RULES OF ORIGIN: an unfinished negotiation[1]

Vera Thorstensen[2]
2012

I. Introduction

Rules of origin (RO), as a trade policy instrument, can be considered as a major international issue in the Multilateral Trading System. When determining the country of origin of a product, RO identify not only the origin of that good in the flow of international trade but also the object of trade policy instruments. Despite being itself an old instrument, RO have received international attention only recently, during the Uruguay Round: general principles related to the application of RO were negotiated during the Uruguay Round. These negotiations also created the Committee on Rules of Origin (CRO) at the World Trade Organization (WTO). The CRO is responsible for coordinating the process of harmonizing RO at the multilateral level. The harmonization work programme, started in 1995, and represents a huge task: to define origin for around 5113 products, as defined at the 6-digit level of the Harmonized System.

The negotiation of a uniform system of RO at the multilateral level is a key element to keeping international commerce free from policy frictions created by divergent national rules defining origin, and, as such, to guaranteeing transparency and predictability to traders around the world. As evidenced by Jackson, there is great differentiation in the treatment of imports depending on their origin. If a number of WTO members form a customs union in order to free all trade among them from tariffs, it is possible to observe at least three levels of tariffs that may be applied to goods imported into one of the countries: (i) the WTO bound tariff level of WTO members who are not in the customs union; (ii) tariff-free treatment for customs union goods; and (iii) tariffs for goods from other countries that are non WTO members.[3] Harmonized RO will be all the more necessary in the face of globalization and fragmentation of production, whereby parts and components for a given final product can originate in manifold countries. Since WTO is an organization of countries, and the logic of its instruments is based on rules for exported or imported products from a given country, the identification of the origin of each product is essential.

There are two types of rules of origin, preferential and non-preferential RO. Both have important implications to international trade flows, production and outsourcing patterns, and investment decisions. Non-preferential rules, the focus of the multilateral negotiation and the object of the harmonization process, shall be used as the basis for the application of many important trade policy instruments, such as tariffs, tariff quotas, antidumping, countervailing duties, safeguards, public procurement, origin markings, and trade statistics. For their part, preferential RO are negotiated between parts to a preferential trading arrangement (PTA) and reflect their

[1] To be published

[2] Vera Thorstensen is professor at the School of Economics from the Getulio Vargas Foundation and Head of the Center on Global Trade. She was the economic advisor of the Mission of Brazil to the WTO from 1995 to 2010. She was Chair of the Committee of Rules of Origin for seven years.

[3] Jackson, J., *The World Trading System*, MIT Press, 1992.

main interests in that negotiation. Preferential RO are also employed in the context of generalized systems of preferences (GSP) as a tool to avert trade deflection and to ensure that preferential treatment will be conferred to their parts alone. As the number of PTAs increases, so increases the number of RO systems. The GSP RO are employed in non-reciprocal agreements, and thus defined by the country conferring the preferences.
Prior to the Uruguay Round, each country defined its own non-preferential RO. This resulted in the proliferation of different types of RO based on different criteria, being employed differently within a given country, depending on the trade policy instrument in question. For instance, the US applies a given RO differently in some key sectors such as textiles, steel, or information technology depending on whether the RO was used for customs purposes or for initiating antidumping actions. Not subject to an international discipline, RO evolved into a highly complex instrument that undercut the transparency of trade policy and increased the costs of trading for importers and exporters around the world. Concerns over the trade-distorting effects of RO led to the Uruguay Round participants to agree in the ARO.

Despite being a similarly powerful trade policy instrument, preferential RO have yet to come under international negotiations. Unlike non-preferential RO that fall within the scope of the WTO, preferential RO are negotiated among the PTA partners and only indirectly fall under the responsibility of the WTO Committee on Regional Trade Agreements, and the Committee on Trade and Development. However, as preferential RO were being transformed in important barriers to preferential trade, replacing the reduction of tariffs, many countries, mainly developing ones, are claiming for the harmonization of non-preferential RO as well.

