25th anniversary of the WTO Agreement on Rules of Origin: overview

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This presentation

Some background about the conditions that led to the adoption of the Agreement on Rules of Origin, 30 years ago

Why regulate this area?

- Practice:
  - Wholly obtained goods: a single country of manufacture
  - Substantially or sufficiently transformed goods: last transformation economically justified leading to a new product (new use, new name, new tariff classification, etc.).

- Problems…: Identified as early as the 1940s (original GATT); 1950s (GATT “recommendations”); 1970s (Kyoto Convention); 1970s (GSP) and 1980s (leading to Uruguay Round negotiations)

Problems

- Arbitrary application of national rules: lack of consistency or uniformity, case-by-case determinations
- Inconsistent results: the same product might have a different origins depending on the country that is importing it
- Changes: since RO are autonomous legislation, may be changed at any time
- Lack of transparency and lack of predictability: differences of interpretation between the importing and the exporting country
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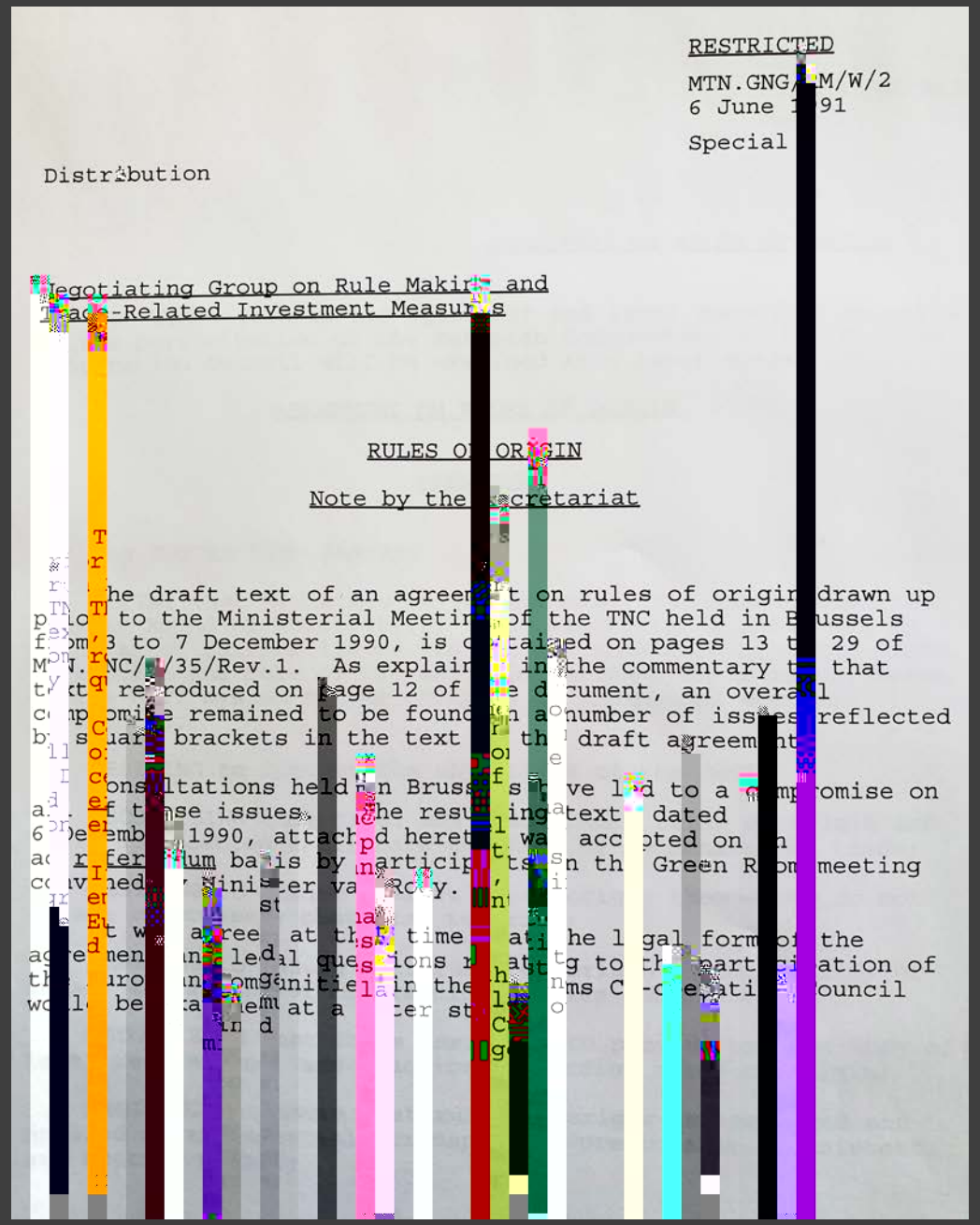
Growing consensus that international regulation was needed in this area

