



Committee on Rules of Origin

**SUMMARY OF THE INFORMATION SESSION ON
NON-PREFERENTIAL RULES OF ORIGIN**

18 APRIL 2018

Note by the Secretariat¹

1. Introduction

1.1 In the absence of negotiations on the harmonization of non-preferential rules of origin, the Committee on Rules of Origin (CRO) engaged in an "educational exercise" to share experiences of existing non-preferential rules of origin and to develop a clearer understanding of the design, coverage, and impact of such rules (G/RO/M/63). In that context, Members heard presentations by international organizations, business associations, and representatives of the private sector in a series of "information sessions", held since 2015 (summaries of previous sessions may be found in documents G/RO/W/162, G/RO/W/167, and G/RO/W/170). This document contains a brief summary of the presentations made during the session of 18 April 2018.

2. Darlan F. Martí, Trade Policy Specialist, Market Access Division, World Trade Organization (WTO) (RD/RO/66)

2.1 In the presentation "The certification of origin in the WTO Agreement on Rules of Origin and other WTO Agreements", Mr Martí reminded Members that existing WTO provisions already regulate the use of certificates of origin. He noted, however, that the current provisions only cover certain specific aspects of origin certificates and that there was scope for further international disciplines in this area. In particular, he noted that:

- the WTO Agreement on Rules of Origin focuses primarily on the rules themselves (that is, the harmonization of the criteria used to determine non-preferential origin) and does not contain specific provisions regarding procedures or certification related to origin;
- however, Article VIII of the GATT 1994 ("Fees and Formalities connected with Importation and Exportation") contains some provisions that would be directly relevant; for example, the need to minimize the incidence and complexity of import and export formalities and to decrease and simplify import and export documentation requirements. In addition, the Notes to Article VIII clearly state that certificates of origin should only be required "to the extent that is strictly indispensable";
- the provisions of Article VIII explicitly cover fees, charges, formalities, and requirements imposed by governmental authorities in connection with importation and exportation, "including those relating to: (a) consular transactions, such as consular invoices and certificates"; and "(f) documents, documentation and certification";
- moreover, the recent WTO Trade Facilitation Agreement also contains provisions intended to make certification obligations more transparent (for example, through their publication; through their availability over the Internet; through their availability at Enquiry Points; and through their translation into all three of the WTO's official languages (Article 1)).

¹ This document has been prepared under the Secretariat's own responsibility and is without prejudice to the positions of Members or to their rights and obligations under the WTO.

Furthermore, the Agreement aims to make certification obligations simpler and fast (for example, by allowing for the prior processing of documents, and the electronic payment of trade documents (Article 7); and by the acceptance of copies (Article 10)). Finally, the Agreement calls for the standardization of trade documents wherever possible, in particular by promoting cooperation among customs administrations (Article 12);

- in addition to these Agreements, the 2013 and 2015 Ministerial Decisions on preferential rules of origin for LDCs also contain provisions intended to keep proofs of origin as simple as possible by, for example, using self-certification, customs cooperation and risk-management measures, and simpler certification requirements for small consignments.

3. Ms Mette AZZAM, Senior Technical Officer at the World Customs Organization (WCO) (RD/RO/64)

3.1 Ms Azzam summarized the "WCO legal instruments and guidelines on the certification of origin". She highlighted the following points:

- a proof of origin was always needed in preferential trade agreements. However, in most cases, a proof of origin was not needed for non-preferential purposes because of an absence of practical consequence. In fact, the Revised Kyoto Convention recommended that a certificate of origin (CO) should only be requested when it was necessary for the application of trade preferences, for the application of unilateral trade measures, or when customs authorities suspected fraud²;
- with regard to types of proofs of origin, Ms Azzam noted that different categories were available; for example, different systems existed according to the authority issuing the certificates (such as government or delegated authority, Chambers of Commerce), or according to the entities applying for a certificate (trusted exporters, any other category of exporter, and importers);
- certificates of origin for non-preferential purposes entailed significant difficulty: in addition to adding costs for operations, they could not be established according to internationally agreed rules of origin (in the absence of multilaterally agreed non-preferential rules of origin). As a result, certifying entities in the exporting country were expected to interpret and ensure compliance with the rules of the importing country;
- a 2013 WCO Survey confirmed that most WCO Members did not require certificates of origin for non-preferential transactions. However, some Members did in certain cases and a few did in all cases. Among the reasons reported by customs administrations for a request for a certificate were: customs valuation purposes; duty assessment; consumer protection; enforcement of intellectual property rights; risk management profiling; and application of quotas. It could be argued that a CO is not an appropriate instrument for achieving certain of these objectives. Furthermore, according to the Survey, the average fee for issuing a CO ranged between US\$30 and US\$50 (for certificates issued by chambers of commerce) and between zero to US\$9 (if issued by a governmental agency);
- based on this survey and practices, the WCO developed guidelines to be used as guidance for Members wishing to design, develop, and achieve robust management of origin-related procedures. These non-binding guidelines encouraged Members to use self-certification as frequently as possible and to ask for a non-preferential CO only when absolutely necessary.

4. Mr Martin Van der Weide, Chair of the International Chamber of Commerce World Chambers Federation (ICC WCF) CO Accreditation Committee and currently leading the revision of the CO Guidelines (RD/RO/61)

4.1 Mr Van der Weide explained that, year after year, the number of COs issued reach new record numbers. This continuous increase seemed to confirm their utility and benefit for international trade. Chambers of commerce were the most common entity issuing COs (third-party

² Specific Annex K "Origin", Chapter 2 " Documentary evidence of origin", available at http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv.aspx

certification). He shared with Members some of the efforts currently being deployed to ensure that the COs issued by chambers of commerce were of high quality and credibility, as follows:

- several instruments had been put in place by the ICC World Chambers Federation, in particular, "CO Guidelines" and a "CO Accreditation Chain". These efforts were intended to establish universal procedures for issuing and attesting COs, thereby ensuring a uniform level of trust and integrity. The progressive utilization of these standards and processes should reinforce the integrity and credibility of certificates issued by chambers and enhance the role of chambers as a competent trusted third party in the issuance of COs. However, these instruments would not replace harmonized rules of origin and a clear interpretation of the rules;
- the "CO Guidelines" covers: the use and purpose of COs; definitions and language; the role and authority of chambers; place of issue; printing and distribution of forms; pricing and issuing fees; outline of the issuing process; determination and verification of origin; supporting documents; concessions and prohibitions; training requirements; changes or problems with certificates of origin; a supplement for CEOs; and printable sample letters and forms;
- the "CO Accreditation Chain" is an ICC WCF initiative to which individual chambers can adhere on a voluntary basis. The Accreditation Chain affirms that chambers are mutually responsible and globally interconnected, assuring businesses, traders, banks and customs administrations that COs are issued in accordance with international best practices. Adherence to the CO Guidelines is mandatory for all chambers participating in the Accreditation Chain. There are currently 20 participating chambers in the chain. Accredited chambers to the CO chain may use the ICC WCF international quality label on their CO forms, which reinforces their credibility when goods arrive at the Customs entry point;
- any chamber may join the chain subject to the acceptance of an "accreditation committee". In order fully to implement these guidelines, participating chambers receive training to build the capacity of the staff issuing certificates and to enhance trust and controls. In fact, the most significant element of the guidelines is that participating chambers must obtain evidence of origin before agreeing to issue a CO.

5. Mrs Ursula Hermelink, Non-Tariff Measures Programme Manager, International Trade Centre (ITC) (RD/RO/67)

5.1 Mrs Hermelink explained that the ITC business surveys on NTMs documented the experiences of companies that were involved in international trade. The surveys covered interviews and reports conducted in 35 developing countries and the EU 28 member States. The purpose of the surveys was to identify the regulatory and procedural trade obstacles imposed by importing countries as well as potential bottlenecks in the exporting country. Based on the survey results, Mrs Hermelink highlighted the following points:

- exporters valued clarity (regarding the relevant regulations), consistency (what applied when) and procedural efficiency (cost and time). Unfortunately, small exporters in developing countries usually only worry about regulatory requirements until the very last moment, once all other trade hurdles have been jumped over (finding a buyer, meeting quality standards, obtaining export certificates and licences, etc.);
- in the surveys collected among responding businesses, rules of origin appeared as a trade obstacle in 16% of cases. Problems relating to rules of origin concerned primarily manufactured goods (81% of cases). Certain sectors, such as non-electric machinery, clothing, leather products, and textiles, were particularly affected by problems relating to origin. Among the difficulties reported, 77% related to origin procedures (e.g. certification) and 9% to the rule itself (e.g. origin criteria). In other words, origin procedures represented a hurdle more commonly than in other areas (such as SPS measures, for example);
- according to the surveys, the biggest problems related to costs (often judged prohibitive), administrative burden (number of documents to be prepared), and delays for obtaining COs. Furthermore, 90% of procedural delays and costs occurred in the exporting country (and not

the importing country). While this may be surprising at first sight, it could be explained by the fact that COs must be obtained from entities located in the importing country;

- in conclusion, the multiplicity of requirements created complexities for companies that in turn generated confusion and unpredictability. In the absence of standardization and harmonization, transparency and training were fundamental to minimizing unpredictability and achieving greater efficiency.

6. Mr Michel Anliker, Director and Head of Trade & Customs, KPMG Switzerland (RD/RO/65)

6.1 Mr Anliker, shared with Members his impressions of how companies complied with origin certification requirements. Among some of the main points he made were the following:

- non-preferential rules of origin create significant barriers for companies engaging in international trade as a result of costly and cumbersome certification requirements, lack of clarity in the applicable rules, and differences in origin outcomes (that is, the same product may have different countries of origin depending on the applicable regulations of importing countries);
- businesses tend to understand trade regulations very poorly. For example, businesses have difficulty calculating the origin of their products in the case of value-added rules. Such difficulties could be partly explained by a lack of transparency, clarity, or precision, in the applicable regulations. Moreover, companies must understand the requirements of each importing country because the rules are not harmonized. Finally, companies also frequently confuse preferential origin, non-preferential origin, and marks of origin;
- many companies felt that non-preferential COs did not bring any value to their transactions, that a CO was required in many instances when it was in fact not needed, and that they carried significant costs. In Switzerland, for example, chambers charged a minimum fee of CHF10 or CHF20, and a maximum of CHF300 to CHF450 per certificate. Moreover, there was confusion about the applicable rules for establishing COs: should they be established according to the rules of the importing or the exporting country?;
- some of the recommendations Mr Anliker made included the following: to align or standardize preferential and non-preferential origin requirements; to simplify rules of origin (to have a single rule based on the last substantial transformation with an increased catalogue of minimal processing); and to establish a mutual recognition framework.

7. Mr Stefano Inama, Chief, Technical Assistance, Trade and Customs in the Division on African and Least Developed Countries (LDCs), UNCTAD (RD/RO/68)

7.1 Mr Inama presented his latest research on "Measuring transparency on origin certification". Among his main arguments were the following:

- there were problems and inefficiencies in the certification of origin that generated costs for businesses. This was in part a result of the proliferation of national requirements, as well as regulatory gaps in this area. In fact, on the one hand, the Revised Kyoto Convention was not binding and had become outdated; on the other, the WTO Trade Facilitation Agreement had not entirely filled in the gaps in this area. In reality, origin certification had barely evolved: a majority of COs were still paper-based and stamped;
- Mr Inama's ongoing research focussed on codifying national certification requirements to classify and compare the stringency, transparency, and trade facilitation of such requirements. The requirements being compiled related to preferential and non-preferential rules of origin. A total of 38 different types of variables had been identified to date, indicating wide discrepancies in national practices. The outcomes of this research would be described in a forthcoming study by UNCTAD and the WCO, which measured the transparency and stringency of such requirements;

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- by collecting details about national certification practices, the research had revealed that there were major gaps in WTO notifications of non-preferential rules of origin: many of the Internet links provided did not work; the information provided was often partial or had gaps; there was a lack of clarity regarding the scope of practices (imports or exports); and the legislative texts were rarely provided and, even if available, were often too complex or lengthy, or had not been provided in an official WTO language;
 - Mr Inama said that greater transparency regarding non-preferential origin requirements, including certification, was urgent. He also said that improved notification guidelines were necessary.

