



The Work Programme for the HARMONIZATION of Rules of Origin

Informal meeting of the Committee on
Rules of Origin

13 September 2013

Objectives of this presentation

1. Brief overview of the negotiating process
2. What has been agreed: draft Consolidated Text of Harmonized Rules of Origin
3. What remains to be agreed
4. Main stumbling blocks



1.

Background and Negotiating process

1 BACKGROUND and NEGOTIATING PROCESS

- **Art.9.2:** a “*work programme shall be initiated as soon after the entry into force of the WTO Agreement as possible and will be completed within 3 years*”
- To be conducted jointly by the CRO and TCRO
- **20 July 1995:** CRO requested the TCRO to initiate discussions to recommend HRO: definitions of wholly obtained goods; minimum operations or processes, definition of substantial transformation for other goods (Product specific rules based on tariff classification change), any supplementary rules...
- **June 1999:** Agreed rules (Basket 1,) and Rules that required a decision (Basket 2)
- Review by the CRO of all recommendations; agreement reached for most pending rules but divergences on a number of specific rules
- **Successive extensions of the deadline to complete the HWP** (General Council and Ministerial Conference)

1 BACKGROUND and NEGOTIATING PROCESS

- Globalization and increasing reality of multi-country organization of production
- Approximately 2,000 pages of proposals by Members and other WTO documents and 2-3 week-long meetings
- **July 2002:** the CRO submits to the General Council a list of 94 “core policy issues” for discussion and decision (G/RO/52)
- **2003-2007:** on behalf of the Chair of the General Council, the Chair of the CRO held consultations on the “core policy issues” (WT/GC/M/77, §158)
 - **June-July 2006:** package of product-specific proposals (JOB(03)/132/Rev.11)
 - **June-July 2007:** package for machinery and other technical issues (JOB(07)/73 and JOB(07)/84)

1 BACKGROUND and NEGOTIATING PROCESS

- **July 2007:** due to persistent divergences
 - i. “recognizing the insurmountable difficulties concerning the implications issue and the dual rule approach for machinery, the CRO seeks guidance from the General Council with regard to these 2 issues*
 - ii. that the work on these two issues be suspended until the General Council provided guidance to the CRO*
 - iii. that the CRO continue its work with a view to resolving all technical questions, including related to the overall architecture as soon as possible”*
- Since then, the work of the CRO has lost substance and relevance: counterproductive to negotiate rules in the absence of clarity regarding the scope of application of these rules
- **2010:** China, India, Pakistan (WT/GC/W/622) to the General Council (WT/GC/M/126)

2.

**Progress made
the *draft* consolidated text**

2.1 BACKGROUND

- **G/RO/W/111** – now in **Rev.6** (314 pages)
- To be annexed to the ARO
- Compilation of the rules that have been endorsed the Committee and proposals by the Chairperson of the Committee:
 - the final package for 83 product-specific core policy issues to the General Council in July 2006 (JOB (06)/86/Rev.2)
 - a package for 72 technical issues in June 2007 (JOB(07)/84)
 - the machinery package in July 2007 (JOB (07)/73)
- Discussions on a few “technical issues” and Rule 1 of Appendix 2

2.2 STRUCTURE

- Preamble
- Definitions (neutral elements, minimal operations...)
- Appendix 1 – Wholly Obtained Goods
- Appendix 2 – Substantial transformation (not W.O.G.)
 - General rules (Rule 1 and Rule 2)
 - Terminology
 - Product-specific criteria, including Chapter-specific definitions and residual rules
- **2011-2013:** Transposition of draft rules to more recent versions of the HS nomenclature (JOB/RO/2/Rev.1, JOB/RO/3/Rev.1 and JOB/RO/4)

3.

