



WCO 2017 Global Origin Conference

Session 6: Future of Rules of Origin

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In the European Union

the future of rules of origin starts in... 2005



COMMISSION OF THE EUROPEAN COMMUNITIES

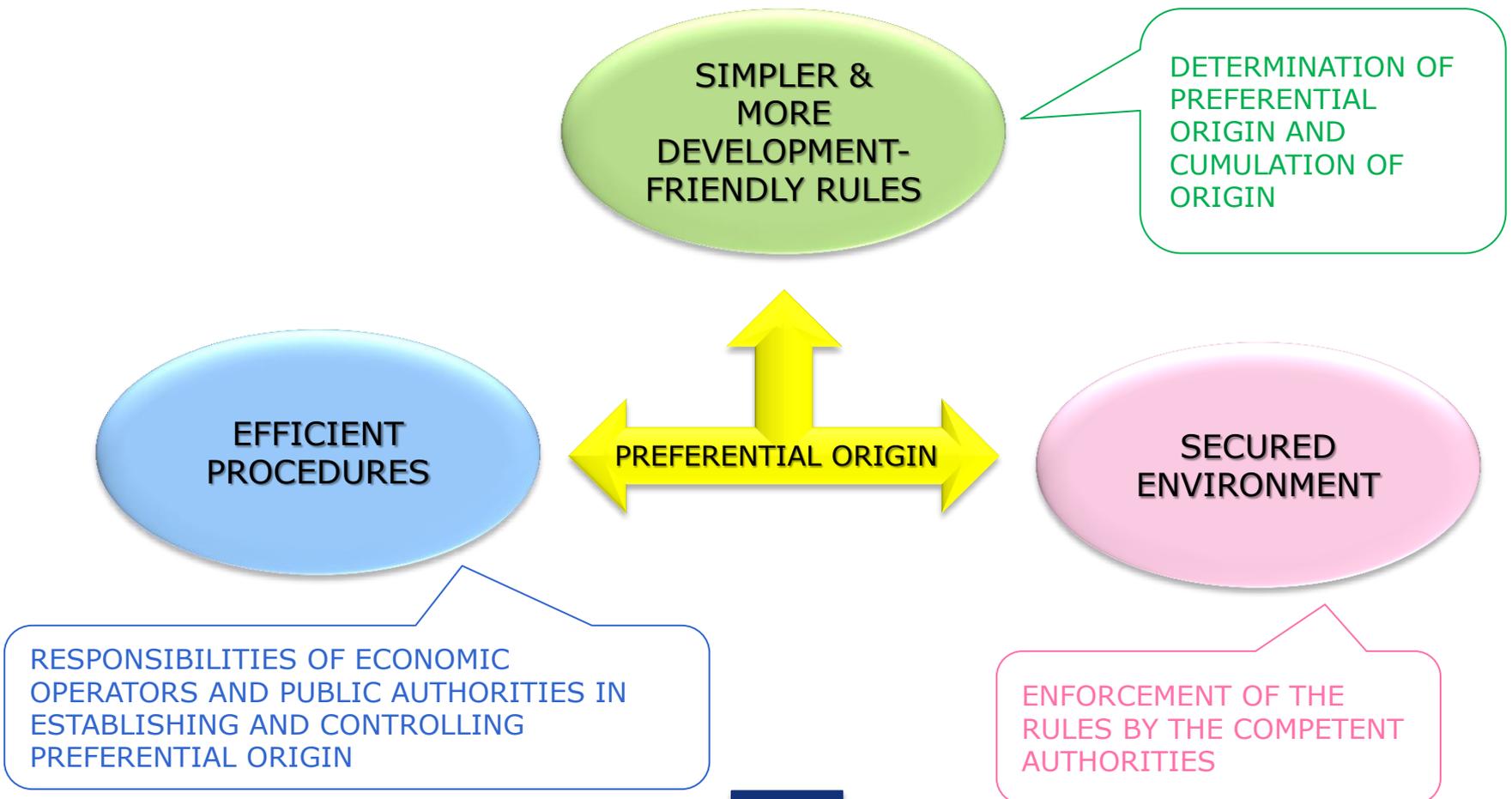
Brussels, 16.3.2005
COM(2005) 100 final

**COMMUNICATION FROM THE COMMISSION TO THE COUNCIL, THE
EUROPEAN PARLIAMENT AND THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE**

