

CHINA'S TRANSITIONAL REVIEW MECHANISM

The following communication, dated 6 November 2002, 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

China's TRM at the Committee of Rules of Origin

- I. Paragraph 100 of the Report of the Working Party on the accession of China (WT/ACC/CHN/49) stipulates that a mechanism that met the requirements of Articles 2(h) and 3(f), and Annex II, paragraph 3(d) of the Agreement, which required provision upon request of an assessment of the origin of an import or an export and outlined the terms under which it would be provided, would be established in China's legal framework by the date of accession. We thus have the following questions:
- A. *Question on the period of validity of assessments of origin and on the period of implementation:* Pursuant to Article 2 (h), Article 3 (f), and Annex II, Paragraph 3 (d) of the WTO Agreement on Rules of Origin, assessments of the origin to be accorded to a good are to be issued as soon as possible but no later than 150 days after requests. Such assessments shall remain valid for three years provided that the facts and conditions, including the rules of origin, under which they have been made remain comparable. However,
- The "Temporary Regulations (Revised) of the PRC Customs on Origin of Imported Goods," does not specify neither the deadline for Customs to issue an assessment of the origin of a good nor the period of validity of such a Customs' ruling on origin. Please inform us of how many days Customs needs to issue an assessment after the receipt of a properly-documented request, and how long the assessment remains valid if the rules, facts and conditions of origin remain comparable.
- B. *Question concerning judicial, arbitral or administrative tribunals or procedures to review any administrative action in relation to the determination of origin:* Article 2 (j), Article 3 (h), and Annex II, Paragraph 3 (f) of the Agreement stipulate, "Any administrative action which they take in relation to the determination of origin is reviewable promptly 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, the Protocol on the accession of China Article 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 “Temporary Regulations of the PRC Customs on Origin of Imported Goods” states that the PRC General Administration of Customs makes the final ruling if there is any opposition on the implementation of the regulations. It is our understanding that the PRC Customs authority is the body that both determines the origin of goods and reassesses the appeal. Please explain how this regulation conforms to the Agreement on Rules of Origin and the China’s accession Protocol.
- C. *Question concerning confidentiality of information:* Article 2 (k), Article 3 (i), and Annex II, Paragraph 3 (g) state, “[A]ll information that is by nature confidential or that 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.” However,
- the “Temporary Regulations (Revised) of the PRC Customs on Origin of Imported Goods,” contains no clause of confidentiality. Please explain how the aforementioned Regulation conforms to WTO rules in terms of preserving confidentiality.
- II. *Question concerning the method of calculating the percentage of substantial transformation:* Article 2 (a), Subparagraph (ii) of the Agreement on Rules of Origin, “[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 a four-digit tariff line 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, “[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.” Please indicate the method for calculating this percentage in order to conform to the WTO Agreement.
- III. *Question on conferring origin on a good’s processing:* According to Article 2 (a), Subparagraph (iii) of the 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.” However,
- Article 6 (2) of China’s “Regulations of the PRC Customs on Origin of Exported Goods” describes “products that partially or wholly use imported raw materials or parts that within PRC territory undergo their primary and final manufacturing and processing that cause their external appearance and substantial form or their use to change substantially.” Furthermore, Article 28 of “Implementing Measures of the Regulations of the PRC Customs on Origin of Exported Goods ” states, “...MOFTEC will make and promulgate further manufacturing and processing lists accordingly.” Please provide the information on the manufacturing and processing lists and explain how these two regulations conform to the Agreement on Rules of Origin.
- IV. *Question on punishment for import of products whose origin is falsely reported or counterfeited:* Article 2 (g), Article 3(e) and Paragraph 3 (c) of Annex II of the Agreement on Rules of Origin state, “[T]heir laws, regulations judicial decisions and administrative rulings of general application relating to rules 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.”
However,

- According to Article 8 of “Temporary Regulations of the PRC Customs on Origin of Imported Goods”, which states “Regarding the false reporting or counterfeiting of the origin of imported goods, the PRC Customs will administer punishments according to regulations.” Please indicate if the punishments on false reporting or counterfeiting have already been published.
