

Executive Summary of Proceedings for the Workshop on Simplification and Harmonization of Rules of Origin (ROO), ADB Thailand Resident Mission (TRM), Bangkok, Thailand, 18-21 March, 2008

Introduction

1. Government officials from 15 ADB member countries and a representative from the ASEAN secretariat participated in the workshop aiming to review ROO policies of major trading partners, examine the preferential ROO, and explore ways to simplify and harmonize ROO. The workshop was organized by ADBI in collaboration with Office of Regional Economic Integration (OREI), ADB Headquarters and ADB TRM, Bangkok; United Nations Conference on Trade and Development (UNCTAD), Geneva; and Ministry of Finance, Government of Japan. The coordinator of the conference was Mr. Teruo Ujiie, Senior Capacity Building Specialist, Capacity Building and Training (CBT) Department, ADB Institute (ADBI), Tokyo.

Day One – Tuesday, 18 March 2008

Opening Remarks

2. The workshop was opened by **Dr. Worapot Manupipatpong**, Director, CBT, ADBI, who also delivered his keynote speech on “*Regional Integration and Cooperation in the ADB Region*”.

3. Dr. Worapot stressed that Asia had become much more integrated over the past decade. The intra-regional trade accounted for about 52 percent of Asia’s trade in 2006, most of which occurred in emerging Asia. While the statistics compare favorably with 52.5 percent trade with NAFTA and 59.2 percent trade within EU of 15, much of this growth was, however, concentrated in East Asia. Intra-regional trade in South Asia, for example, was less than two percent of its GDP. The differences in growth in intra-regional trade are attributable to different growth strategies of these sub-regions. South Asian countries pursued import-substituting industrialization while East and Southeast Asian countries adopted an outward-oriented growth and industrialization strategy.

4. He noted that the growth in the intra-regional trade had been brought about by market-led as well as government-led integration efforts. Market-led integration has

been driven by profit maximizing behavior of business firms and supported by both technological advancement and globalization. Economic regionalism in North America and Europe has motivated countries in Asia to pursue closer cooperation and greater institutionalized or government-led integration. Another reason for greater regionalism is that certain issues such as energy shortage, mobility constraints for landlocked regions, and high transaction cost due to poor trade facilitation across region, can be addressed much more effectively through regional cooperation.

5. While countries in East, Southeast and South Asia are at various stages of development, there are substantial complementarities that can be exploited for mutual benefits. For example, countries with saving surplus can act as the banker for those that suffer from saving gaps. Pooling of regional demands can help address underutilization of industrial and production capacity.

6. A World Bank paper on Preferential Trading in South Asia asserted that, to avoid creating a trade diversion, SAFTA should be strategically approached in the context of creating a larger preferential trade area in Asia, particularly encompassing China and ASEAN countries. A recent trend towards developing a Comprehensive Economic Partnership in East Asia (CEPEA), which includes India, may contribute a step towards bridging South and East Asia.

7. Another paper, co-authored by Dean Kawai of ADBI, maps the salient characteristics of East Asian FTAs, assesses their economic impacts, and identifies issues and challenges for further integration in East Asia. The paper suggests that the consolidation of multiple and overlapping FTAs into a single East Asian FTA can help mitigate the harmful “noodle bowl” effect of different ROO and standards and that the consolidation at the East Asian Summit level would yield the largest gain to East Asia among plausible regional trade arrangements – while the losses to non-members would be relatively small.

8. The paper further recommends ASEAN to act as regional “hub” and for ASEAN countries to further deepen ASEAN economic integration, the plus-three countries (PRC, Japan, and Korea) to collaborate more closely, and India to pursue further structural reforms. To take advantage of integrated regional markets, the need to strengthen the supply-side capacity of poorer ASEAN countries—including the building

of trade supporting infrastructure (transport, energy, and telecommunications)—was also highlighted.

9. As essential components of Regional Trade Agreements and bilateral FTAs, Rules of Origin (ROO) are primarily intended to prevent trade deflection and enforce tariff discrimination but their complexity and varieties in existing RTAs and bilateral FTAs may cause it to be a hindrance to cross-border trade, particularly from private sector perspective. To prevent ROO from becoming a non-tariff barrier to trade, it is therefore necessary to critically analyze the various ROO components and explore ways to further simplify and/or harmonize them.

10. The first introductory presentation entitled “*Regional Trade and FTAs in the Asian Region*” was made by **Dr. Jayant Menon**, Principal Economist, OREI of ADB Headquarters in Manila. Dr. Menon observed that preferential trade agreements (PTAs) and bilateral trade agreements (BTAs) in Asia-Pacific region are rapidly increasing during the recent years, and many more are proposed and/or under negotiations. In addition to general factors such as disenchantment with WTO and domino/snowballing effect, a number of economic, strategic and event driven specific factors were identified as driving forces for BTAs. Economically motivated BTAs are characterized as sector driven or market driven. Sector driven BTAs can be either sector expanding (WTO Plus) or sector excluding (avoid sensitive sectors). Market driven BTAs are motivated by the need to restore market share (market restoring) or develop new market (market creating). BTAs can also be strategically motivated by “fair trade” agenda (lobby driven) or geopolitical objectives (terror driven). Consolidation of BTAs into region-wide PTAs may reduce the number of intra-regional BTAs, but could carve the world up into more distinct blocks. In addition, if more countries are outside than inside the region, total number of BTAs could increase.

11. Dr. Menon suggested that once a country concluded BTAs with most major trading partners, it should equalize preferences across BTAs and offer them to all on an MFN basis. This would remove the administrative burden and eliminate distortions to the country and global trade patterns. Liberalizing ROOs can prepare ground for full multilateralization through harmonizing and expanding rules of cumulation.

12. In conclusion, there is no single remedy for the noodle bowl effect of BTAs and FTAs because of different motivation by countries. Reviving of the stalled Doha

Round under the auspices of the World Trade Organization (WTO) remains the best solution, combined with multilateralization and/or consolidation.

Session 1: Overview of ROO Issues in Regional Cooperation

Moderator: Teruo Ujiie

13. The first presentation of the session was made by **Mr. Teruo Ujiie**, who explained the core concepts and discussed determination methods on ROO. While ROO, commodity classification and customs valuation are the three basic custom laws, and there are international agreements on these areas, only ROO lacks product-specific details. ROO is also administered by respective national laws.

