

Comment Paper on the Harmonization of the Rules of Origin for Creating the EAFTA

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I. Introduction

It is my great pleasure to comment on the Harmonization of the Rules of Origin(ROO) for Creating the EAFTA at this session, which provides me with an excellent opportunity to comment a very interesting and challenging subject.

I would like to express my sincere appreciation to the organizing secretariat for inviting me to this conference.

I am from the Korea Customs Service and responsible for negotiation and implementation of FTA and the ROO related to Customs administration.

In recent international trade regime, there has been a growing awareness of the importance of ROO because they greatly affect the pattern of international trade including establishment of the Free Trade Agreement. I imagine that is the reason why the subject of this session is included in the issues of this forum.

Before commenting on presentation of Prof. KOMURO, I have to say that my comment is based on my personal view point and opinion, and thus it does not reflect them of the Korea Customs Service.

II. Existing situation on the Rules of Origin in the East Asia Region

(Absence of the common or harmonized preferential ROO)

The ROO matter within the East Asian region because there has been no harmonization of the ROO multilaterally.

Unlike other major economies which have many experiences in dealing with multiple preferential trade regimes, East Asia including China, Japan and Korea was for a long time the only major trading region that had not a FTA necessarily requiring preferential trade regime.

Even though three countries have become more positive on regional economic cooperation with neighboring countries and ASEAN, the absence of common or harmonized PROO will entail difficulty in bringing deeper economic integration including the establishment of RTA including three countries.

The main problem for EAFTA in terms of the ROO is as follows:
There is no harmony between the approaches to the ROO adopted in RTAs.
Even within the same country, different ROO are used depending upon the trading agreement and causes increasing complexity of the ROO.

The ROO in the East Asia are quite divergent. Each has its own definitions of value-added requirements and its own exceptions. This gives rise to conflicting sets of signals and potential trade diversion to traders within the region.

The existence of many different and non-compatible ROO may also have restrictive or distorting effects on trade flows between East Asian countries. More seriously the existence of various types of the ROO may serve as protectionist tools in the hands of influential local lobbyists and provide a temptation to use them as a form of hidden protectionism or mini-industrial policy.

(Various Origin Determination Criteria in the Preferential ROO)

Change of Tariff Classification and/or following Value Added Criteria ;

- AFTA is based on a 40 percent value-added rule
- Australia-New Zealand: 50 percent area-content requirement
- Japan-Singapore: 60 percent value-added rule
- Korea-Chile: 30 or 45 percent value-added rule
- MERCOSUR: 60 percent value-added rule
- NAFTA: 50 - 60 percent value-added requirement, and more restrictive value-added and transformation requirement exist for the auto and textile sectors

(Different technological gaps in various industrial sectors)

As East Asian countries have different technological gaps in various industrial sectors, it will be difficult to develop and address the common ROO, especially defining the specific origin-conferring production processes such as surface metal treatment, chemical purification and ionization and assembly of clothes.

III. How to reconcile and design the harmonized preferential ROO for the EAFTA

(Establishing Common Principles on the preferential ROO)

In reality, it will be hard work to explore and adopt the same type or the same provisions for the preferential ROO. Under the current circumstances, the way to harmonization of preferential ROO looks to be far.

However, elaborating common principles necessary for origin determination, such as adoption of generic ROO system, tariff classification change rule as main criteria, single level of value-added percentage, can be regarded as step-stone toward establishment of the common or harmonized preferential ROO.

In addition, harmonization of technical criteria, such as common calculation formula for applying value-added or accumulation rule, can be challenging tasks.

