlighted information gaps from three different perspectives: policy-makers, customs officials and private sector operators. He noted, in addition, that Members were under the obligations of Article 2(c) of the Agreement on Rules of Origin which required that "rules of origin shall not themselves create restrictive, distorting, or disruptive effects on international trade." Given the scope of information gaps that had been identified by the WTO Secretariat, he wondered how Members would effectively monitor the observance of that article. He argued that information gaps jeopardized the ability of Members to properly monitor the implementation of WTO Agreements. Similarly, the lack of certainty about the applicable non-preferential rules of origin also jeopardized essential aspects of the work of customs administrations, such as origin certification and origin verification. Finally, he noted that businesses also suffered from the lack of information, as could be inferred from the difficulties that the ITC had in obtaining relevant information to feed its database. As a result, he suggested that it was incumbent on the Committee to take steps and improve the current situation.

2.7. The representative of Hong Kong, China deplored the situation as depicted by the three presenters and argued that the Committee had a very strong case to improve notifications and ensure the relevance of the WTO for traders. She said that from a trade-facilitation viewpoint, it had become urgent to improve access to information. This was particularly in the interest of small businesses who simply did not have the resources to bridge this information gap. She wondered whether there were estimates about the portion of international trade that was subject to non-preferential origin requirements. She also wondered whether the ITC intended to widen the scope of its rules of origin database to cover non-preferential rules of origin.

2.8. The representative of the European Union reiterated that her delegation supported transparency both in terms of domestic publication and notification to the WTO. She agreed that access to accurate information was essential for economic operators. The EU had conducted a survey which corroborated some of the findings mentioned by the presenters. In particular, the fact that operators needed greater and simplified access to simple, business-friendly information. This was actually in the interest of administrations as it would ensure better compliance with their requirements. Furthermore, she highlighted the importance of the ambitious work being conducted by the ITC in this area. She said that the EU might have some suggestions regarding the terminology being used in ITC's Facilitator. She wondered how the ITC was planning to ensure that the Facilitator remained up-to-date once all the rules of origin had been entered in the Facilitator.

2.9. The representative of the United States, reflecting on the presentation by the WTO Secretariat, asked other Members to reflect about the extent to which information gaps had made their trade more difficult in a practical sense. She thought the gaps on rules of origin greatly illustrated some of the major problems with respect to information gaps in the WTO notification system. She wondered whether other Members thought that some gaps were more pressing than others. She also wondered whether the needs of traders could be disaggregated to better identify whether their problems only related to lack of information or also to other origin-related procedural aspects.

2.10. Likewise, the representative of Canada wondered if information was available about the more specific challenges that industry was facing in relation to rules of origin.

2.11. The representative of El Salvador asked whether the percentages of Members who had notified their non-preferential rules of origin considered all notifications received since 1995. She was interested to confirm the number of Members who had notified that they did not apply non-preferential origin requirements. She asked, in addition, whether the Secretariat had more information about the trade policy measures to which non-preferential origin requirements applied in different Members.

2.12. The WTO Secretariat clarified that the percentages of Members who had notified that they applied or did not apply non-preferential origin requirements were up-to-date and reflected all notifications since 1995. Some Members, who did not apply non-preferential rules of origin, had introduced such rules more recently (e.g. Brazil or Peru) and that was reflected in the figures presented. The numbers seemed to indicate that a growing number of countries were adopting non-preferential rules of origin however, the Secretariat warned, these numbers had to be interpreted with caution. In fact, some Members who had notified that they did not apply non-preferential rules of origin might, for instance, require a certificate of non-preferential origin in some or all cases. Similarly, some countries had notified that they did not apply any rules but had policies associated with non-preferential origin verification (such as anti-dumping or SPS restrictions). In other words, some requirements might not have been reflected in the notifications. Moreover, the current notifications did not allow Members to have an overview of the trade-policy measures to which non-preferential rules of origin applied (anti-dumping, labelling, quotas, etc.). As had been pointed out by Switzerland, the Committee was, at present, ill-equipped to monitor the impact of rules of origin on international trade as required in Article 2 of the Agreement.

2.13. The representative of the WCO Secretariat said that surveys of Members' practices conducted in 2005 and 2012 had shown that fewer Members were systematically asking for a certificate of origin for non-preferential purposes. According to the latest available figures, 8% of Members asked for a non-preferential certificate of origin in all cases. Yet, in most cases, such certificates did not serve any purpose hence, were an unnecessary burden for traders. The WCO recommended to Members to request a certificate of non-preferential origin exclusively when the certificate was necessary.