The rules of origin in preferential trade arrangements

Orientations for the future

3 'pillars' for the future



A work plan for the implementation

*" The revision of the rules of origin along these lines will constitute an important component for **new GSP scheme**."*

- **Implemented through the reform of GSP RoO adopted in 2010, now incorporated in the Union Customs Code**
- **Pillar 2 (REX) progressively implemented between 2017 and 2020**

*" This new approach to the rules of origin and administrative co-operation should shortly also be proposed, as a matter of priority, for the **Economic Partnership Agreements (EPAs)** being negotiated with six regional groups of African-Caribbean-Pacific (ACP) countries, in full respect of the current benefit of the Cotonou Agreement."*

- **Pillars 1 and 3 partially implemented in EPAs in force**
- **Pillar 2 not implemented yet**

A work plan for the implementation

*" It could then progressively be extended to **existing Free Trade Agreements.**"*

- **Progressive extension to existing and new FTA**
- **Many FTAs still with traditional rules, especially procedures under Pillar 2**

*" This would support a sufficient level of **harmonisation of the rules** in the framework of a given set of preferential arrangements with a regional coherence, including the grouping into a single framework (a regional convention , for instance) of rules which are common to a given region)."*

- **Implemented in the PanEuroMed region through its Regional Convention on Origin**
- **Variety in substance and procedures amongst other FTAs**

Changes surrounding preferential rules of origin

*Limited outcome of the **Doha Development Agenda**: the 'Bali' and 'Nairobi' packages*

*Explosion of **FTA negotiations** worldwide*

- EU 'Trade For All' strategy: COM(2015)497 of 14.10.2015

*Impact of **global value chains** on bilateral/regional FTAs*

*Increasing **interactions** across FTAs (cumulation)*

*Ambitious **coverage** of FTAs beyond preferences based on origin*

*Confrontation of **different traditions** in the way to define and manage preferential origin*

More and more 'spaghetti in the bowl'

Simpler and more development-friendly rules?

◦ **Yesterday**

*Origin of a good (preferential as non-preferential) was often described as its '**nationality**', to be established through strong territorial and physical links with a country, entailing hopes for 'consistency' and even 'harmonization'*

◦ **Today**

*Preferential origin of goods (including various cumulation schemes) is actually **a matter for negotiation** closely linked to market access deals, MFN tariffs discrepancies, sourcing needs and/or aid to development (→ rules adjusted to the preferential scheme but increasing complexity)*

Efficient procedures ?

- **Yesterday**

Proof and verification of preferential origin was in general seen as a matter for governmental authorities (in the case of the EU: authorities of the exporting/beneficiary country) based on certificates

- **Today**

EU is evolving towards setting up procedural patterns combining 3 principles:

- (1) **self-certification** by exporters on commercial documents*
- (2) **administrative cooperation** in the verification of origin*
- (3) **denial of preferential treatment** by the importing country where goods appear not being originating*

EU self-certification by

Exporter

- Registers to customs (EU=REX)
- Complies with rules
- Accepts controls
- Makes out statements on origin
- Is responsible for false statements

commercial relation

Importer

- Checks exporter's registration and statements
- Claims preference and declares origin in import declaration
- Provides statement on origin and additional evidences where requested
- Is responsible for false declarations

relation authority EX -
exporter

relation authority IM
- importer

registered exporters

Authority EX

- Registers exporters (EU=REX)
- Manages and updates the register
- Withdraw failing exporters from the register
- Assists authority IM in verification

administrative cooperation

Authority IM

- Selects import declarations and statements on origin to verify
- Request subsequent verification of origin to the authority EX
- Deny the preference if no reply or no sufficient elements to confirm origin

Secured environment ?