8. Mr Tokio YAMAOKA, Director, Office of Rules of Origin, Customs and Tariff Bureau, Ministry of Finance of Japan (RD/RO/62)

8.1 Mr Yamaoka presented some of the main initiatives being deployed by Japan Customs to facilitate compliance with Japan's origin requirements. The following are among the points he highlighted:

- Japan Customs had three main roles: (i) contributing to a safe and secure society; (ii) collecting taxes and duties appropriately and fairly; and (iii) facilitating trade. Risk assessment and verification measures were needed to achieve these objectives in parallel;
- in principle, Japan did not require a CO for imports. However, the government may issue a CO at the request of Japanese exporters in cases where exporters may need to present a CO abroad (Japan's Chamber of Commerce and Industry);
- many measures had been taken to facilitate compliance with origin requirements. These measures could be divided into three types: the examination of information before clearance; at clearance; and after clearance;
- the main instrument used before clearance was advance rulings. Requests for advance rulings had increased very sharply since the conclusion of the Japan-Australia EPA. This agreement had introduced self-certification for the first time in Japan. In fact, self-certification was possible by the importer, by the exporter, or by the producer. A CO issued by a competent authority was acceptable. More than 70% of transactions currently claimed preferential treatment based on self-certification;
- in relation to the clearance phase, Mr Yamaoka said that the electronic submission of COs was now possible (in pdf format). In addition, Japan had introduced facilitated or simplified procedures for low-value consignments (those with a customs value that did not exceed 200,000 yen), and for transactions by authorized operators. Furthermore, it had also introduced a flexible treatment for minor errors and mistakes in COs;
- in relation, specifically, to preferential rules of origin for LDCs, Japan had taken several initiatives: it had introduced bilateral cumulation; it had simplified the rules of origin for textiles and clothing; and it had also introduced a de minimis rule for products of chapters HS50 to HS63 (10% of the weight of the product).

9. Mr Peter Bishop, Deputy CEO of the London Chamber of Commerce (RD/RO/63)

9.1 Mr Bishop highlighted certain aspects of the UK's practice when issuing certificates of origin, explaining that:

- rules of origin and origin requirements had never been so relevant as now in the UK's international trade agenda. Brexit and other developments meant that governments were increasingly looking to rules of origin and other possible ways to fight fraud, abuse, and circumvention. In addition, there was a growing interest in the linkages between origin and product quality;

- Chambers of Commerce dated back to 1599 when a chamber had been established in Marseille. The 1923 Geneva Convention on the Simplification of Customs Procedures confirmed, for the first time, that governments could delegate the authority to issue trade documents to a third party. Today, over 15 million COs were issued by chambers every year (and the numbers continued to increase). In addition, chambers continued to modernize COs, particularly by introducing electronic COs in a growing number of countries;
- requests for non-preferential COs were also increasing, perhaps to counter unpredictability in trade and business. In certain countries, COs were requested systematically (for instance, in many parts of the Middle East).

10. Mrs Choidog Oyunjargal, Director of Customer Service, Mongolian National Chamber of Commerce and Industry (RD/RO/60)

10.1 Mrs Oyunjargal shared with Members some of the main features of Mongolia's practices in issuing non-preferential certificates of origin. She highlighted the following elements:

- the Mongolian National Chamber of Commerce and Industry was the sole body authorized, according to Mongolian law, to determine the origin of goods and issue COs for international trade. The Chamber was responsible for issuing both preferential and non-preferential rules of origin;
 - the number of requests for COs had increased steadily in Mongolia. Most of the commodities that certified were natural resources (such as coal, copper, gold, crude oil, iron oils, and cashmere). Most products were exported either to China (85%), the UK (10.7%), or the Russian Federation (1.1%);
 - the COs were issued according to the origin requirements and origin criteria of the importing country. The fees charged by the Chamber of Commerce and Industry ranged from USD4 to USD60 depending on the value of the shipment;
 - in her view, businesses were not yet ready to move to self-certification. They would first require training.
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