2.14. The representative of the ITC clarified that widening the scope of any database of rules of origin was constrained by the fact that it was so difficult to obtain accurate information on non-preferential origin. However, once the information would be available, ITC would ensure it was updated at least yearly, as is done for tariff rates. Traders relying on the Origin Facilitator needed to trust the information displayed. The ITC needed to be confident that the information was correct and up-to-date and that was the main reason why the ITC collaborated with the WTO and the WCO to build the Facilitator and why it supported improved WTO notifications. Uncertainty in this area also explained that there were no estimates about the portion of trade covered by non-preferential origin requirements. This was a complex calculation. Rules of origin, he said, would become part of the capacity building programmes of ITC, so it was necessary to improve access to information and train operators accordingly. He also said that he welcomed any suggestions regarding the Facilitator and ways to improve terminology or its functioning. Finally, on specific complaints from businesses, he clarified that the ITC business surveys had revealed that problems related to rules of origin were very common. Most often, problems concerned very operational issues like obtaining the right certificate of origin, completing it correctly, traveling to the capital city to obtain the necessary signatures, etc. However, the surveys did not allow to differentiate among preferential or non-preferential origin.

2.15. The Committee took note of the presentations and statements made.

3 CONSULTATIONS ON "ENHANCING TRANSPARENCY IN NON-PREFERENTIAL RULES OF ORIGIN" – REPORT BY SWITZERLAND

3.1. The Chairperson recalled that in previous meetings of the Committee, the delegation of Switzerland had reported that they were coordinating informal discussions about non-preferential rules of origin. The objective of these discussions was to identify ways of facilitating international trade by reducing the barriers created by non-preferential rules of origin and origin requirements. She therefore asked the Swiss delegation to update Members on their consultations and the progress made.

3.2. The representative of Switzerland confirmed that small group consultations had been held among 16 WTO Members from a variety of geographical locations, development status and trade profiles. In very broad terms, the discussions pursued the objective of facilitating international trade by reducing trade barriers inherent to non-preferential rules of origin and origin procedural requirements. The small group had met four times since April and had decided to focus on "Enhancing Transparency in non-preferential rules of origin". This narrower focus stemmed from a realisation that better transparency and understanding of Members' practices was a prerequisite to any future work in the Committee. After that, Members would be in a better position to identify

trade-facilitating practices and promote their international diffusion. To that end, Members proposed to enhance notifications and standardise the information available with a new template. A proposal containing the draft template would be circulated to the entire Committee for comments. Finally, the representative of Switzerland reiterated that the discussions were without prejudice to the harmonization work programme (HWP) and its results.

3.3. The representative of Korea supported work to enhance transparency on non-preferential rules of origin and said that it was, in fact, one of the core elements to facilitate international trade and make it clearer and more predictable.

3.4. The representative of the United States appreciated the efforts of the Swiss delegation and encouraged other interested Members to join the discussions in the small group. She reiterated that the US did not support restarting the HWP but that it remained open to discussing useful ideas. She said that the Committee should avoid work that was duplicative and agreed that the collective efforts to implement the Nairobi Decision on preferential rules of origin for LDCs could serve as a model of cooperation.

3.5. In conclusion, the Chair thanked the delegation of Switzerland as well as the other delegations who had been taking part in the small group consultations. She commended their efforts to move forward the work in the Committee. She also encouraged delegations working in the small group to intensify their consultations so that an outcome could be presented to the Committee as soon as possible.

3.6. The Committee took note of the report and of the statements made.

4 NOTIFICATIONS UNDER ARTICLE 5 AND UNDER PARAGRAPH 4 OF ANNEX II OF THE AGREEMENT ON RULES OF ORIGIN

4.1. The Chairperson reported that new notifications had been received by the Secretariat and had been circulated in documents G/RO/N/166, G/RO/N/167, G/RO/N/168, G/RO/N/169, G/RO/N/170, G/RO/N/171, G/RO/N/172, G/RO/N/173 and G/RO/N/174. These notifications covered both preferential and non-preferential rules of origin. On the basis of these notifications, the situation regarding the application of non-preferential rules of origin was the following:

i. Forty-nine Members applied non-preferential rules of origin (counting the EU and its member states as one);
ii. Fifty-seven Members did not apply any non-preferential rules of origin; and
iii. The remaining 31 Members (about half of which were least developed countries) had not yet submitted any notification under Article 5.