14. Rules of origin are defined as the laws, regulations and administrative determination to identify the country of origin of goods. In other words, a country of origin is the “nationality” of a country where goods were produced. ROO is widely used in international trade, such as application of different tariff rates, trade remedy measures, and tariff quotas. It is observed that the interest of business/trading communities has shifted from tariff measures to non-tariff measures (NTMs), in particular, trade facilitation areas including ROO in order to reduce the costs of doing business. The reasons why ROO has become one of the key trade agenda would include such factors as: common business practice of outsourcing; increase of foreign direct investment (FDI) and export processing zones (EPZs); tool for trade policy instrument; and possible countermeasures against circumvention of trade remedy measures.

15. There are two types of ROO: one is non-preferential ROO applicable to MFN trade; and the other is preferential ROO, such as those under contractual nature (FTAs) and autonomous nature (generalized system of preferences: GSP). Due to different patterns of trade, different national interests and different product coverage, preferential and non-preferential ROO can co-exist. In the case of the preferential ROO, a preferential tariff applies to eligible products under a particular preferential trade regime. For this reason, the main purpose of this type of ROO is to ensure that the benefits of preferential tariff treatment are confined to products originating in the parties. Unlike the case of the non-preferential ROO, rules are necessary only for the dutiable products covered by such FTAs.

16. GSP ROO is a tariff preference scheme offered by developed countries to eligible product originating in designated preference receiving countries, whose main elements are used in the context of FTAs. These main elements include origin criteria, direct consignment, documentary evidence, sanctions, mutual cooperation between preference giving-receiving countries, and special facilities in favor of preference-receiving countries.

17. Origin criteria, which are the core of the GSP ROO, determine the country of origin of the goods in question. All tradable goods can be divided into two categories: one is the wholly produced goods or 100% made in a particular preference-receiving country; and the other is goods produced with imported materials or origin unknown materials. If and when a product for export is wholly obtained or produced in a single country, no one can deny that this country has the country of origin. However, determining the country of origin becomes difficult when imported inputs from various supplying countries were used. In these cases, in order to confer a country of origin, imported inputs must be substantially transformed into a new product. In other words, the country of origin is given to the country where the last substantial transformation or sufficient working or processing has been carried out.

18. There are two ways to interpret the concept of “substantial transformation” in practice: one is a process criterion; and the other is a percentage criterion. In the case of the process criterion, it requires a certain manufacturing process to meet the substantial transformation requirement. In practice, Harmonized System (HS) is used. Imported inputs have undergone substantial transformation if the finished products fall under a tariff heading of HS different from that of any inputs used in the manufacturing process. So, a change in an HS heading must take place for imported or origin-unknown materials.

19. In the case of the percentage criterion, while various INCO Terms are used as denominator (e.g. ex-factory cost, ex-factory price, FOB, and CIF), and different figures are used as numerator (e.g. 35%, 40% or 50%), the basic idea is to calculate domestic contents or imported inputs to determine whether the substantial transformation takes place. The cumulative rules of origin require that a group of countries be treated as a single entity in determining the country of origin. Any process and value added operations can be accumulated among all beneficiaries or particular grouping.

20. Each criterion has its own pros and cons. Merits of the process criterion include: greater accuracy and objectivity; no need to consider various cost elements in production - only need to know what is imported and produced in the HS term; and less dispute cases, while demerits include: lengthy and detailed descriptions; necessity of various lists of exceptions; and need for sound knowledge of HS. Merits of the percentage criterion are: simple rules and simple calculations while demerits include: less clear logics and economically justifiable as to substantial transformation (e.g. border-line cases); daily fluctuation on exchange rates for imported inputs tends to create disputes on cost elements; and need for advanced book keepings.

21. **Dr. Ganeshan Wignaraja**, Senior Economist from OREI, ADB made a second overview presentation entitled “*Impact of FTAs on Business in East Asia: Findings from an ADB Study*”. He highlighted the overlapping multiple ROOs in East Asian bilateral FTAs and suggested that consolidating them into a region-wide FTA could reduce business costs and offer global gains.

22. Based on an ADB study on impact of FTAs on business activities in Asia, with case studies from Japan, Thailand and Singapore, market access and low preferential tariffs are found to bring net benefits particularly to larger firms while negative impacts include increased competition, excessive documentation, and possible relocation of production. At the country level, the Thai-US FTA and the Japan-Thai Economic Partnership Agreement (EPA) are most important for firms in Thailand, while ASEAN Free Trade Area (AFTA) is considered most important by firms in Japan and Singapore. Utilization of preferences in FTAs has however been low at less than 20% and mostly by large firms. About half of the firms see multiple ROOs as a problem, more so by smaller firms, particularly SMEs. Firms in Thailand have indicated the need to simplify and streamline the process for ROO certification. They also requested for more information on FTAs that are being implemented, financial support for upgrading technology and skills as well as greater involvement in the FTAs that are being negotiated.

23. A CGE (Computable General Equilibrium) exercise on three region-wide FTAs, namely ASEAN+PRC, ASEAN+3 or ASEAN+6 FTA, showed notable gains for FTA members, with these benefits increasing as the coverage of the region-wide FTAs expands. Accordingly, ASEAN+6 FTA appeared to bring the greatest benefits to its

members while creating a limited impact on outsiders, such as United States and EU.

The major benefits of East Asia-wide FTA are believed to be coming from:

- Increased competition and scale effects;
- Gains from trade and location effects;
- Less administration and technical barriers to trade;
- Expansion of trade opportunities to different sectors;
- More equitable distribution of gains from trade;
- Structural adjustments and resource reallocation;
- Possibility of technology spillovers; and
- Increased product variety to consumers.

24. To ensure the benefits of FTAs, the following recommendations were made.

- Continuously upgrade price, quality and delivery standards to world class levels and integrate with the global value chains,
- Link future structural agenda with expected liberalization,
- Reform and modernize custom administration,
- Regular consultations between governments and business on FTAs and information on FTAs,
- Improve support services for business, such as export marketing, training, standards, R&D and clusters,
- Promote business-friendly investment climate, and
- Advocacy for region-wide FTAs.

25. **Mr. Tran Dong Phuong**, Director, Trade and Facilitation Cluster, Bureau of Economic Integration and Finance, ASEAN Secretariat presented an overview of “*Regional Issues on ROO in ASEAN*”.

26. The rules of origin for the Common Effective Preferential Tariff scheme under the ASEAN Free Trade Area (CEPT-AFTA ROO) determine whether goods originate within a member country of ASEAN to ensure that AFTA benefits go to ASEAN member states and to prevent trade deflection. It is based on ROO for ASEAN Preferential Trading Agreement. Wholly obtained products and non-wholly obtained products are the two origin concepts used in CEPT-AFTA ROO. For non-wholly obtained products, Regional Value Content (RVC) generally applies where at least 40 percent of its content must originate from any ASEAN member states and final process should be performed within the territory of an ASEAN exporting member state. Other

criteria such as process rules and change in tariff classification (CTC) based criteria have also been used for selected products.