What remains to be agreed

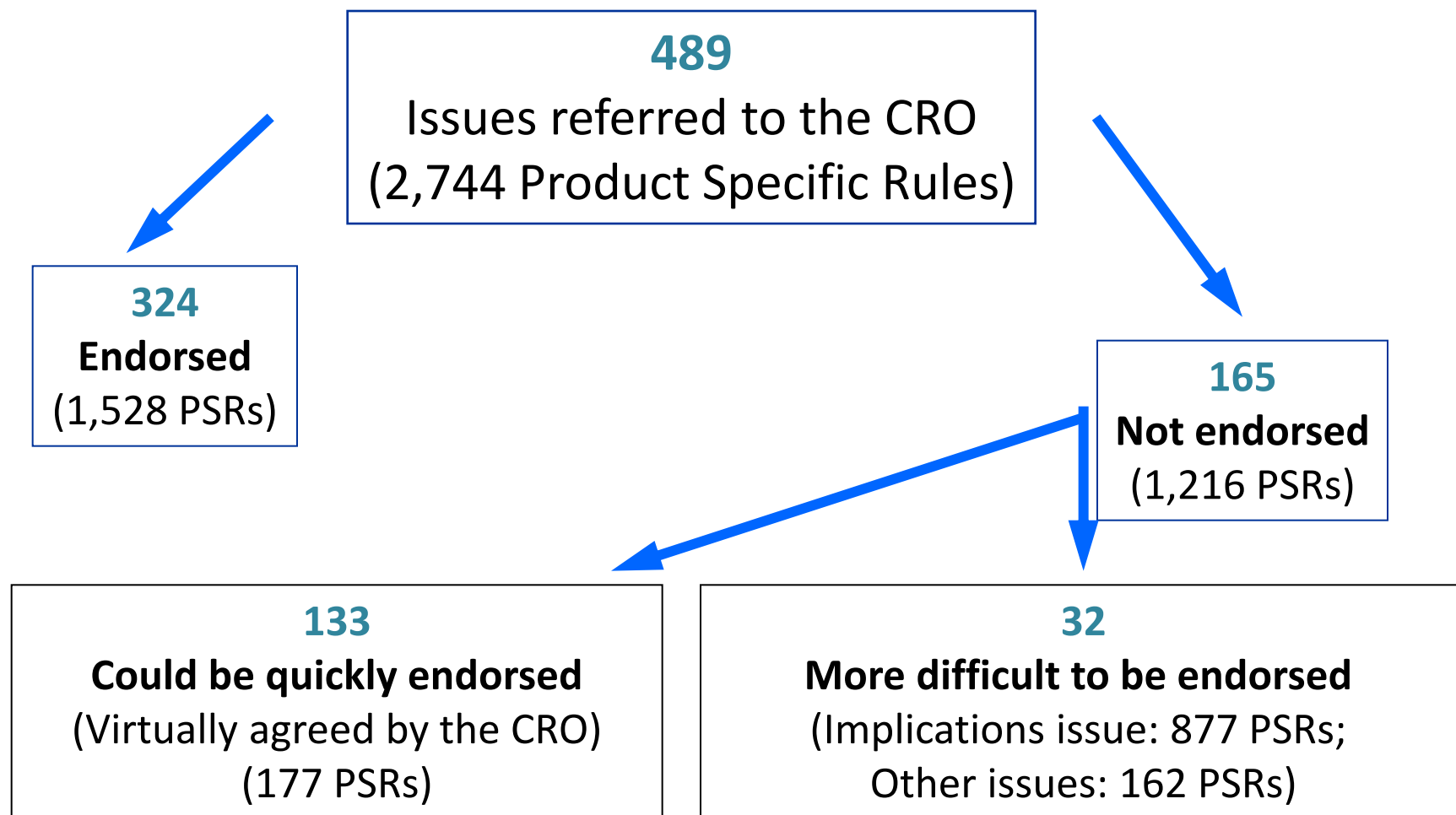
3.1 ARCHITECTURE

- Preamble (built-in review of HRO)
- Definition 2 of Appendix 1 (fish taken from the Economic Exclusive Zones, EEZs)
- Rules 1 and 2 of Appendix 2 (residual rules)
- Consideration of the overall coherence of the rules
- A mechanism for amending the rules (transposition into more recent versions of the HS nomenclature, revisions to make the rules more operational, etc.)

