

CHINA'S TRANSITIONAL REVIEW MECHANISM

The following communication, dated 22 September 2003, has been received from the Permanent Mission of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu.

Questions from the Separate Customs Territory of Taiwan,
Penghu, Kinmen and Matsu

1. Method of calculating the percentage of substantial transformation

Article 2 (a), subparagraph (ii) of the Agreement on Rules of Origin states “[I]n cases where the *ad valorem* percentage criterion is applied, the method for calculating this percentage shall also be indicated in the rules of origin.” In addition, paragraph 98 of China’s Working Party Report states that “the criteria for making the determination of substantial transformation was: (a) change in tariff classification of four-digit tariff lines in the Customs Tariff; or (b) the value-added component was 30 per cent or more in the total value of a new product.”

However, Article 3 of China’s *Temporary Regulations (Revised) of the PRC Customs on Origin of Imported Goods* states that “[S]ubstantial process means that the percentage of an after-processed product or the value-added component is more than 30 percent of the total product value.”

Would China please indicate the method used in calculating this percentage.

2. Operation that confers origin on the processing of a good

According to Article 2 (a), subparagraph (iii) of the WTO Agreement on Rules of Origin, “[I]n cases where the criterion of manufacturing or processing operation is prescribed, the operation that confers origin on the good concerned shall be precisely specified.”

Article 6 (2) of China’s *Regulations of the PRC Customs on Origin of Exported Goods* contains the description “...products that partially or wholly use imported raw materials or parts that undergo their primary and final manufacturing and processing within PRC territory, causing their external appearance and physical form, or their use, to change substantially. Lists of manufacturing processes shall be based primarily on the manufacturing and processing sequence, supplemented by the principle of assembly ratio, and shall be stipulated and adjusted by the relevant authority of the foreign economic and trade administrations as well as the State Council.”

Furthermore, Article 28 of China’s *Implementing Measures of the Regulations of the PRC Customs on Origin of Exported Goods* states that “...MOFTEC will make and promulgate further manufacturing and processing lists accordingly.”

It would be appreciated if China could please provide these manufacturing and processing lists and inform us of the conditions under which the supplemental rules will apply. Furthermore, could China please advise how the assembly ratio is calculated under their regulations?

3. Determination of origin - reviewing of by judicial, arbitral or administrative procedures

Articles 2 (j) and 3 (h), and Annex II, paragraph 3 (d) of the WTO Agreement on Rules of Origin concern administrative actions on determination of origin, whether non-preferential or preferential. It states that “Any administrative action which they take in relation to the determination of origin is subject to prompt review by judicial, arbitral or administrative tribunals or procedures, independent of the authority issuing the determination, which can effect the modification or reversal of the determination.” In addition, China’s WTO accession Protocol, 2 (D) 2 states, “If the initial right of appeal is to an administrative body, there shall in all cases be the opportunity to choose to appeal the decision to a judicial body.”

However, Article 9 of China’s *Temporary Regulations of the PRC Customs on Origin of Imported Goods* states that the PRC General Customs makes the final ruling if there is any opposition on the implementation of the regulations

In the case of an importer needing to appeal a ruling on origin of imported goods, we would appreciate knowing to which office the appeal form should be sent. Furthermore, what is the deadline for filing such an appeal and could China please provide us with information on the appeals procedure that may apply.

The same Article 9 of China’s *Temporary Regulations* as described above seems to indicate that the PRC Customs is the authority that both determines the origin of goods and reassesses the appeal. Could China advise us as to whether this understanding is correct and, if so, how this regulation is justified under China’s WTO accession Protocol and the WTO Agreement on Rules of Origin.

4. Confidentiality of information

Articles 2 (k) and 3 (i), and Annex II, paragraph 3 (g) of the WTO Agreement on Rules of Origin state that, “[A]ll information which is by nature confidential or which is provided on a confidential basis for the purpose of the application of rules of origin is treated as strictly confidential by the authorities concerned, which shall not disclose it without the specific permission of the person or government providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings.”

China’s *Temporary Regulations (Revised) of the PRC Customs on Origin of Imported Goods*, however, contains no specific confidentiality clause. Could China please explain how its regulations deal with matters of confidentiality.

5. Punishment for import of products whose origin is falsely reported or counterfeited

Articles 2 (g) and 3(e), and paragraph 3 (c) of Annex II of the WTO Agreement on Rules of Origin state, “[T]heir laws, regulations judicial decisions and administrative rulings of general application relating to rules of origin are published as if they were subject to, and in accordance with, the provisions of paragraph 1 of Article X of GATT 1994.”

Article 8 of China’s *Temporary Regulations of the PRC Customs on Origin of Imported Goods* states that “Regarding the false reporting or counterfeiting of the origin of imported goods, the PRC Customs will administer punishments according to regulations.”

It would be appreciated if China could please indicate whether records of punishments for false reporting or counterfeiting have been published.