27. ASEAN formed a ROO Task Force in 2002 to review and strengthen the CEPT-ROO by i) standardizing the ASEAN content calculation; ii) identifying measures to prevent circumvention; iii) strengthening the operational certification procedures; and iv) adopting an alternative origin criterion to the RVC criteria, such as the CTC based criteria (in 2006).

28. Both direct and indirect methods are used in RVC calculation. Most ASEAN members are using the direct method except Indonesia, Lao PDR, Myanmar and Singapore. The main principles of RVC calculation are:

- Each member country has the flexibility to adopt either the direct or indirect method of calculating the ASEAN content;
- To promote transparency, consistency and certainty, each member country shall adhere to one method. Any change shall be notified to AFTA Council at least six (6) months prior to the adoption of the new method; and
- Any verification of the calculation by the importing member country shall be done on the basis of the method used by the exporting member country.

29. Diagonal and Partial Cumulation are the two CEPT cumulative ROO. Diagonal Cumulation is used when aggregate ASEAN content of the final product is more than 40 percent and inputs from other member states comply with the origin criteria. When inputs from other members states contain ASEAN value content of less than 40 percent, but equal to or more than 20 percent, Partial Cumulation applies.

30. New elements in the revised CEPT-AFTA ROO include i) *de minimis* with a 10 percent value threshold; ii) identical and interchangeable good and neutral elements; iii) back-to-back certificate of origin (CO) arrangement, and iv) the third party re-invoicing arrangement. ASEAN is also considering an advanced ruling on origin determination, electronic form D and harmonized application procedure to further facilitate trade in ASEAN. Currently, ROO is being implemented for ASEAN-China and ASEAN-Korea FTAs while ASEAN-Japan FTA is being finalized and ASEAN-ANZ and ASEAN-India FTAs are under negotiation. Formula for the RVC criteria for ASEAN-China and ASEAN-Korea ROO is similar to that under CEPT-AFTA.

Day Two – Wednesday, 19 March 2008

Session 2: Country Practices and Issues on ROO in ASEAN and Republic of Korea

Moderator: Tran Dong Phuong

31. Country practices and issues on ROO of Thailand, Malaysia and Korea were presented during this session in addition to the overview of regional issues on ROO in SAARC. The first presentation was made on “*Thailand’s Experiences on ROO*” by **Mr. Sompob Teraumpon**, Trade Technical Officer, Ministry of Commerce of the Government of Thailand. Mr. Teraumpon’s presentation focuses on ROO and its main elements, procedures of issuing certificates and Thailand’s current practices in ROO in the context of ASEAN AFTA.

32. The Department of Foreign Trade, Ministry of Commerce is the government authority for issuing certificates of origin for preferential trade in Thailand. The authority determines whether the exporting products are produced consistently with related rules of origin of each FTA framework and therefore eligible for preferential tariff under FTA in the importing country. Four types of certificates of origin are issued, namely, Form D for CEPT-AFTA, Form E for ASEAN-China FTA; Form FTA for Thailand-Australia and Thailand-India FTAs; and Form JTEPA for the Thailand-Japan FTA (JTEPA). For Thailand-New Zealand FTA, an invoice issued and certified by exporters is used as the certificate of origin

33. Regarding the origin criteria, wholly obtained goods are those produced without any imported materials. Goods produced with imported materials must go through substantial transformation process and their origin determined by percentage criterion or process criterion or combination of the two criteria.

34. The Department of Foreign Trade maintains a website that provides information on rules of origin requirements under the GSP, GSTP, ASEAN AFTA-CEPT and FTA programs as well as the list of products that are eligible. Application form for origin examination is also available on-line. There are a number of local offices of the Department of Foreign Trade that provide certificates of origin service in various parts of the country.

35. “*ROO practices and Issues in Malaysia’s FTAs*” was presented by **Mr. Wan Ahmad Syazwan Wan Ismail**, Assistant Director, ASEAN Economic Cooperation Division, Ministry of International Trade and Industry, Malaysia. Mr. Syazwan highlighted, among others, national law on ROO, certificate of origin, and problems and recommendations regarding ROO practices.

36. For Malaysia, 2007 is the 10th consecutive years of trade surplus with total trade growth of 3.7 percent, with sixty three percent of total export within Asia. Singapore, Japan, China, Thailand, Korea and India are Malaysia’s major trading partners.

37. Benefits that Malaysia enjoys from FTAs include expanded market access (for both Malaysian goods and services), strengthened cooperation and collaboration, greater information exchange, and increases in bilateral trade and investment flows.

38. Currently, Malaysia does not have any national law on ROO but adopts FTA’s specific ROO such as Malaysia – Pakistan, ASEAN – China, and ASEAN – Korea, into the legal enactment. The threshold for RVC for ROO purpose is generally set at 40% while there are some specific rules for certain products. Different forms are required for ROO application under different FTAs. For example, Form MPCEPA is required for Malaysia-Pakistan FTA while Form E is for ASEAN-China FTA. Ministry of International Trade and Industry is the sole authority to issue CO. Application forms are available at Federation of Malaysian Manufacturers and its branches and pre-exportation verification to determine the origin of a product is required prior to CO approval. The result of verification is valid for two years.

39. The process to claim for preferential tariff treatment is as follows:

- Present the CO to Customs Authority of the importing party;
- If there is reasonable doubt, Customs Authority of the importing party may request issuing authority of the exporting party to conduct retroactive check; and
- If not satisfied, the Customs Authority may conduct verification visit to the manufacturer’s premise in exporting country.

40. Unrecognized specimen signatures, fraudulent cases, lack of implementation of decisions made on ROO and consignment clearance are some problems faced in the ROO implementation. Steps that have been taken to address these problems include

acknowledgement of receipt of new specimen signatures and forwarding it to the relevant authority immediately; greater flexibility on consignment clearance, follow-up on implementation of decisions; and finally, black-listing of those fraudulent exporters and inform them to the business community.

41. **Mr. Indi Suk-oh Kim**, Deputy Director, Bilateral Customs Cooperation Division, Ministry of Economy and Finance, Republic of Korea, presented “*Korea’s FTA Policy and Experiences in ROO*”. The presentation focused on Korea’s FTA policies, ROO, origin procedures, and mechanism to implement FTAs.

42. To date, Korea has signed FTA with seventeen countries. FTAs with thirty six countries are under negotiation and seven more are in the study stage.