The Agreement on Rules of Origin was negotiated in the Uruguay Round to establish basic principles for RO, and to put in place the program for harmonizing rules of origin that would result in a multilateral system of origin determinations of goods listed in the Harmonized System. The harmonization work, launched in 1995, was to be completed in three years. For this period of talks, the Agreement defined rules for certification of origin to counter the use of national certification methods as trade barriers. However, after 15 years of hard work, the harmonization program has yet to be concluded. Although the CRO has been able to define a RO for all products, the complexity and political sensitivity of many products continue blocking the conclusion of the program. There are many “core issues” and “crucial issues” awaiting resolution. The CRO has dealt with these contentious issues by sending them to the highest instance of the WTO negotiations, the General Council, in order for the member state ambassadors to reach a political solution. But ambassadors were never willing to solve these issues, arguing they are too technical. In reality, despite the technical language involving the negotiations, the discussion includes very sensitive political questions.

In other words, establishing the rule of origin for a given product is hardly an easy task. Each country has a negotiation position on each product, depending on whether the country is a producer, importer, and/or exporter of that product. The complexity of these issues has prompted member countries to carry out extensive consultation rounds with their producers and various governmental entities dealing with RO, as ministries of agriculture, industry, foreign trade, tax authorities, customs authorities, and also private sectors representing agricultural and industrial production through

their confederations and associations. Many of these sent representatives to Geneva to be kept updated on the details of the harmonization process and to be present at the discussions at the WTO.

Many countries are also engaged in trade negotiations on FTAs. RO are a central theme on each of theses fronts. A detailed analysis of the key questions surrounding the harmonization process is compelling, given that RO talks at the WTO will affect the negotiation of FTAs. Many developing countries are waiting the results from WTO to define their own RO. Since the impasse continues, they are creating their own systems and multiplying different ROs to satisfy their needs.

This article seeks to provide some clues why it was impossible, till now, to finish this multilateral negotiation. It is organized as follows: i) review of the main issues in the ARO; ii) present the main points of contention in the harmonization work; iii) analyze the implications of a harmonized system of rules of origin to the other major WTO agreements as well as to other national trade policy instruments; and to present some possible scenarios how to conclude the negotiation.

II. WTO Agreement on Rules of Origin

The purpose of the ARO is to ensure that clear and predictable RO facilitate the flow of international trade, do not create unnecessary obstacles to trade, and do not nullify or impair rights of members. It also recognizes that it is desirable to provide transparency on regulations and practices regarding origin, and ensure that ROs are prepared and applied in an impartial, transparent and predictable manner.

Definitions and disciplines

ARO defines RO as "laws, regulations and administrative determinations of general application applied by any Member to determine the country of origin of goods".[4] (ARO, Article 1.1). It does not include trade regimes leading to the grating of tariff preferences. RO include all the rules used in non-preferential trade policy instruments, such as tariffs (most favoured nation), national treatment (imported x domestic goods), lists of tariff concessions, elimination of quantitative restrictions, antidumping, countervailing duties, safeguards, origin marking requirements, and any discriminatory quantitative restrictions or tariff quotas. The definition of RO also includes RO used for government procurement and trade statistics. (Article 1.2).[5]

The Agreement lists the criteria to determine RO: tariff classification, specifying heading and subheading of the tariff nomenclature; ad valorem percentage with the method for calculating it; manufacturing or processing operation precisely specified.

During the transition period, ARO establishes, among others rules, that RO are not to be used as instruments to pursue trade objectives directly or indirectly, and shall not create restrictive, distorting or disruptive effects on international trade (Article 2).[6]

[4] WTO, Agreement on Rules of Origin, Article 1.1.
[5] WTO, Agreement on Rules of Origin, Article 1.2.
[6] WTO, Agreement on Rules of Origin, Article 2.