3.2 PRODUCT SPECIFIC RULES

- Outstanding items in several HS Chapters: 1 to 4, 7, 9, 15 to 18, 20 to 23, 25, 39, 40 to 43, 50 to 64 , 68, 70, 72, 74 to 80, 84 to 90, 91, 92, 94, 95, and 97
- The HWP, in accordance with the consolidated text, requires an agreement on rules for 2,744 products. The CRO reached consensus on 1,528 products, which would mean that **45 % of work is still outstanding** (JOB/RO/1/Rev.2)

Summary of unresolved issues



4.

Main stumbling blocks

4.1 BACKGROUND

- G/RO/52: “core policy issues” referred by the CRO to the General Council for discussion, decision and guidance.
 - Implication Issues (1 issue)
 - Dual rule for machinery (9 issues)
 - Product Specific rules (84 issues)
- The CRO Chair, on behalf of the Chair of the General Council (WT/GC/M/77, paragraph 158) conducted negotiations on the 94 core policy issues (JOB(03)/132/Rev. 11), and reported packages on her own responsibility
- JOB/RO/1/Rev.1: “Status update” summarizes the process and reflects the status of product specific rules to date ([Part II](#) and [Part III](#): endorsed rules, rules that remain contentious, rules where there are objections, etc.)

4.2 THE “IMPLICATIONS” ISSUE

- *“Implication of the HRO for other WTO agreements”, or sometimes the “scope of application” of HRO*
- Divergence of interpretation in the prospective obligation to *“apply rules of origin equally for all purposes set out in Article 1”* (ARO, Art. 3(a))

QUESTIONS ➔ How should the HRO apply to other trade instruments? Would the application of HRO change the manner in which certain trade policy instruments are implemented?

Do WTO Agreements actually require Members to *“determine the country of origin of goods”* (in the sense of the ARO)? Or do they simply require the identification of a *“place of origin”, a “country of export”* or some *“concept of origin”*?

- **The scope of the rules could alter the way in which Members approach the negotiation of the rules and the HWP**

4.2 THE “IMPLICATIONS” ISSUE

- Example: COFFEE
 - If the HRO is: *the origin of coffee is the country where the beans were roasted or otherwise substantially transformed*
- If coffee was grown and harvested in **Colombia** and exported to the **U.S.** where the beans were roasted and ground, can the coffee bear the mark “**100% Colombian Coffee**” in the U.S. market?
 - Argument 1: no, because HRO also apply to “marks of origin” (GATT Article IX). If option 2 was used to determine the origin of the coffee (roasting), the origin of the coffee is the U.S. and a mark “100% Colombian coffee” would be misleading and fraudulent.
 - Argument 2: yes, it could as HRO would not apply to “marks of origin”. Article IX of the GATT speaks about “true origin” of products but contains no obligation to “determine the country of origin” (ARO).



4.2 THE “IMPLICATIONS” ISSUE



- Similar examples:
- **Registration of a Trademark / Geographical Indication:** should a country refuse or invalidate the registration of a trademark which contains a geographical indication (“100% Colombian Coffee”) which is not the same as the “country of origin” (U.S. according to the HRO)?
- **Application of a Sanitary and Phyto-Sanitary** measure: an importing country restricts the importation of coffee grown in Colombia because of certain pesticides used in plantations. Would that country also be allowed to restrict imports of coffee harvested in Colombia but roasted and ground in the U.S. if the U.S. was the “country of origin” of the coffee?