43. The NAFTA ROO, the ASEAN AFTA-CEPT ROO and the PAN-European ROO are the common models for the Korea’s ROO. Wholly obtained goods and sufficiently processed goods generally meet the origin criteria. However, a trading partner frequently imposes different ROO for an identical product in different FTAs.

44. For sufficiently produced goods, CTC (change in tariff classification) rule, value test (percentage rule), specific operation and alternative or combination rule are applied to determine a country of origin when imported materials are used in the production. Such specific rules are described in the annex of each FTA. For products that are produced in the outside territory of a party, it must meet special additional requirements such as minimum originating material content of not less than 60 percent of the total value of goods; minimum non-originating material content of not exceeding 45 percent of the value of the final product; and direct transport requirements.

45. The value test can be calculated using a build-down (BD) method, a build-up (BU) method and a net cost (NC) method. These methods consider the minimum originating material content (BU), minimum regional value content (BD), maximum non-originating material content and net cost.

46. Some FTAs allow a self-certification system while others require an authorized certification system. FTAs may also differ in terms of CO (certificate of origin) Format, and validity period. Origin verification can be made via direct verification, indirect

verification and hybrid verification system depending on the specific requirement of each FTA.

47. Korea introduced the Special Act on Custom for the Implementation of FTAs on 31 December 2005. This Act establishes an effective mechanism for the implementation of FTAs and provides guidelines for subsequent FTA negotiations.

48. Preferences may be denied based on various grounds, including failure to submit supporting documents, submission of false documents, negative determination of origin, failure to provide a result of verification, denial of verification and failure to keep supporting documents.

49. Actual utilization ratio of FTAs is very low in Korea. The maximum utilization ratio was 46 % while the minimum was 4 %. Several factors contributed to this low utilization, including multiple ROO, complex and arbitrary interpretation (in the value test calculation), burden of keeping supporting documents and requirement of a high level of an accounting system, complicated production processes, and sound knowledge of a legal system.

50. Korea has recently introduced a set of policy improvements to promote utilization of various FTAs. Certification can now be made through an internet based certification system. An approved exporter designated by the Customs Authority can follow a simplified certification procedure. Other improvements such as supplier's declaration for origin materials, integrating FTA ROO into business consulting models, and establishing an FTA customer call center for origin matters also contribute to facilitate the ROO process.

51. A presentation on "*An Overview of Regional Issues on ROO in SAARC in the Context of South Asian Free Trade Area (SAFTA)*" was prepared by the SAARC secretariat and presented by Mr. Ujiie. The presentation emphasized an overall framework in which the SAARC Member States are currently pursuing their regional economic cooperation and integration.

52. One of the most important initiatives for regional economic cooperation and integration in SAARC is the agreement on SAFTA signed in January 2004, through which SAARC envisages a creation of a free trade area by 2016.

53. SAFTA contains a comprehensive agreement that dovetails with several existing bilateral agreements the SAARC Member States have among themselves. It has elaborated ROO, and a mechanism for the compensation of revenue loss for its LDC members.

54. SAFTA ROO also includes product specific rules and detailed modalities on operational certification procedures for the ROO. The rules apply to directly consigned products that are eligible for preferential treatment under two categories, namely, products wholly produced or obtained in the territory of the exporting state; and products not wholly produced or obtained in the territory of the exporting state.

55. For products that are not wholly produced or obtained, three conditions have to be met before they become eligible for preference under SAFTA. First, the final product is classified in a heading at four digit level of HS that is different from those in which all the non-originating materials used in its manufacture are classified. Second, specific value addition criteria are met; and third, manufacturing takes place in the exporting contracting state. Sri Lanka and other LDCs are given more flexibility in terms of minimum domestic content and content from undetermined origin.

56. Regional cumulation applies to products of the exporting contracting state that fulfills the following conditions.

- Must use inputs from contracting members;
- The combined value of inputs from other contracting states and domestic addition should be more than 50 percent of FOB;
- Domestic value addition of the exporting contracting member should be more than 20 percent of FOB; and
- The final product fulfils the condition of the CTH (at the 4-digit level) or CTSH (at the six- digit levels for the products covered under the product specific rules).

57. Some products under SAFTA have their own product specific rules. The CTH or CTSH, along with domestic value addition norms is provided to make ROOs comprehensive and progressive. There are detailed operational certification procedures for SAFTA ROOs, including the issuance of certificate of origin and a standardized format for the certificate of origin. There is also an established mechanism for the member states to exchange information on the number of certificate issued.

Day Three – Thursday, 20 March 2008

Session 3: Country Practices and Issues on ROO in SAARC

Moderator: Teruo Ujiie

58. Two country experiences from India and Pakistan were presented in the workshop during this session. The first presentation was made by **Mrs. Madhumita Hazarika**, Under Secretary, Department of Commerce, Ministry of Commerce and Industry, India on “*ROO practices and Issues in India’s FTAs*”.

59. Mrs. Hazarika highlighted the case of overlapping ROO between India and Sri Lanka. Sri Lankan exporter enjoys benefits of harmonization for exports to India under the bilateral agreement as well as SAFTA as the ROO are the same but it has disadvantage for exporting under APTA (due to higher threshold for value added). Indian exporter, however, has to meet different threshold requirements on ROO under all the agreements to export to Sri Lanka, which could affect its sourcing opportunities and strategic investment decisions.

60. The current proliferation of FTAs has spun a complex web of ROO and created a lot of product-specific rules. A manufacturing process that meets particular ROO may not meet other rules. This brings a very difficult option to the business and trading community. Consolidation of multiple membership agreements with more liberal ROO will reduce spaghetti-bowl-related costs of trading under various preferential regimes.

61. She raised a couple of fundamental issues regarding the possibilities of harmonization, its objectives and principles. In particular, the objectives of harmonization should be: simple, transparent and predictable rules; low cost of issuance of certificates of origin; promotion of an intra regional trade; prevention of trade deflection/circumvention; minimum use of product specific ROO; and special provisions for LDCs.

62. The second presentation of this session was made by **Mr. Anjum Bashir**, Joint Secretary, Ministry of Commerce, Government of Pakistan. Mr. Bashir made a presentation on “*Harmonization of ROO, Operational FTAs/PTAs and ROO, and Pakistan’s Experiences*”.

63. Due to stalemate of the Doha Round, Pakistan has put greater emphasis on regionalism through FTAs and PTAs. The objectives are to seek enhanced market access, facilitate and promote trade, investment and economic development, enhance competitiveness of exports via tariff reduction, and build capacity through cooperation.

