

Committee on Rules of Origin

**REPORT TO THE COUNCIL FOR TRADE IN GOODS
ON CHINA'S TRANSITIONAL REVIEW**

1. The Committee on Rules of Origin, at its meeting on 15 November 2002, carried out the transitional review of China pursuant to paragraph 18 of the Protocol on the Accession of the People's Republic of China (WT/L/432).
2. China's notification has been circulated in document G/RO/53, and questions on China's rules of origin from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu have also been circulated in document G/RO/W/94. The statements made at the meeting of 15 November 2002 are reflected in the minutes of the meeting (G/RO/M/42), paragraphs 4.1-4.10. The relevant paragraphs which reflect this discussion are annexed.

ANNEX

4. Transitional review under paragraph 18 of the Protocol of Accession of the People's Republic of China (WT/L/432, WT/ACC/CHN/49, G/RO/53 and G/RO/W/94)

4.1 The Chairman noted that that in accordance with paragraph 18 of the Protocol of Accession of the People's Republic of China, the CRO was to report to the Council for Trade in Goods on the outcome of the Review which would then report to the General Council. He drew attention to two documents with regard to this Review. The first was the notification of rules of origin by China (G/RO/53). The second was from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu in document G/RO/W/94, containing questions to China.

4.2 The representative of China wished that his introduction of the implementation of China's commitments with regard to rules of origin within the framework of paragraph 18 of China's Protocol of Accession would help Members better understand the efforts and achievements China had made in this respect after its accession to the WTO. He first drew attention to the fulfilment of the transparency requirements. With reference to Article 5.1 and paragraph 4 of Annex II of the Agreement on Rules of Origin, the Chinese Government, in June 2002, had submitted to the CRO the texts of the regulations and administrative measures in effect in China regarding non-preferential rules of origin. They were (1) Provisional Regulations concerning the Rules of Origin of the Customs General Administration of the People's Republic of China; (2) Proclamation concerning Change of the Rules of Origin for Petroleum Products of the Customs General Administration of the People's Republic of China; and (3) Proclamation of the Customs General Administration of the People's Republic of China on the Establishment of Predetermination on Origin of Imports (No. 17, 2001). The notification had been circulated by the Secretariat in document G/RO/53. Apart from this, the information regarding rules of origin of China could also be accessed through the China WTO Notification and Enquiry Centre or the website of the General Administration of Customs of the People's Republic of China, at www.customs.gov.cn. With the notifications made and this Chinese proclamation in place, the principle of transparency had been effectively ensured with regard to rules of origin.

4.3 The second point concerned the implementation of China's commitments. Since China's accession to the WTO, continuous efforts had been made to align the rules of origin administration in China with the WTO provisions and its accession commitments. Thanks to those efforts China's laws, regulations and administrative measures relating to rules of origin had been in full conformity with the WTO Agreement on Rules of Origin. On 5 December 2001, the General Administration of Customs of China promulgated the Proclamation on the Establishment of Predetermination of Origin for Imports. That regulation came into force on 11 December 2001. The Proclamation provided stipulations on pre-assessment of the origin of an import upon request and outlined the terms under which it would be provided. It also stipulated that customs determination of origin was reviewable through administrative or judicial procedures independent of the customs office issuing the determination, which could decide the modification or reversal of the determination, and that customs would keep information for origin determination confidential upon request. These provisions were in line with Articles 2(h), (j), (k), 3(f), (h), (k) and Annex II, paragraph 3(d), (f), (g) of the Agreement on Rules of Origin.

4.4 The third point concerned some explanations on China's rules of origin. With regard to the issue of a deadline to access and implement origin predetermination, Articles 4 and 5 of the Proclamation concerning origin predetermination stipulated that the customs should make an origin predetermination decision within 150 days from the date of the acceptance of the written application and all the necessary documents. The decision should be persistently effective within the customs territory provided that the rules of origin, the facts and conditions under which the rules had been

made remain unchanged. The validity conditions maintained by China went beyond the provisions of the Agreement on Rules of Origin, which only provided for a three-year term of effectiveness for the predetermination decision. With regard to the issue of appeal against a customs origin decision, and if a person concerned disagreed with the decision made by customs on the origin of an import, he was entitled to apply for an administrative review or file a lawsuit in accordance with Implementing Measures of Customs Administrative Review Law of the People's Republic of China and the administrative procedure law of the People's Republic of China. With regard to the issue of confidentiality of information for origin determination, Article 9 of the Proclamation concerning origin predetermination stipulated that the customs should keep the information for origin predetermination confidential upon request, and would not disclose such information without the consent of the applicant unless the disclosure was required by judicial proceedings.

