GUEST EDITORIAL

Customs Origin: A Review of Non-Preferential Rules of Origin in International Trades

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1 Why an issue on customs origin?

This issue of the journal is dedicated to non-preferential customs origin. Not so long ago, the words 'customs origin' did not evoke anything to pretty much anyone. Utter the words in otherwise learned gatherings, and all you would get in return is a blank stare. Then in June 2016, to the question 'Should the United Kingdom remain a member of the European Union or leave the European Union?' a majority of the British people answered 'Leave the European Union'. That answer was a surprise. When the dust settled (to the extent that it ever did), it became clear that the area where this decision would have its biggest impact was on the movement of goods, not only between the UK and the EU, but also between the rest of the world and the UK. At the core of lot of the ongoing discussions and considerations around Brexit is, precisely, customs origin.

Something else is happening, probably the result of the same root causes[1]: the multilateral global trading environment built after the Second World War is crumbling. For sure the Word Trade Organization (WTO) stopped progressing long ago,[2] but until recently few envisaged that it could wither, let alone end. Yet, we are now a few months away from the WTO losing an effective dispute settlement mechanism.[3] The multilateral discipline of the WTO is being replaced by bilateral tensions and negotiations (usually the former leading to concessions made in the latter). At the core of free trade agreements, there are trade preferences applicable only to originating goods (preferential origin). At the core of the unilateral duties and retaliatory measures countries impose against each other's products, there is the question of where targeted products originate (non-preferential origin).

There is a specific UK twist to this: while Brexit was the consequence of a nativist phenomenon, the UK government was and remains in favour of free trade. Hence the need to explain Brexit as an opportunity to open foreign markets, to conclude free trade agreements truly tailored to the needs of the UK, and not those of the EU at large. This added to the renewed interests, in the UK and beyond, for free trade agreements, at the core of which there is customs origin.

Customs origin, a complex topic if there ever was one, with preciously few experts able to talk about it.

This is why we thought that an issue of the journal entirely dedicated to customs origin would be timely. As it turns out, we were fortunate enough to find enough experts willing to write about this to fill an issue only on non-preferential customs origin. A later issue will be dedicated to preferential origin.

Lastly, here is the right place to thank Jin Woo Kim[4] for his precious help in reviewing and getting all the below articles. This issue would not be there without him.

2 The papers presented

Here is a description of the articles presented in this issue:

Marc Wegnez works for the Belgian ministry of economy which is competent for deciding origin matters in Belgium. In his article, the author reviews what is the 'origin of goods' under EU law, which includes both non-preferential and preferential origin. Rules on the 'origin of goods' were made to implement trade measures, in

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1 The rise of populism, fuelled by the increasing disaffection of the working and middle classes.

2 The Doha round of negotiation started in Nov. 2001 with the objective of lowering the level of trade barriers globally through multilateral negotiations between the WTO members, broke down in 2008 and was never successfully revived.

3 In all likelihood, in Dec. 2019 the Appellate Body of the WTO will have less than three members, and will case to function.

4 Steptoe & Johnson in Brussels.

particular when goods were manufactured with components from several countries – not to protect consumers. The author then distinguishes the 'origin of goods' from other related notions that are often confused with the 'origin of goods', namely provenance, protected designation of origin ('PDO'), protected geographical indication ('PGI'), non-agricultural geographical indication, and commercial origin. The author explains that unlike the 'origin of goods', all these notions are defined in relation to consumer protection.

Dan Arnold and Yves Melin are trade lawyers in the London and Brussels offices of Steptoe & Johnson. Their article seeks to act as a refresher on non-preferential rules of origin in EU customs law. The authors first place non-preferential origin in its broader customs context, and then review the substantive rules governing the acquisition of origin. This article then reviews the new anti-avoidance rules introduced by the Commission when the Union Customs Code (UCC) was adopted, and explain why in their view those new rules are invalid.

Tiziana Satta is a senior customs officer in the Italian customs, World Customs Organization (WCO). Examines rules on non-preferential origin under international law, the European Union ('EU') law and Italian law. In particular, the author explains that while the UCC provides rules on non-preferential origin in EU level, the EU Member States may adopt national laws that are in full compliance with the EU Treaties and regulations. The author then analyses the Italian legal framework providing rules on non-preferential origin.

Christophe Coulie (Legal Affairs Manager, Federation of Belgian Chambers of Commerce) and **Martin van der Weide** (Policy advisor on origin, Netherlands Chamber of Commerce) explain the digitalization of issuing non-preferential Certificate of Origin ('CO') in Belgium and the Netherlands, in particular progresses made and challenges faced by the Belgian Chambers of Commerce and the Netherlands Chamber of Commerce. Emphasizing that the ultimate goal of the digitalization is to produce a fully electronic CO ('eCO') without involving any paper, the authors address future challenges. In this regard, the authors find that international cooperation among Chambers of Commerce around the world will be important in developing eCO systems.

Mette Azzam (Senior Technical Officer, WCO) discusses the harmonization of non-preferential rules of origin and the certification of origin in two different papers. In the **first paper**, the author reviews the previous efforts to harmonize the non-preferential rules of origin at the WTO. Noting that the harmonization of the non-preferential rules of origin has stalled in the WTO, the author emphasizes the importance of reviving the momentum. In the **second paper**, the author examines how rules of origin were included in international instruments – namely under the WTO and the WCO. The author then describes the different certification systems and analyses certification of non-preferential rules of origin.

Mohamed Abdallah (Head of Department, Tunisian Customs) provides the overview of Tunisia's customs legislations concerning non-preferential origin, with emphasis on the criteria and conditions for obtaining non-preferential origin and the proofs of origin to be presented at customs clearance. In this regard, the author explains that the Tunisia's customs legislations are largely based on international standards and best practices, particularly those of the EU.

Finally, **Sherif Erfan** (First Commercial Secretary, Embassy of Egypt in Brussels) analyses practical implications of the Authorized Economic Operator ('AEO') programmes on certification of preferential origin. The author explains the increasing importance of AEO programmes and their benefits of providing trade facilitation. At the same time, the author points out the challenge of harmonizing AEO programmes and how this challenge could be addressed. The author suggests an extensive joint work of the WTO and the WCO to achieve a more harmonized AEO programmes.