64. Pakistan does not have specific law on ROO, so ROO are negotiated on a case-by-case basis. Following a simple procedure, the Federation of Pakistan Chambers of Commerce and Industry can issue certificates of origin and there is no requirement for registration. Pakistan also participates in the WTO exercise on harmonization of ROO.

65. Pakistan-Sri Lanka FTA has been effective since June 2005 and in the origin criteria, product that incorporates imported components should have value addition not less than 35 percent of its fob value or carry a different tariff heading at 6 digit HS level.

66. Pakistan-China FTA has been effective since 1 July 2007 where 40% RVC is applied to products with imported components. Some product specific rules are still being worked out. Pakistan-Malaysia FTA has been effective since 1 January 2008 with similar ROO to that of Pakistan-China FTA.

67. Pakistan-Mauritius PTA, which was signed on 30 July 2007, has been operational since 30 November 2007 and will be converted to FTA within one and half year. Regarding origin criteria, a product that incorporates imported component should have value addition in the exporting country more than 25 percent of its fob value. Another PTA with Iran, which has become operational since 1 September 2006, requires a value addition of at least 50 percent of the fob value.

68. ECO-Trade Agreement was signed by five out of 10 ECO (Economic Cooperation Organization) member countries on 17th July, 2003 in Islamabad. The signatory members are Pakistan, Afghanistan, Tajikistan, Turkey and Iran. The ECOTA ROO carry a minimum value addition of 60 percent of the fob value of the product that incorporates imported components. Five more FTAs/PTAs (with Bosnia, Serbia, European Free Trade Association, Bangladesh and Thailand) are under negotiation.

Session 4: ROO Development in Key Trading Partners

Moderator: Worapot Manupipatpong

69. Experiences from three major trading partners, namely, United States (US), Japan and European Union (EU), were presented in this session. First, **Mr. Stefano Inama**, Manager and Senior Customs and Trade Expert, Division for Africa and Special Programs, UNCTAD, presented the evolution of US ROO.

70. Before NAFTA, US ROO were centered on its GSP scheme where a minimum domestic content of 35% (material and direct processing cost) is required. Under NAFTA, a product specific list is prepared with certain ROO requirements such as a change of tariff classification, regional value content, or a combination of RVC and change of tariff classification.

71. In NAFTA, a product is eligible if it is either wholly produced, or substantially transformed. Substantial transformation occurs, when, after processing, a final product changes its tariff classification.

72. Transaction value and net cost methods are used in NAFTA to calculate regional value content (RVC), usually at 60% and 50% respectively. Transaction value is generally based on the price actually paid or payable for the goods; while the net cost method removes such costs as sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and some interest costs from the selling price.

73. The *de minimis* provision (up to 7 percent of the value of each shipment or 9 percent in the case of cigarettes and cigars) allows a final NAFTA product to contain a small quantity of non-NAFTA source.

74. Origin criteria, flexible *de minimis*, an importer declaration of certification, flexibility in textile supplies and verification of origin are some new elements in the recent US FTAs. For the certification of country of origin, NAFTA ROO relies on certifying authorities, certificate of origin and verification. All other FTAs have shifted to an importer-based system of certification and verification. It means that no official certification in the exporting FTA partners is required.

75. The second presentation was made by **Mr. Hiroshi Imagawa**, Director, Office of ROO, Tokyo Customs, Ministry of Finance, Japan, and focused on "*Policies and techniques used in Japan's ROO with special emphasis on various Japan's EPA ROO*".

76. Preferential and non-preferential ROO are implemented in Japan for international trade. There are two types of preferential ROO. One is autonomous and unilateral in nature known as the Generalized System of Preferences (GSP) which has been in operation since 1971. The other type of ROO is included in a bilateral (and in the future, also regional) Economic Partnership Agreement (EPA) which Japan has with a number of countries (Singapore-2002, Mexico-2005, Malaysia-2006, Chile and Thailand-2007). Japan has recently signed EPAs with the Philippines, Brunei and Indonesia. It has completed negotiation with ASEAN and is pursuing an EPA with Korea, Vietnam, Gulf-Cooperation Council), India, Australia and Switzerland. In the case of non-preferential ROO, it is in the application for MFN duty, Anti Dumping duty and marking, etc.

77. Unlike the normal concept of free trade area, Japan's EPAs are broader in scope because they cover not only trade in goods but also, to the extent possible, trade in services, investment, movement of natural persons, intellectual property, government procurement, competition, as well as improvement of business environment and cooperation, etc.

78. Mr. Imagawa explained that the ways the rules of origin are formulated and enforced are shaped by the inherent difference that exists in the nature of preferential and non-preferential goods. In the case of preferential trade regime, the issue is whether the good is qualified for GSP or EPA rate of duty, and therefore the determination process ends when the originating status is not met. In the case of non-preferential trade, the issue is to determine the "nationality" of the good, so that enforcement-wise, examination continues, in principle, until the "country of origin" is identified.

79. In the agricultural sector, the ROO often require the use of originating materials. In the industrial sector, there are cases that EPA ROO are more liberal than the non-preferential ROO in which a change-of-heading rule is mostly applicable. The general provisions in the rules are nearly identical under EPAs with ASEAN member countries to prevent the "spaghetti bowl" effect.

80. Under the EPAs, Japan determines the applicability of the preferential tariffs based on such origin criteria as (i) wholly obtained or produced goods, (ii) goods

produced exclusively from originating materials, and (iii) goods substantially transformed. Wholly obtained or produced goods are those where one party alone is involved in the production of the goods such as agricultural, fishery, and mineral products. If the final good is produced from intermediate materials which are not wholly obtained and may have foreign input but have undergone manufacturing processes to satisfy product-specific rules, then it is considered to be produced exclusively from originating materials. Goods are considered substantially transformed and are therefore deemed originating when they fulfill such requirements as change of tariff classification, specific manufacturing or processing operations, *ad valorem* percentage or the combination of any of the above.

81. Lastly, to prevent trade deflection as in other preferential regimes of developed countries, specific criteria to determine that the goods are not disqualified for preferential treatment while in transport to Japan include i) the goods are transported directly, or ii) if transshipped, unloading, reloading or any other operations necessary to preserve the goods in good condition. Certification is required to prove the origin and consignment criteria.

82. **Mr. Edwin Vermulst**, founding partner of Vermulst, Verhaeghe & Graafsma Advocaten, Brussels, presented an overview of “Rules of Origin in the European Union: Policies and Techniques”. The presentation focused on both preferential and non-preferential rules of origin and a comparison between the two types of rules. .