Rules of Origin Disciplines after the Negotiations

Once the harmonization program has been concluded, WTO members shall ensure that (ARO, Article 3): a) to apply RO equally for all trade policy instruments mentioned in ARO; b) to define country of origin of a good as the country where the good has been wholly obtained or the country where the last substantial transformation has been carried out; c) to apply RO on imports and exports not more restrictive than those applied to determine whether a good is a domestic one, and do not discriminate between other WTO members, irrespective of the affiliation of the manufacturers of the good concerned; d) to administer RO in a consistent, uniform, impartial, and reasonable manner; e) to publish laws, regulations, judicial decisions, administrative rulings related to RO; f) to establish the origin of a product within a maximum of 150 days, and remain valid for three years as long as facts and conditions remain comparable; and g) do not apply legal or administrative modifications to RO retroactively.[7]

Declaration on Preferential Rules of Origin

The growing importance of preferential RO in the face of the proliferation of regional integration agreements prompted the Uruguay Round participants to negotiate also the Common Declaration with Regard to Preferential Rules of Origin (ARO, Annex II).[8]

In the Annex, the members define preferential RO as "laws, regulations and administrative determinations...applied by any Member to determine whether goods qualify for preferential treatment under contractual or autonomous trade regimes leading to the granting of tariff preferences." As such, preferential RO go beyond circumstances where the most favored nation principle is applied.

Members also agreed to a similar series of disciplines for applying preferential RO as for non-preferential RO. They agree to provide to the WTO Secretariat promptly their preferential RO, including a listing of preferential arrangements to which they apply, as well as any judicial decisions and administrative rulings on preferential RO.

Committee on Rules of Origin

ARO established the Committee on Rules of Origin composed by representatives from each of the members, to consult and carry out the responsibilities assigned under ARO. It also created the Technical Committee at the Brussels-based World Customs Organization (WCO) to carry out technical studies, and provide data and advice on matters related to the ARO.[9]

The main task before the CRO is the Harmonization Program of Rules of Origin. The Program has been extended several times since its planned date of conclusion in 1998. Besides the 5113 product-specific RO, the CRO is to harmonize the general RO that cover all products. In the beginning, the harmonization work was carried out jointly by the CRO and TCRO. The latter has completed the technical part of the work, which involves the technical discussion over the options available for each product.

[7] WTO, Agreement on Rules of Origin, Article 3.
[8] WTO, Agreement on Rules of Origin, Annex 2.
[9] WTO, Agreement on Rules of Origin, Annex 1.

When a given RO was approved by consensus, it was sent to Geneva to the CRO. The Technical Committee's work was concluded in 1999, with the about 500 open questions that could not be solved at the technical level being sent to Geneva. The CRO has sought to extract compromises on these remaining issues through a negotiated dynamic among member states. The final 150 issues were too political and contentious for the CRO to solve, which prompted it to send these issues to the General Council.

III. Negotiations of the Harmonization Program

Objectives and principles

The ARO also established the objectives and principles for the harmonization program of negotiations for non-preferential RO (ARO, Article 9.1)[10]:
a) all rules of origin should be applied equally for all purposes set out ion ARO; b) the country of origin of a good is either the country where the good has been wholly obtained or, when more than one country is concerned in the production, the country where the last substantial transformation has been carried out; c) RO should be objective, understandable and predictable; d) RO should not be used as instruments for the pursuit of trade objectives, either directly or indirectly, and they should not create restrictive, distorting or disruptive effects on international trade, or pose unduly strict requirements or require the fulfillment of a certain condition not relating to manufacturing or processing as a prerequisite for the determination of the country of origin; e) RO must be administrable in a consistent, uniform, impartial and reasonable manner; f) RO should be coherent; and g) RO should be based on a positive standard, negative standards may be used only to clarify a positive standard.

ARO also required that the Harmonization Program should be conducted on a product sector basis, as represented by chapters or sections of the Harmonized System Nomenclature (Article 9.2).[11] Some definitions were included: i) For wholly obtained goods: as goods obtained in one country with minimal operations or processes that do not confer origin; ii) For substantial transformation: use the criterion of change of tariff heading or subheading and the minimum change to meet; as a supplementary criterion, the use of ad valorem percentage or processing operation.

After the harmonization work is completed, the Committee is to review the results in terms of their overall coherence.

The Structure of the Agreement

The results of the Harmonization Program will be incorporated in the ARO and should contain the following:
1. General Architecture with General Rules: definitions of basic terms, methods of obtaining goods, materials incorporated in a good, and originating and non-originating materials; scope of the agreement; determination of origin; neutral elements; packaging and labelling; parts and accessories

[10] WTO, Agreement on Rules of Origin, Article 9.1.
[11] WTO, Agreement on Rules of Origin, Article 9.2.