- **Yesterday**

*Preferential rules of origin mainly implemented by each party **on its own**, with a **joint management** limited to: verification of origin, mutual administrative assistance, work in committees set up by FTAs, possible common guidance ('explanatory notes'), and dispute settlement mechanisms*

- **Today**

***As yesterday plus, on the EU side:** 'precautionary measures' ('notices to importers'; possible withdrawal of preference in case of fraud); contribution to capacity building; development of 'monitoring' actions after entry into force*

And tomorrow? Some food for thought...

Harmonise the substance of preferential rules of origin ?

The answer is definitely NO in a context of market access and/or development-oriented definition of these rules

Harmonise the procedures on preferential origin ?

Possible approximation on the basis of a combination of the best of various systems, taking into account requirements for 'extended', inter-FTAs, cumulation?

Enhanced the joint management of rules of origin in FTAs ?

Develop cooperation in committees, explanatory tools, monitoring

Improve transparency and understanding be improved through the reinforcement of existing tools in each WTO-WCO member and collectively?

Develop a 'toolbox' in the WCO Origin Manual, as an helping hand for negotiation and implementation of preferential rules of origin?

A WCO 'toolbox' on preferential origin?

The concept : *"an add to the WCO Origin Manual"*

*Provide decision-makers (negotiators) on rules of origin in preferential trade arrangements with **a catalogue of concepts, with possible definitions and templates** which may be used in provisions on preferential origin*

*Build on **existing traditions and language** used by WCO members in their respective FTAs and present the various ways to address/express similar notions*

*Highlight **equivalence/differences** between the concepts and related provisions + suggest possible compromise wording ?*

*The toolbox would not impose any choice but **help negotiators to make their choice** in various tools at their disposal*

Example 1: 'territoriality'

US-Korea FTA - ARTICLE 6.1: ORIGINATING GOODS

Except as otherwise provided in this Chapter, each Party shall provide that a good is originating where it is:

- (a) a good wholly obtained or produced **entirely in the territory** of one or both of the Parties;*
- (b) produced **entirely in the territory** of one or both of the Parties and*
 - (i) each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification (...), or*
 - (ii) the good otherwise satisfies any applicable regional value content or other requirements (...), and the good satisfies all other applicable requirements of this Chapter; OR*
- (c) produced **entirely in the territory** of one or both of the Parties exclusively from originating materials.*

EU-Korea FTA - Article 12 - Principle of territoriality

*Except as provided for in Article 3 and paragraph 3 of this Article, the conditions for acquiring originating status set out in Title II must be **fulfilled without interruption in a Party.***

Example 2: 'bilateral cumulation'

US-Korea FTA - ARTICLE 6.5: ACCUMULATION

1. Each Party shall provide that **originating goods or materials of one Party, incorporated into a good in the territory of the other Party**, shall be considered to originate in the territory of the other Party.

EU-Korea FTA - Article 3 – Cumulation of origin

Notwithstanding Article 2, products shall be considered as originating in a Party if such products are obtained there, **incorporating materials originating in the other Party**, provided that the working or processing carried out goes beyond the operations referred to in Article 6. It shall not be necessary that such materials have undergone sufficient working or processing.

Example 3: 'full cumulation'

US-Korea FTA - ARTICLE 6.5: ACCUMULATION

2. Each Party shall provide that a good is originating **where the good is produced in the territory of one or both of the Parties by one or more producers**, provided that the good satisfies the requirements in Article 6.1 and all other applicable requirements in this Chapter.