83. Preferential rules of origin as included in the autonomous and bilateral arrangements concluded by the EU stipulate the criteria for ascertaining whether the products originating in these countries benefit from the preferential trade regimes. Non-preferential rules as a means to determine the economic nationality of goods are important for the purposes of trade statistics, enforcement of TDI, quantitative restrictions, public tenders and origin markings.

84. The basic legal framework for the rules of origin in the EU is provided in the Community Customs Code and the provisions implementing the Community Customs Code. In specific, the preferential rules are introduced in Article 27 of the Community Customs Code and elaborated in Articles 66-97 of the implementing provisions as regards the unilateral arrangements. With respect to the bilateral arrangements, specific protocols on the rules of origin and administrative cooperation exist for each such

arrangement. The non-preferential rules are stipulated in Articles 22-26 of the Community Customs Code and elaborated in Articles 35 – 65 of the implementing provisions.

85. Under the preferential rules, the “originating status” of a product has to be defined in order to establish the link between the product and the partner/beneficiary country for the purpose of preferential treatment. A product is considered as originating if it is wholly obtained in the partner/beneficiary country or if it results from sufficient working or processing carried out on non-originating/imported materials in the partner/beneficiary country.

86. Wholly obtained products generally include natural products from the partner/beneficiary country and/or goods made entirely from them like mining, agricultural or fishery products and preclude the use of non-originating materials. A list of these products is provided in the Protocol 4 of the Agreement on the European Economic Area.

87. For products manufactured using imported materials, “originating status” is conferred only when the sufficient working or processing requirements provided in the ‘list rules’ for each arrangement are satisfied. The sufficient working or processing criteria can be in the form of technical criteria; change of tariff heading criteria; added value criteria; or a combination of any of these three criteria.

88. The technical criteria basically enlist certain operations that have to be carried out on the non-originating materials to confer “originating status” on the resulting product. The change of tariff heading criteria implies a change in the classification of the resulting product under the combined nomenclature as opposed to the classification of the raw materials/parts used in its manufacture. The added value criteria determines origin on the basis of the commercial value added to a product in a particular country and is vital for assessing the country of origin in case of cumulation.

89. With reference to such origin criteria, *de minimis* operations are considered insufficient to confer origin on the product manufactured from the non-originating materials even if the listed criteria for sufficient working or processing are fulfilled. Examples of *de minimis* operations include maintenance, simple assembly operations,

packaging operations, labeling or marketing of a product. Working or processing going beyond *de minimis* operations does not confer origin unless the 'list rules' are satisfied.

90. An important concept for the sufficient working and processing criteria is the principle of "absorption" which provides that a product comprising of non-originating materials having acquired originating status by complying with the 'list rules' for its manufacture is considered as having 100 percent local origin when subsequently incorporated in the manufacture of another product. The non-originating inputs which may have been used in its manufacture are disregarded and the origin requirements applicable to the final product in which it is incorporated are also not applicable to it.

91. An exception to the limitations on the use of non-originating materials exists in the form of a "general tolerance rule" which permits the use of non-originating materials up to a specific percentage value of the ex-works price. However, the percentage for the permissible maximum value of non-originating materials specified in the 'list rules' cannot be exceeded by the application of this exception. Such tolerance percentages vary in different preferential regimes but do not apply to textile products.

92. Lastly, the neutral elements such as energy and fuel; manufacturing plant and equipment; machines and tools; and goods (which do not enter and which are not intended to be incorporated into the final composition of the product) are counted as originating in the beneficiary/partner country. The unit for origin determination is the same as used for customs classification and if the products consist of a group/assembly of articles, the whole group is the unit to be considered.

93. According to the EU's preferential rules of origin, cumulation implies that materials originating in any of the partner countries benefiting from the preferential trade regime are considered as originating in the country concerned. Additionally, for cumulation, the working or processing carried out on originating products in each partner country does not have to be sufficient working or processing as set out in the 'list rules'. This practically helps to enlarge the "originating zone" for the purpose of preferential treatment. Cumulation can be bilateral, diagonal or full.

94. Bilateral cumulation operates between two countries on the basis of a free trade agreement. Under this form of cumulation, the originating inputs imported from one partner country and produced in accordance with the relevant rules of origin qualify as

originating materials when used in the exporting partner's exports to the former. The only requirement is that the working/processing in the exporting partner has to be more than *de minimis* for the resulting product to obtain the origin of that partner. Only originating products or materials can benefit from this form of cumulation.

95. Diagonal cumulation operates between more than two countries and requires a network of free trade agreements containing identical rules of origin and diagonal cumulation provisions between every country in the zone. Under this form of cumulation, the country of origin of the product is either the last country (in the zone) where more than *de minimis* operations are carried out or where the value added is greater than the value of the materials used originating in any of the partner countries in the zone. If, none of these conditions is satisfied, then the product has the origin of the country which accounts for the highest value of the originating materials used. Moreover, diagonal cumulation applies only to the materials and products which have acquired "originating status" by the application of the relevant rules of origin and products which do not undergo any working or processing retain their initial origin.

96. Full cumulation operates between countries having free trade agreements allowing full cumulation between them. Under this form of cumulation, working or processing can be carried out on the non-originating materials in any partner country and all the operations carried out in the partner countries are taken into account. Therefore, the resulting product is considered as originating in the cumulation zone for the purpose of preferential treatment.

97. There exists a fair difference between the cumulation criteria under diagonal cumulation and full cumulation. In the former, cumulation is permissible only of the originating products and such products have to obtain the "originating status" of that partner country before they are exported to another partner for further working or processing. Whereas in full cumulation, total cumulation of non-originating products is permitted, provided that all the working or processing requirements of the 'list rules' are carried out on such non-originating materials in the importing partner country.

98. In the general context of the preferential rules of origin in the EU, the origin requirements have to be wholly satisfied in the territories of the parties/cumulation zone without interruption. This is termed as the principle of territoriality. In case of export of the products for further processing to a third country, they retain the "originating status"

when re-imported, only if the returned products are those which were originally exported; and the products in question have not undergone processing beyond what is necessary to preserve them in good condition. Derogation from this principle is allowed in certain arrangements in the form of outward processing i.e. working/processing undertaken abroad. The conditions for the application of the derogation are that the exported materials should have originated in the beneficiary/partner country or should have undergone more than *de minimis* operations before being exported and it has to be demonstrated to the customs authorities that the re-imported goods have been obtained by working or processing the exported materials. Moreover, the total value added outside the EU or the partner country concerned cannot exceed the percentage permissible under the general tolerance rule.