2. Appendix 1 – Wholly obtained goods: scope of the agreement; application of RO; determination of origin; primary rules; secondary rules; intermediate materials; interchangeable materials; sets and kits; collections of parts; *de minimis* rule
3. Appendix 2 – RO for Specific Products: Lists of RO of products at 4- or 6-digit level of disaggregation, with RO being defined as: Change of chapter (CC) performed at 2-digit level; Change of tariff heading (CTH) at 4-digit level; Change of tariff sub-heading (CTSH) at 6-digit level; Additional criteria such as value added or technical requirement

IV. The Big Questions in the RO Negotiations

This section presents a synthesis of the more contentious issues pending in the negotiations of the harmonization process. The negotiation scenario includes many countries with defensive or offensive actors. If they are defensive, their interests are to use RO to protect their industries through restrict rules. If they are offensive, they want to export, and do not want origin to be used as a barrier to trade, through liberal rules.

1. Food products – The debate on food products is divided between the major agricultural producers and major exporters, and countries that usually protect their agricultures, being big importers of primary products that exporters of processed food. The former argue that processing alone is not sufficient to confer origin; the latter view processing as substantial transformation that renders the final product distinct from its raw material inputs. An important issue surrounding the debate is export subsidies. Subsidies encourage eligible producers to import raw materials, process them, and subsequently re-export them, subsidized, to the raw material producer countries, a practice that undercuts domestic producers' market share. The main sectoral issues of contention are as follows:

- Raising and fattening of animals. At stake is whether origin should be granted to the country where the animal was born or where it was raised. Countries that do not need to import animals defend the former option (Brazil), while countries that raise animals support the latter (EU). Sanitary standards are an important issue to the discussion (Japan, Korea).

- Slaughtering, fresh, chilled, and frozen meat. The question is whether slaughtering can be considered substantial transformation (US, Brazil, Argentina), or whether origin is conferred to the country that raised and fattened the animal (EC, Japan). The broader issue at stake, again, is sanitary standards, vaccinations and hormones.

- Dried or smoked meat of fish, bovine or swine. The issue is whether drying, salting, or smoking of meat can be considered substantial transformation. Some countries argue that it is the process that guarantees the quality of the final product as in the case of fish (Norway), ham and sausages. Others considered these operations as non-substantial.

- Fish products. There are two issues under consideration. The first concerns processing. Is the operation of filleting fish substantial? Countries that depend on fishing and seafood exports argue that processing of fish requires special techniques that should confer origin (Norway). The second issue concerns the definition of origin

of products obtained from the exclusive economic zone (EEZ) in the sea. All countries agree that fish caught within 12 nautical miles from the shore of a country is accorded the origin of that country. What is contested is the EEZ extending 200 nautical miles from a country's coast. Most developing countries favor a RO conferring origin to the country in whose EEZ the fish was caught (Brazil, Argentina, India, Australia). The EC, meanwhile, supports a RO that determines origin of fish caught in the EEZ by the origin of the vessel.

- Milk products. The issue is whether processing confers origin. In this case, milk powder imported from one country to another for processing (mixing with fat and water) would acquire the origin of the latter. At the heart of the matter are the use of milk quotas and sanitary standards (US, EU).

- Ground and toasted coffee. Large coffee producers argue that country where coffee beans are grown is the country of origin (Brazil, Colombia). The main producer of processed coffee or consumer countries (EU, US) hold that the origin of bean is not sufficient since the final product is a blend of roasted coffees from different origins, and only the blending and roasting process can give the taste to the final product. A parallel issue is determining the origin of blends, i.e., the exact percentage of coffee originating from a given country in the final blend that would suffice to confer origin. The same debate surrounds soluble coffee.

- Refined sugar. Sugar-producing countries maintain that refining is not adequate to confer origin (Brazil); sugar-importing countries, interested in re-exporting refined sugar, often at subsidized rates, argue to the contrary (several countries).