4.2 THE “IMPLICATIONS” ISSUE



■ Illustration Anti-dumping – Circumvention

- If HRO is: *the origin of vehicles is the country where they were assembled.*
- After investigations, Country A imposes anti-dumping duties on automobiles assembled in Country B.
- The firm in country B, in order to avoid or "circumvent" the newly imposed anti-dumping duties, changes its operations and sends parts and components to Country C where they are assembled and exported to Country A.
- If the harmonized rule of origin states that "assembly" confers origin for automobiles, the origin of the automobile should now be conferred to Country C.
- Can Country A extend the anti-dumping duty to Country C in order to avoid the firm circumventing its anti-dumping action?

4.2 THE “IMPLICATIONS” ISSUE

Some references

- India (G/RO/W/28/Rev.1, 30, 42, 50); the United States (G/RO/W/32, 48, 65); the Dominican Republic and Honduras (G/RO/W/33); El Salvador (G/RO/W/34); Korea (G/RO/W/38); and Japan (G/RO/W/66, 74).
- Note by the Secretariat: Provisions relating to ROO in WTO Agreements (G/RO/W/31) and agreement-specific “room papers”
- Referred to in several minutes of the Committee: G/RO/M/15, paragraphs 2.2-2.4; G/RO/M/16, paragraphs 3.1-3.3; G/RO/M/19, paragraphs 2.1-2.8; G/RO/M/23, paragraphs 4.1-4.13; G/RO/M/26, paragraphs 4.1-4.9; G/RO/M/37, paragraphs 3.1-3.3; G/RO/M/40, paragraphs 4.1-4.27
- Intensive consultations in 2006-2007, also in tandem with other WTO bodies: the Committee on Anti-dumping Practices (informal group) discussed technical matters, including whether or not "country of production", "country of export" and "country of origin" are or not identical concepts.
- July 2007: General Council accepts to suspend discussions on this issue

4.2 THE “IMPLICATIONS” ISSUE

Solutions proposed

1) “Selective application”

- HRO to be used whenever there is a mandatory legal requirement in a WTO Agreement
- Each Member, in accordance with its rights and obligations under the provisions of the WTO Agreements to decide whether rules of origin are used in its non-preferential commercial policy instruments
- The WTO Secretariat would be notified about Members’ practices

2) “Guidelines”

- HRO as they are would be applied as “guidelines”, that is, a set of non binding rules as best practice (Decision, Recommendation, Declaration?)
- The HWP would continue in parallel (which is why some also referred to an “early harvest”)

4.2 THE “IMPLICATIONS” ISSUE

Arguments

- The intention of the HWP was to increase predictability, the application of HRO to other trade measures would create uncertainties about the implementation and results of such measures.
- Not applying HRO to certain WTO Agreements (carve out, pick and choose or selective or partial application) would amount to an unacceptable dilution of the HWP and ARO
- Applying it across the board would amount to unravelling the balance of Members’ rights and obligations under other WTO Agreements.

4.3 RULES FOR MACHINERY

- Related to the issue of implications and the application of other trade measures (trade remedies) to a sector where intermediate goods and assembly have great importance. How to craft a HRO that would serve all cases?
- About 600 tariff lines of HS Chapters 84-90
- Complexity and costs of administering and tracking a dual-rule system
- The “machinery package” allowed each Member to choose either a "change of tariff classification rule" or a "value-added rule" (so called "dual-rule approach“, JOB(07)/73)
- July 2007: General Council accepts to suspend discussions on this issue (WT/GC/M/109, §79)

4.4 OTHER CORE POLICY ISSUES

- List of processes for which a single HRO could not be agreed to, e.g.:
 - Fish taken from the sea of the exclusive economic zone;
 - Dyeing and printing of textile products;
 - Coating of steel products;
 - Assembly of machinery;
 - Assembly of vehicles;
 - Refining of sugars;
 - Roasting of coffee;
 - Slaughtering of live animals;
 - Refining of oils;
 - Footwear; and
 - Dairy products

Likely to be more easily solved if the issues of implications and machinery were solved

Proposals made by the CRO Chair