99. Outward processing as explained above does not count for the purpose of the origin criteria, except, if a particular criterion sets a maximum value for all the non-originating materials that can be incorporated. This value cannot exceed the percentage value provided in the 'list rules' and is calculated by combining the total value of the non-originating materials incorporated in the country of assembly and the total added value during outward processing. Moreover, the outward processing exception is valid only when the product satisfies the origin criteria and is generally not applicable to textile goods. The co-existence of this derogation and the general tolerance rule is not allowed.

100. An important element in this regard is also the direct transportation of the preferential goods from the partner/beneficiary country to the EU. This is vital because the countries benefiting from the cumulation rules are considered as a single export area. Therefore, when preferential products pass through/stop-over in a third country's territory, the direct transportation requirement is fulfilled only if the goods remain under the customs supervision and do not undergo operations beyond unloading, re-loading or operations to preserve them in good condition. In this situation, a proof of compliance such as a "non-manipulation certificate" issued by the third country authorities is mandatory. An exception to the direct transportation rule exists with respect to the products sent by a beneficiary/partner country for exhibition to non-beneficiary countries and subsequently re-exported to the EU.

101. Lastly, in the context of the EU's preferential rules of origin, there is a prohibition of custom duty refund, remission or exemption on non-originating materials

used in the manufacture of preferential goods. This is aimed at preventing unfair competition and trade distortions.

102. For the non-preferential rules of origin, a product has the origin of the country where it is wholly obtained or where it undergoes the last, substantial economically justified processing or working (in an undertaking equipped for that purpose) resulting in the manufacture of a new product or representing an important stage of manufacture.

103. By way of conclusion, Mr. Vermulst compared the preferential and non-preferential rules and underlined that the general principles and techniques of the preferential rules of origin as discussed are to be found in most of the bilateral arrangements concluded by the EU with minor variations. For instance, the EEA agreement provides for full cumulation whereas the Euro-Mediterranean agreements provide for diagonal cumulation. Additionally, the protocol on the rules of origin to the EEA agreement incorporates the general tolerance rule (10 percent), territoriality principle, and the no drawback rule. The rules of origin in the Euro-Mediterranean agreements incorporate the general tolerance rule (10 percent) and the territoriality principle, besides the provision for diagonal cumulation (in some agreements partial drawback rule is provided). The EU's arrangements with the countries from Africa, Caribbean & Pacific region generally provide for bilateral, diagonal & full cumulation between the OCTs and EU, general tolerance rule (15 percent) and the territoriality principle. Similar provisions exist in origin protocols to the agreements concluded with other countries and territories like Farore Islands; South Africa; Latin American countries; and the Western Balkan countries.

Day: Four – Friday, 21 March 2008

Session 5: ROO Development in WTO/WCO

104. The whole morning session was devoted to the presentation made by **Mr. Hiroshi Imagawa** on recent efforts towards simplification and harmonization of ROO at WTO/WCO. Mr. Imagawa divided his presentation into four parts, namely, the introduction and the Agreement on ROO (ARO) under the WTO; progress of the harmonization of rules of origin for non-preferential trade; the architecture of the draft Harmonized Non-Preferential Rules of Origin (HRO); and the relevance of the harmonization work programme in the present context.

105. It was recalled that during the 1980s, ROO, more than being technical trade instruments, were deemed to have been politically motivated and had trade-restrictive or trade-distortion ramifications. Countries, like Japan, adversely affected by such measures, proposed the harmonization of origin rules both for preferential and non-preferential trade during the Uruguay Round of multilateral trade negotiations. The US and Japan were united to table the inclusion of preferential rules as well but this proposal was rebuffed by both the EC and the EFTA. The main players, as a compromise, finally settled down their differences and an understanding was reached to pave the way for the harmonization of the non-preferential ROO. As to the preferential rules of origin, the ARO does not call for its harmonization although it does lay down some general non-binding guidelines for their use.

106. Mr. Imagawa explained first that the ARO consists of four Parts and two Annexes. Part I provides definitions and coverage. Part II provides the disciplines. Part III covers various procedural arrangements, while Part IV is devoted to the harmonization work programme (HWP). Annex I deals on the on-going responsibilities of the Technical Committee on Rules of Origin (TCRO), its representation and procedural arrangements. Annex II contains a common declaration regarding the application of preferential rules of origin, as distinct from the non-preferential ones. According to the ARO, when the Harmonized Non-Preferential Rules of Origin (HRO) negotiations are completed, its results would later be annexed as an integral part of ARO.

107. The ARO defines rules of origin as the laws, regulations, administrative determinations to identify the country of origin of goods provided that they are not related to contractual or autonomous preferential trade regimes. Under the ARO, ROO shall not be i) used to pursue trade policy objectives, ii) restrictive, iii) more stringent than the rule to determine domestic trade, and iv) discriminative between members. They shall i) be administered in a consistent, uniform, and impartial manner, based on positive standards, ii) provide pre-entry assessment not later than 150 days, which is valid for three years, and iii) be subject to judicial, arbitral or administrative tribunals or procedures.

108. The Committee on Rules of Origin (CRO) under the World Trade Organization (WTO) in Geneva, and Technical Committee on Rules of Origin (TCRO) under the World Customs Organization (WCO) in Brussels are the two international bodies

responsible for carrying out the HWP. Working in tandem, the CRO may request, and had in fact requested the TCRO to undertake the technical work necessary to achieve the objectives of the ARO.

109. The TCRO in turn, is tasked, subject to the principles laid down in Article 9.1 of the ARO and under specified time frame of three years (initially), to develop harmonized definitions of goods that are to be considered wholly obtained in one country and the minimal operations or processes that do not by themselves confer origin to a good; criteria for substantial transformation based on change in tariff heading; and supplementary criteria where the exclusive use of change of tariff heading does not allow for the expression of substantial transformation.

110. All the criteria shall be governed by what is called the “overall architecture of the draft harmonized rules of origin” or the Architecture. Until the TCRO completes its task, the CRO will consider the interpretations and opinions that will be periodically submitted to it by the TCRO during the HWP, with a view to endorsing them.

111. Mr. Imagawa added that the TCRO’s technical examination started in July 1995 and was supposed to be completed in three years. However, despite its best efforts, the huge volume of work involved, coupled with the technical complexity and political sensitivity of the issues, TCRO completed its work in May 1999 and forwarded to the CRO the provisional text of the Harmonized Non-preferential Rules of Origin as the final result of its technical review, together with a series of referral documents regarding the unresolved issues and the possible options for resolving them.