- Refined vegetable oils. Countries producing seeds and exporting vegetable oil argue that the mere process of refining oils cannot suffice for conferring origin. Importers of raw oil defend that processing is enough to confer origin.

- Pizzas. Countries that import pizza bases argue that the toppings of a pizza confer origin; countries exporting those bases hold that is the base that defines origin.

- Fruit juices. There are two issues and three sets of interested parties: countries that export fruit, countries that export juice concentrates, and countries that produce juice from concentrate. The first issue is whether the fruit or the juice confers origin; the second whether juices made from concentrate confer origin, or whether it is concentrate that defines the origin of the juice.

- Wines. Much like for juice, the question is whether the origin of the grape is the origin of the wine (EC). Further issues are whether wine produced from grape must is originating, and defining origin for blends of imported and domestically produced wines (Japan). Similar questions surround distilled beverages: whether the process of distilling or the blending of distilled beverages confers origin.

2. Processed Industrial Goods – the most contentious issues are:

- Cement. Countries that export portland cement where clinker represents nearly 90% of the mixture argue that origin should be defined by the country of clinker. Countries

that produce special cements and where clinker is only 40% of the mixture or less, posit the country that produces the cement from clinker is the originating one.

- Pharmaceuticals. The two key issues are determining the origin of a blend with materials from two or more countries, and whether blending materials to produce medicine can be considered substantial transformations. Countries that produce the final product affirm that the process of blending requires high levels of precision in order to produce an effective and safe final product, and hence should confer origin

- Perfumes and beauty products. The question again is on the origin of a blend of materials from various countries. The debate is related to the broader issue of brands and trademarks.

- Leather products. The discussions focus on the operation or combination of operations: tanning, re-tanning, refining and finishing, that would suffice to provide origin. At stake are the interests of countries exporting leather and countries exporting final products made of leather as footwear.

- Textiles: yarn and fabrics. The question is which part of the yarn production would confer origin: dyeing, printing or finishing. It extends to natural and synthetic products alike. The big debate is whether origin should be conferred by the country doing the weaving, or, as argued by countries with incentives to import woven products, by the country of coloring or printing. Another debate is related to fabrics. Again, is dyeing, printing and finishing substantial? India, EC, Egypt say yes; US says no.

- Embroidery. The question is how much of the embroidery is to take place in a country in order for it to claim origin, and how to define the extent of broidery: whether by the embroidered area, space between the designs, weight of the thread used for embroidery, or the value added by embroidery.

- Apparel, knitted to shape. The discussion is whether origin may be the country where the knit or woven parts were put together (assembled) or the country that produced these parts. India defends the first; US and Brazil the second.

- Iron and steel. There are two main issues. One is whether laminating steel confers origin. The second is whether coating to preclude corrosion and so increasing the value of the good can be considered substantial transformation. Big steel producers argue that neither laminating nor galvanizing suffices for conferring origin. Behind the issue is that producers want assurances that they would not be subjected to anti-dumping or anti-subsidy actions from a third country, should their raw materials be imported by another country and subsequently re-exported by that country at low prices to the third country market.

3. Assembly of machinery, electrical equipment, vehicles, airplanes, ships

The basic issue in the debate on the origin of assembled industrial goods is the criterion that allows for precluding simple manufacturing operations. One such proposed criterion is CTH (change of heading) (US, Japan); however, since the Harmonized System was not developed with origin considerations in mind, the CTH

criterion would be excessively demanding to meet: parts and accessories for many machinery products fall under the very same heading as the final good itself. Another proposal is to introduce a value added criterion (EC, Brazil); however, the exact domestic value added sometimes is difficult to calculate, particularly given that it is subject to changes in exchange rates and can depend on the accounting system of the producing company. Globalization of and fragmentation of production has further complicated the determination of the origin of each intermediate good included in a given final good.