4.2. The full list of notifications received, including outstanding notifications, was available in the Annex of document G/RO/W/176. In addition, all the notifications could be accessed on the rules of origin page of the WTO website. The Chair encouraged all delegations to check their notifications to make sure they were up to date and that they had been correctly reflected in the website.

4.3. The Committee took note of the report made.

5 TWENTY-FOURTH ANNUAL REVIEW OF THE IMPLEMENTATION AND OPERATION OF THE AGREEMENT ON RULES OF ORIGIN

5.1. The Chair reminded Members that Article 6.1 of the Agreement on Rules of Origin required the Committee to conduct an annual review of the operation and the implementation of the Agreement. Document G/RO/W/176, prepared by the Secretariat, summarized the recent work of the Committee and the latest relevant developments. She proposed to take note of the Secretariat note and complete the 24th Annual Review of implementation of the Agreement.

5.2. The Committee completed the 24th Annual Review of implementation of the Agreement (document G/RO/88).

6 DRAFT REPORT OF THE CRO TO THE COUNCIL FOR TRADE IN GOODS

6.1. The Chairperson drew Members' attention to document G/RO/W/177 which contained the draft report of activities of the CRO to the Council for Trade in Goods for 2018. Article 6.1 of the Agreement on Rules of Origin required the CRO to review annually the implementation and operation of the Agreement and inform the Council for Trade in Goods of any developments.

6.2. The Committee adopted its 2018 Annual Report to the Council for Trade in Goods (document G/L/1266).

7 OTHER BUSINESS

7.1 "Determination of non-preferential origin for hot-rolled coil by Indonesia" – statement by Kazakhstan

7.1. The representative of Kazakhstan sought clarifications on the laws, regulations and administrative determinations of general application applied by Indonesia to determine the country of origin of goods mentioned in Article 1 of the Agreement on Rules of Origin. The clarifications concerned, more specifically, the use of non-preferential rules of origin for the implementation of an anti-dumping measure on hot-rolled coil originating in Kazakhstan. He explained that the original anti-dumping measure, imposed in 2008, targeted imports of hot-rolled coil originating in China; India; the Russian Federation; Chinese Taipei; and Thailand. In 2013, the Government of Indonesia had extended the application of the original anti-dumping measure to imports also originating in Kazakhstan and Belarus in the framework of the measure's sunset review. He highlighted that the application of anti-dumping duties on products from Kazakhstan were inconsistent with the WTO laws, since the Indonesian Anti-Dumping Committee had never investigated imports originating in Kazakhstan. In its Report on essential facts pertaining to the 2013 sunset review, the Indonesian Anti-Dumping Committee had argued that such an extension of the measure had become necessary after the establishment of Eurasian Customs Union between the Russian Federation; Belarus; and Kazakhstan. His government disagreed however, and argued that a specific investigation would have been needed. Any concerns about anti-circumvention of the anti-dumping measures had to be addressed through customs control, risk management and origin verification, and not through the mere extension and continued application of an anti-dumping measure. As a result, his government kindly asked the delegation of Indonesia to reply to the following questions (circulated later in document G/RO/W/181):

a. First, did Indonesia have laws, regulations and administrative determinations of general application applied in relation to a WTO Member, to determine the country of origin of goods mentioned in Article 1 of the Agreement on rules of origin of goods, i.e. rules normally used for the determination of non-preferential origin?
b. Second, should this not be the case, could Indonesia clarify how the Indonesian Government defined and verified the country of origin of goods in the application of: most favoured nation treatment under Articles I, II, III, XI and XIII of GATT 1994; anti-dumping and countervailing duties under Article VI of GATT 1994; safeguard measures under Article XIX of GATT 1994; origin marking requirements under Article IX of GATT 1994; and any other quantitative restrictions or tariff quotas?

7.2. The representative of Indonesia took note of the concerns and questions raised and said that he would convey them to his authorities in capital.

7.2 Dates of the next CRO meeting

7.3. The Chair informed Members that the next formal meeting of the Committee had been scheduled for 15 and 16 May 2019.

7.4. The meeting was adjourned.