112. Meanwhile, the CRO continues to examine the interpretation and opinions of the TCRO including on those contentious specific products or sectors and submit unresolved issues to the WTO General Council. In July 2002, the CRO submitted to the WTO General Council for its decision, 93 core policy issues and the so-called “implications issue” which argued the applicability of the HRO for other WTO Agreements, in particular, trade remedy measures.

113. In the formulation of the draft HRO, the Architecture serves as the structural framework of the envisioned ROO since it contains the general provisions to govern the entire set of rules for defining wholly obtained goods and the criteria for determining substantial transformation. The basic structure of the Architecture consists of General

Rules, Appendix 1 for definitions of wholly obtained goods, and Appendix 2 for criteria of substantial transformation.

114. To determine the origin of goods, there is a clear hierarchical structure between Appendices and among the rules set out in Appendix 2. If the production of a good is confined in a single country, the good may be considered wholly obtained only by the application of a relevant definition laid down in Appendix 1. When more than one country is involved in the production of a good, the origin must be assigned by the application of Appendix 2 rules. This means that when coal, mined in one country, is exported to another country, packed and re-exported from there to a third country, the determination of origin of the coal shall be made by the application of rules in Appendix 2, and not by the definition of wholly obtained goods.

115. The “co-equal” status of primary rules was also explained. When there are several rules set out for a particular Chapter, heading or subheading under the category of the “primary rules”, these rules are treated with the same status, in a co-equal manner. Assuming, for example, a chemical good where a change-of-subheading rule is set out at a heading level and the chemical reaction rule is laid down at a chapter level, in this case, either a change-of-subheading rule or the chemical reaction rule should be satisfied, even if two rules are set out as “primary rules”. There is no need to prove which rule was “last” satisfied, or which was not satisfied.

116. It is recognized in principle that origin rule must be precise, that a good without an identified country of origin is not possible. Thus, an ultimate rule is also anticipated as a fallback for determining the origin of good in cases where the good does not meet a primary rule such as a change-of-heading. In the Architecture, the sequential application of the so-called “residual rules” is provided, e.g., ranging from the chapter specific rules to a more general condition, i.e., when none of the specific residual rules determines the origin, the origin is attributed to the lone country which provided the “major portion” of the materials used.

117. It has been almost 20 years since the proposal of harmonization was tabled during the Uruguay Round and 13 years since HWP was launched in 1995. An issue was raised regarding the relevance of the HRO today. Some argued that, at present, certain countries have their own non-preferential rules of origin in place, while some

countries do not even have one at all, so why not allow the status quo to prevail. Others questioned whether such a situation was acceptable.

118. Does origin matter to consumers? For buyers who are quality conscious, the trade mark or brand name may be the determinant factor regardless of the country of origin. Likewise, the manufacturers are expected to benefit when non-preferential ROO are harmonized. Under such circumstances, one origin marking is sufficient to export the same goods to any country in the world. Otherwise, different origin marking may be needed depending on the export destination, owing to different existing origin rules. At present, origin marking for imports is mandatory for several countries.

119. On trade policy side, non-preferential ROO are still used in the application of MFN duty although it is overshadowed by the increasing preferential trade and an expanded WTO membership. There is also its application in cases of anti-dumping, countervailing duties, safeguard measures and quantitative restrictions, although their volume of trade affected may not be vast. Interestingly, certain national security measures are in use for non-preferential ROO. Trade embargo, consumer protection, sanitary or phytosanitary requirements are additional areas of application, in addition to trade statistics and government procurement.

120. Despite the delay, HWP is now in its last stages and would become a worldwide standard when completed. Customs and traders would be better served with harmonized ROO that are uniform, predictable, and transparent. As a spin-off effect, the know-how in crafting the HRO has already permeated in the negotiations for EPAs/FTAs in some countries in Asia. Thus, the draft HRO serves somehow as a de facto standard. Political will is however needed to see HWP to its completion.

Session 6: Roundtable Discussion

121. Under the chairmanship of **Mr. Stefano Inama**, various resource speakers and participants discussed and made suggestions towards possible simplification and harmonization of ROO during this session.

122. As customs tariffs are coming down, business and trading communities' concern has increasingly focused on trade facilitation aspects, including ROO, to further

reduce costs of doing business, and facilitate access to preferences offered in many existing FTAs and PTAs.

123. There are still much room and opportunities for expanding intra-regional trade in the regions of SAARC and ASEAN, and sound understanding of FTA ROO by officials and business community concerned is vital to facilitate cross-border trade among them. There has been a serious concern among certain WTO members, WTO researchers and business/trading communities that the proliferation of FTAs is now creating the so-called “spaghetti bowl” or “noodle bowl” effect by having different sets of preferential ROO under such FTAs.

124. Since a FTA is an international agreement, and neither of the party can unilaterally change the provisions of ROO in the FTA, it will require lengthy renegotiations to change rules; hence, a careful analysis on ROO is a precondition before the start of a FTA negotiation. The experiences in simplification and harmonization efforts in preferential ROO under the generalized system of preferences (GSP) could offer some useful lessons.

125. Some stated that a general provision of a “CTH or 40%” supplemented by the cumulation provision would be an ideal determination criterion under a FTA ROO, since technical rectification of the product-specific rules in accordance with the revision of the HS is recognized as one of the most burdensome measures to maintain FTA ROO. As for certification procedures, the system used by United States is importers-based while in the case of EU, certification will be shifted from certifying authorities to the approved exporters.

126. Going forward, various approaches for simplification and harmonization of ROO were identified. They include: early adoption of the draft harmonized ROO developed by the World Customs Organization (WCO) for non-preferential trade or global application; application of best practices in various FTA ROO; harmonization of technical terms used in FTA ROO; use of the draft Harmonized ROO in a FTA ROO as far as possible; and simplification of certification procedures.

127. At the end of this session, **Mr. Teruo Ujiie** delivered his closing remarks. He concluded that it requires a political will by all WTO members to adopt the draft WTO

Harmonized Non-Preferential ROO developed by WCO/WTO. Once adopted, the HRO would substantially reduce origin issues concerning non-preferential trade or MFN trade and serve as best practices for ROO.

128. As a practical step-by-step approach for simplification and harmonization of ROO in both preferential and non-preferential trade, Japan has shown in some pragmatic ways that relevant part(s) of the draft HRO may be utilized in a FTA ROO. Once an FTA is implemented, it would be advisable to monitor and examine a utilization rate in order to identify shortcomings of ROO element(s).

129. There should be special ROO measures for land-locked LDCs. When an article on ROO under a domestic law is to be modified or revised, an advance notice should be given to the public. Private sector should be invited to make full use of an “advance ruling” system.