V. The Implications of Origin Determinations

One of the reasons why the negotiations are so complex and sensitive to conclude is the implications of RO on a series of other agreements negotiated in the WTO or on other international fronts. Some of the key issues are as follows:

-Textiles. The Agreement on Textiles incorporated textiles under WTO disciplines, through the dismantling of quotas established in the Multifiber Agreement. However, origin rules for yarn, textiles, and apparel alike have major implications to products whose components originate from different countries. As origin in these products is defined by a series of processes, the current strategy of many companies to spin in one country, weave in another, and color and print in still another will undoubtedly be affected. Moreover, although the Textiles Agreement has expired, a change in origin definitions alters the application of other related important instruments as antidumping, anti-circumvention and countervailing measures, and also existing quotas. Some countries argue that any processing should confer origin, while others maintain that only integrated production will suffice for claiming origin. For its part, some others see the colouring and printing as the key processes to confer origin

- Sanitary and phytosanitary (SPS) standards. The SPS Agreement stipulates that the health standards for food products should be defined in ways that would not create new barriers to trade. The key question is how to comply with this provision in a world where a given food product may contain inputs from various different countries with differing health standards, and differences in the uses of chemicals, antibiotics, hormones, and genetically modified seeds. Although the objectives of the SPS Agreement and the ARO differ, their provisions should be compatible with each other.

- Labelling requirements for food products. Codex Alimentarius defines the international norms for food products. It informs consumers of the ingredients and processes involved in the production of the final product, and, as such, it basically defines origin on the grounds of processing. However, the RO negotiations will complicate the labelling requirements, as they have given rise to several proposals to define origin especially for meat products, such as on the basis of country where the animal was born, raised, or slaughtered, or where the meat was processed. Moreover, that consumers have recently become more demanding of the information on the origin of meat and the type of processing that can be employed will likely have important implications to the Codex and the definition of RO alike. Again, the two sets of rules have different ends but should be made complementary.

- Antidumping. ARO contains provisions on the use of RO for antidumping actions. However, some countries, such as the US, Japan and Korea argue that the calculation of the margin of dumping, the difference between the price of the exported good and its value in the domestic market, as defined in the Agreement on Anti-Dumping is normally based on the concept of exporting country and not on the country of origin. As such, determining origin for antidumping actions would not be always necessary. The US prefers having its own RO for antidumping investigations in order to be better able to defend some of its major domestic industry sectors, such as textiles, electronics, and metal industries that have already stringent RO.

Many countries, as China and ASEAN cite the problem of circumvention of antidumping actions as revealing the need for establishing harmonized RO. Circumvention takes place when an exporter, in an effort to circumvent antidumping actions by an importer, exports dumped components to the importer country's market and produces the final good within the borders of the importer country. Alternatively, an exporter ships dumped goods to a third country and proceeds to export from the third country to the importer, thus evading the antidumping. Once harmonized, non-preferential rules of origin could pave the way for resolving numerous cases of circumvention in global trade, particularly of goods shipped from Asia to the US or EU markets.

- Safeguards. Usually safeguards are imposed as additional tariffs or import quotas. The application of safeguards is problematic in cases where an exporting country with an import quota in the importer country's market has filled it, and starts exporting from a third country by carrying out some minor manufacturing processes with components imported from its own market there. The exporting country has thus circumvented the quota restrictions. How should the origin of the product be defined to make it compatible with the issue of safeguards?

- Origin markings. Origin markings are established to give information about the quality of a good by its country of production, and hence protect consumers from fake and pirated products that are likely of less quality and lower in price. RO will be key in defining origin markings. However, the purposes of origin markings are again distinct from the purposes of RO, and origin marking requirements tend to be stricter than RO.

- Trademarks. Trademarks are protected as intellectual property by Trade-Related Aspects of Intellectual Property Rights (TRIPs). One of the core issue surrounding trademarks and RO concerns coffee. Colombia is particularly worried on its trademark "100% Colombian Coffee". Other coffee producers, such as big consumers as EU or US oppose the 100% rule on coffee due to its practices of blending. This poses a challenge for reconciling harmonization work with the TRIPs Agreement.

- Geographic indication. These denominations, also covered by TRIPs, affect particularly wines and liquors. But the EU is interested in informing the consumer of the quality of the product by indicating the region where the production took place. As on trademarks, RO would have to be made compatible with TRIPs.