(Potential Architecture of the Common Principles on the preferential ROO)

- Adopting the transparent, consistent, simple, clear and predictable principle
The following could be considered as common principles for achieving greater transparency and simplification
 - Main criteria: on the basis of the CTC(mainly, CTH) method
 - Supplementary criteria: value-added rules
 - Specific sectors (such as auto, textile and clothing): Specified Process
 - These harmonized ROO could then be implemented as soon as feasible by all East Asian counties in their non-preferential trade

- If the ongoing WTO non-preferential ROO would be completed in success, East Asian countries could consider for applying the ROO to preferential or regional trading arrangements as well as to non-preferential arrangements to save time and resources for making new preferential ROO for the EAFTA.

III. Experiences of the preferential ROO of China, Japan and Korea

China, Japan and Korea have operated their own preferential ROO for implementing preference treatment to the goods imported from specific countries. In this part, the preferential ROO of three countries are compared to obtain comprehensive view of their rules.

This comparison is based on the report of the APEC Sub Committee on Customs Procedures which was held on February 25-27, 2004 in Chile and the notification to the WTO Secretariat in accordance with the WTO Origin Agreement.

1. Rules of Origin

a) In formulating ROO, there are two tendencies in general terms.

One is **specific** ROO for each goods and the other is **generic** ROO applicable to all kinds of goods. The former accompanies long and voluminous list of origin determination criteria separately applying to product by product. But the latter contains the basic and general ROO applying to all kinds of goods.

China, Japan and Korea have set out specific ROO and generic ROO together in their origin determination system. Generally speaking, three countries seem to adopt the system in which the generic ROO are working as main principles and they are supplemented by the specific ROO.

b) There are several **origin determination rules**, that is, Tariff Classification Change rule, Value- Added rule, Specific Processing rule and their combination.

China, Japan and Korea seem to adopt Tariff Classification Change rule as main rule for origin determination and others as supplementary rules.

2. Certificate of Origin (C/O)

a) With regard to the question of who is in charge of the **issuance** of the C/O, there are two tendencies in general. One of them is that the C/O is issued by the exporter or producer, while the other is that the C/O is issued by government agency or private organization authorized by the government.

China limits the issuer to government agency, but Japan and Korea allow the private organization authorized by government as well as the government agency to issue the C/O.

b) As regards **duration** of the C/O, that is to say, the time limit allowed to import the goods under the C/O as from the date of issuance, China, Japan and Korea provide for 1 year in common.

c) Regarding to the circumstances in which the C/O is **not required** for an import subject to a preferential treatment, Japan and Korea provide for the import under a specific value, but China has no provision about the circumstances.

3. Origin Verification

a) Concerning to verification of the C/O, Japan and Korea provide that customs authority of importing country is the **competent authority** in charge of carrying out origin verification.

b) As regards verification of origin, China and Korea allow the competent authority to send the **questionnaire** to exporters and/or producers in order to control and verify origin.

c) As a method of verification, China and Korea allow the competent authority to **visit** the premises of exporters and/or producers.

4. Penalty against providing false C/O

To secure legitimacy of C/O, China and Korea adopt administrative penalties against exporters or producers who provide false C/O of the goods, and Japan adopts criminal penalties as well as administrative ones.

5. Advance Rulings on origin of goods

Japan and Korea have advance rulings system on origin determination, but China has no provision.

6. Review and Appeal of origin decisions

China has administrative remedies to appeal origin decisions, and Korea has double system of administrative and judicial remedies.

IV. Conclusion (hopeful harmonized preferential ROO for the EAFTA)

When we refer to other countries and trading areas which have long experience in regional economic integration including establishment of the FTA, appropriate introduction and successful implementation of the common preferential ROO has been essential requirement for achieving the goal of the economic integration. Such experience will be useful reference to deeper economic integration in the East Asian region.

Personally, I would like to insist that the expected and hopeful preferential ROO for the region should be consistent at least in the same product sector, simple, clear and predictable, easily applicable and administrable by both traders and Customs.

For successful formulation of the rules, each country in the region should avoid insisting their own “cultures” of legal or institutionalized system which may be unfamiliar to other parties and also should develop the preferential ROO which are widely accepted and prevalent in international trade practices.

Thank you for your attention !