Finalization of the text of the WTO Agreement on Rules of Origin

- 6 December 1990: Uruguay Round (draft) text on RO (MTN.TNC/W/35/Rev.1 p.13-29)



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MTN.GNG/NM/W/2
6 June 1991

Special

Distribution

Negotiating Group on Rule Making and
Trade-Related Investment Measures

RULES OF ORIGIN

Note by the Secretariat

The draft text of an agreement on rules of origin drawn up
pursuant to the Ministerial Meeting of the TNC held in Brussels
from 3 to 7 December 1990, is contained on pages 13 to 29 of
MTN.TNC/W/35/Rev.1. As explained in the commentary to that
text reproduced on page 12 of the document, an overall
compromise remained to be found on a number of issues reflected
by square brackets in the text of the draft agreement.

Consultations held in Brussels have led to a compromise on
all of these issues. The resulting text dated
6 December 1990, attached hereto was accepted on an
ad referendum basis by participants in the Green Room meeting
convened by Minister van Rooy.

It was agreed at this time that the legal form of the
agreement and legal questions relating to the participation of
the European Communities in the Harmonized System Co-operation Council
would be examined at a later stage.

Objectives (preamble) of the Agreement

"Members,

- Noting that Ministers on 20 September 1986 agreed that the Uruguay Round of Multilateral Trade Negotiations shall aim to "bring further liberalization and expansion of world trade", "strengthen the role of GATT" and "increase the responsiveness of the GATT system to the evolving international economic environment";
- Desiring to further the objectives of GATT 1994;
- Recognizing that clear and predictable rules of origin and their application facilitate the flow of international trade;
- Desiring to ensure that rules of origin themselves do not create unnecessary obstacles to trade;
- Desiring to ensure that rules of origin do not nullify or impair the rights of Members under GATT 1994;
- Recognizing that it is desirable to provide transparency of laws, regulations, and practices regarding rules of origin;
- Desiring to ensure that rules of origin are prepared and applied in an impartial, transparent, predictable, consistent and neutral manner;
- Recognizing the availability of a consultation mechanism and procedures for the speedy, effective and equitable resolution of disputes arising under this Agreement;
- Desiring to harmonize and clarify rules of origin"…

Last pending issues before the Agreement could be finalized

- Whether or not preferential rules of origin should also be included in the harmonization effort
- Whether harmonized rules of origin should be utilized for all purposes (trad policy measures)
- Whether Members should submit their new rules of origin to advance notification for comments before su rules could be introduced
- Whether disciplines should be included in case the harmonization work programme could not deliver the expected outcomes

Results

- Two pronged approach:
  1. Disciplines relating to the way RO should be implemented by WTO Members to ensure that RO do not act as an obstacle to trade (before and after the transition period)
  2. Ambitious three-year programme for the harmonization of non-preferential rules of origin to be used in non preferential commercial policy instruments, “such as” those listed in Art.1 (MFN tariffs, Art. I, II, III, quantitative restrictions, anti-dumping and countervailing duties, origin markings, etc....)

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THE “IMPLICATIONS” ISSUE

TRANSITIONAL PERIOD Disciplines until the HWP is completed

“Members shall”:

a) clearly definetheir ROO

b) not use RO as instruments to pursue trade objectives either directly or indirectly

c) not use RO in a way Td [(om)1.6 (9tde)2 ( )]TJ 0

TRANSITIONAL PERIOD Disciplines until the HWP is completed

f) Shall base their ROO on a positive standard (negative standard for clarification or residual cases only)

g) Shall publish promptly their ROO – GATT Art. X

h) Advance rulings: upon request, shall issue determinations of origin in not more than 150 days. Decisions must remain valid for 3 years

i) Shall not apply changes retroactively

j) Shall make available an independent judicial, arbitral or administrative review of decisions

k) Shall treat all information confidentially

+ Also: GATT Articles VIII (Note); IX and provisions in th

- But currently no monitoring mechanism in place

Implications

- 77 WTO Members have notified that they have established Anti-Dumping Investigation authorities (G/ADP/N/14/Add.52): some have notified that they do not implement non-preferential RO
- In a recent survey of over one hundred WTO Members, it was found that 23% applied a general requirement regarding origin markings ("made-in" labels); 71% applied a specific requirement and 6% did

Thank you for your attention!

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