In sum, the result of the RO negotiations can have important implications to the other WTO agreements. As such, RO talks are often faced with resistance from the

beneficiaries of the *status quo* in the other agreements. To be sure, reconciling RO with all the existing international trade agreements would likely prove an impossible endeavour. The goal of the harmonization work should be simply to facilitate commerce and to establish RO that allow the policy instruments in the other agreements to be applied in practice. One of the keys is reconciling health and intellectual property right protection concerns with origin definitions.

VI. Conclusions

WTO rules of origin are an indispensible tool for applying a number of trade policy instruments. The multiplication of different RO systems applied by different countries is certainly creating barriers to trade. It was this concern that led the Uruguay Round participants to negotiate the Agreement on Rule of Origin, which established norms for applying RO and paved the way for the ambitious endeavor of harmonizing non-preferential RO. The harmonization work has been difficult and experienced multiple delays, and, at the present time, faces a significant impasse, due to the conflicting interests involving member states' trade and investment patterns. Some years ago, the main contested issues were sent to the highest level of negotiations, the General Council. However, there is no political will to construct a consensual solution.

Three possible scenarios can be envisaged for the future of WTO RO.

The first scenario is to accept the inevitability of a failure and to suspend the negotiation, accepting the impossibility of reaching a consensus. Despite the importance and the impacts of RO on trade, there is no political press to finish the harmonization task. The consequences are clear: multiplication of national non-preferential RO systems, manipulation of RO as barriers to protect trade from unwanted imports, impact on the application of all defence instruments and undermining of the whole WTO rules system. It is possible to foresee, in the near future, countries ready to start the harmonization exercise again to avoid the chaos created by uncontrolled RO.

The second scenario is to agree in a mid-term solution. After 15 years of hard work, the Committee has a Consolidated Text (G/RO/W/111 series document).[12] It is not a final work, but it is the result of a huge political compromise. The proposal is to use it as a Guideline, that is, as an indicative and non-mandatory text. Since it has several possible options, each country can chose its own and notify to the WTO. After an experimental time, members will discuss what to do with the Guidelines: to kill it, to keep it as Guideline, or to conclude the harmonization exercise. It can be used as a model to countries facing the task of creating its own national system on RO.

The third scenario is to follow the most known criteria of preferential RO, the value added principle. It is simple and direct, but has an inherent fail – it is affected by exchange rate fluctuation. Members need to negotiate a mechanism to correct these fluctuations from calculations of imported costs. A good start is to use SDR (Special Drawing Rights) from FMI, as soon as it starts including a more significant basket of currencies.

[12] WTO, Committee on Rules of Origin, *Draft – Consolidated Texto f Non-preferential Rules of Origin – Harmonization Work Program*, document G/RO/W/111.

The fourth option is to multilateralize preferential RO as a middle ground solution. With the multiplication of FTA and RTA, members are being forced to face the real barriers created by RO to developing countries when negotiating different agreements with different hub partners. The need to simplify these RO systems is already in the agenda of these countries.

There is no easy way out for WTO members. To pretend there is no problem, will not fade it away. It must be faced and solved. It must be negotiated by high level representatives with authority to conclude the program.

Vera Thorstensen is professor at the School of Economics from the Getulio Vargas Foundation and Head of the Center on Global Trade. She was the economic advisor of the Mission of Brazil to the WTO from 1995 to 2010. She was Chair of the Committee of Rules of Origin for seven years.

Bibliography

Baldwin, R.; Low, P. – Multilateralizing Regionalism, Cambridge, 2009.

Brenton, P. – Preferential Rules of Origin, in Chauffour, J., P.; Maur, J. (eds) – Preferential Trade Agreement Policies for Development, The World Bank, 2011.

Cadot, O.; Estevadeordal, A.; Suva Eisenmnn, A.; Verdier, T. – The Origino f Goods, Oxford, 2006.

Choi, W. – Defragmentating Fragmented Rules of Origin of RTAs, JIEL, 13(1), 111-138, January 2010.

Estevadeordal, A.; Suominen, K. – Regional Rules in the Global Trading System, IDB, Cambridge, 2009.

Jackson, J. – The World Trading System, MIT Press, 1992.

Vermulst, E.; Waer, P.; Bourgeois, J. – Rules of Origin in International Trade, Michigan, 1994.