EEA Agreement - Article 2 – General requirements

1. For the purpose of implementing the Agreement, the following products shall be considered as originating in the EEA:

(b) products obtained in the EEA **incorporating materials which have not been wholly obtained there, provided that such materials have undergone sufficient working or processing** in the EEA within the meaning of Article 5.

For this purpose, the territories of the Contracting Parties to which the Agreement applies, shall be considered as **a single territory**.

Example 4: 'fungible goods' versus 'accounting segregation'

US-Korea FTA - ARTICLE 6.7: FUNGIBLE GOODS AND MATERIALS

1. Each Party shall provide that an importer claiming preferential tariff treatment for a good may claim that a **fungible good or material** is originating where the importer, exporter, or producer has:
 - (a) physically segregated each fungible good or material; or
 - (b) used **any inventory management method**, such as averaging, last-in-first-out (LIFO) or first-in-first-out (FIFO), recognized in **the Generally Accepted Accounting Principles** of the Party in which the production is performed or otherwise accepted by the Party in which the production is performed.
2. Each Party shall provide that the inventory management method selected under paragraph 1 for a particular fungible good or material shall continue to be used for that good or material throughout the fiscal year of the person that selected the inventory management method.

Example 4: 'fungible goods' versus 'accounting segregation'

EU-Korea FTA: Article 11 - Accounting segregation of materials (1)

1. Where identical and **interchangeable originating and non-originating materials** are used in the manufacture of a product, those materials shall be physically segregated, according to their origin, during storage.
2. Where considerable costs or material difficulties arise in keeping separate stocks of identical and interchangeable **originating and non-originating materials used in the manufacture of a product**, the producer may use the so-called 'accounting segregation' method for managing stocks.
3. This method is recorded and applied in accordance with the **generally accepted accounting principles** applicable in the Party where the product is manufactured.

Example 4: 'fungible goods' versus 'accounting segregation'

EU-Korea FTA: Article 11 - Accounting segregation of materials (2)

4. This method must be able to ensure that, for a specific reference-period, **no more products receive originating status than would be the case if the materials had been physically segregated.**

5. **A Party may require** that the application of the method for managing stocks provided for in this Article is **subject to a prior authorisation by customs authorities.** Should this be the case, the customs authorities may grant such an authorisation subject to any conditions deemed appropriate and they shall monitor the use of the authorisation and may withdraw it at any time whenever the beneficiary makes improper use of it in any manner or fails to fulfil any of the other conditions laid down in this Protocol.

Example 5: Formulation of conditions in 'PSR'

Change of Tariff Classification (HS 42.01)

US-Korea FTA: 'A change to heading 42.01 from any other heading'

EU-Korea FTA: 'Manufacture from [*non-originating*] materials of any heading, except that of the product'

Japan-Australia FTA: 'CC' [= Change of Chapter]

Example 5: Formulation of conditions in 'PSR'

Value-Based rule (HS 8406.90)

US-Korea FTA: 'A change to subheading 8406.90 from any other heading; or, No change in tariff classification is required, provided that there is a regional value content [*RVC, calculated on a FOB base*] of not less than:

- (a) 35 percent under the build-up method; or
- (b) 45 percent under the build-down method.'

EU-Korea FTA: 'Manufacture from materials of any heading, except that of the product, or, Manufacture in which the value of all the [*non-originating*] materials used does not exceed 50 % of the ex-works price of the product'

Japan-Australia FTA: 'CTH or **QVC 40**' [= *Change of Tariff Heading, or, Qualifying Value Content 40%*]

Other potential examples

'Absorption' versus 'Roll up'

'Neutral elements' versus 'Indirect materials'

'Insufficient operations' versus 'Non qualifying operations'

etc.

A last (but not least) question...

*Is **origin** a concept still **meaningful for the granting of a preferential treatment**, in a context of:*

- ***global value chains** involving more and more value in services, IPR, etc. compared to goods;*
- ***FTAs interacting more and more** with each other, in particular through inter-regional / extended cumulation ?*



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Thank you !