4.5 He also stated that with regard to the issue of non-preferential rules of origin for exports, China's existing non-preferential rules of origin for exports were promulgated on 8 March 1992 and came into effect on 1 May 1992. The rules applied for issuing a Chinese certificate of origin for non-preferential exports upon request of exporters in cases that an importing Member had no non-preferential rules of origin. China's rules were not binding on the importing side, and there was no origin declaration request by the customs for exports. He hoped that the information provided to the CRO prior to this meeting and explanations he had just made would help Members to understand the efforts and achievements made by China to implement the Agreement on Rules of Origin and its commitment. China had been playing an active and constructive role in the ongoing Harmonization Work Programme (HWP) and had committed to fully adopting and applying non-preferential rules of origin as soon as the HWP was completed. China was of the view that agreed rules by the HWP should serve as the basis and the standards for the TRM of China on rules of origin. In the absence of conclusion of the HWP, however, it was unlikely that the transitional review could be conducted in a meaningful manner. In that spirit, and taking account of the full conformity of China's regulatory framework on rules of origin with the WTO Agreement, he suggested that after this review the TRM of China's rules of origin be suspended until the harmonized rules of origin were agreed upon by the HWP.

4.6 The representative of Chinese Taipei appreciated the hard work and obvious efforts of the Chinese delegation in preparing the explanations made at this meeting and China's clarifications on areas which were of much concern to them. However, since they had heard only China's oral presentation instead of in written form provided in advance, it would be very useful if a copy of China's oral presentation could be made available to all interested Members for further transparency purposes. As one of the major trading partners of China, Chinese Taipei felt very much obliged to identify and address several important and equally legitimate concerns in areas where China might have lapsed in its implementation of the Accession Protocol. They strongly believed that China's smooth implementation of its commitments was in the best interest of all Members, including China itself. Therefore, his delegation was pleased to attest to the smooth and successful proceedings of China's first TRM exercise so far.

4.7 The representative of the United States thanked China for its presentation at this meeting, and stated that this was an area in which China had a good story to tell. China had notified the legislation that was applicable well in advance and the clarifications that they had presented were helpful and useful. He seconded the request to obtain a copy of the statement. That would assist them in evaluating the information that had been put forward at this meeting. With respect to the proposal to temporarily suspend future transitional reviews in this Committee, he was not sure if that was something that this Committee could do, a decision it could take on its own. The best place to make this proposal however would be in the General Council when all of the Committees' reviews were looked at at the same time, and then the General Council would be in a position to make any recommendations it deemed necessary.

4.8 The representative of Egypt thanked the Chinese delegate for his statement and raised the following question concerning the establishment of predetermination of origin of imports: in order to have a licence to export to China did he have to wait for 150 days from the date of acceptance of the written application and all necessary documents, and in that case the authorities might say yes or no. He thought this was a very long time and it could mean some barriers to trade between countries.

4.9 The representative of China stated that with regard to the request by some Members to have a copy of his statement in written form, he was prepared to facilitate the work of the CRO by submitting a copy of his statement to the Secretariat so that it could be made available to those Members who were interested. With regard to the specific question raised by Egypt, it was pointed out that those 150 days provided for in the Proclamation concerning predetermination of origin of imports were compatible with the provisions of Article 2(h) and paragraph 3(d) of Annex II of the Agreement on Rules of Origin.

4.10 The representative of Pakistan thanked China for the detailed statement they had made and the notification provided, and stated that China's request to suspend the review of the rules of origin until the HWP was completed appeared to be reasonable. Since the CRO was still in the process of trying to work on various proposals in the HWP, which had been going on for about seven years, and the CRO did not know when it would be completed, it appeared inappropriate to expect that China would be able to conform their rules with what the CRO was still debating. The CRO should recommend China's request to the General Council.

4.11 The representative of New Zealand thanked the Chinese delegation for the information they had provided and the additional explanation made at this meeting. As concerned the issue of suspending the TRM in future years with respect to rules of origin, it did not seem that there was any expectation in the Committee that China would implement the HWP before its completion. That would seem to be somewhat of an unfair burden, especially when the result was not yet complete. However she supported what the US had said with respect to the role of the General Council in this matter. She also pointed out that the Agreement on Rules of Origin did contain provisions that were wider than merely providing the mandate for the HWP, and that in the Agreement there were still issues relevant for the TRM of China in future years without needing to touch on the HWP issues.

4.12 The representative of Cuba thanked the Chinese delegation for their information. She appreciated this exhaustive account. It had shown that China was in conformity with the rules of origin now. She stated that it would therefore be appropriate for the CRO to come up with some kind of comment or decision to the General Council. Although she understood the concerns of the delegations of New Zealand and the US, the basic thing in this Committee was the HWP and until that was done the CRO could not really analyse whether China was in conformity with it.

4.13 The CRO took note of the statements made, and agreed that the Secretariat prepare a short factual report under the Chairman's responsibility, together with the minutes of the meeting for further detail, to be sent to the Council for Trade in Goods.
