Journal of Economic Cooperation **23**, 1 (2002) 61-88

# WTO AGREEMENTS ON NON-TARIFF BARRIERS AND IMPLICATIONS FOR THE OIC MEMBER STATES: Customs Valuation, Pre-shipment Inspection, Rules of Origin and Import Licensing

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The paper examines the very technical issue of customs procedures and foreign trade customs administration under the related WTO Agreements and their implications for the developing countries and, in particular, the OIC countries. It explains in detail regulatory arrangements on each topic stipulated by the WTO Agreements relating to Customs Valuation, Pre-shipment Inspection, Rules of Origin and Import Licensing. Then it discusses the implications of these agreements on the economies of the developing countries and, in particular, the OIC countries. It ends with some concluding remarks regarding the difficulties caused by the implementation of these agreements.

## 1. INTRODUCTION

The efforts to liberalise the world trade have reached a significantly higher stage when countries signed the *Final Act* concluding the Uruguay Round Negotiations, better known as the *'Marrakesh Declaration'* in Marrakesh, Morocco, on April 15, 1994. The Uruguay Round had been launched in Punta del Este, Uruguay, with heated discussions on its agenda in 1986.

Before Marrakesh, the world trade was governed by the General Agreement on Tariffs and Trade (GATT) which entered into force in January 1948. That agreement was concluded by 23 participating countries in Geneva in 1947. It included tariff concessions and trade rules. It also involved a draft charter for the establishment of an International Trade Organisation (ITO). That organisation was one of the three institutions to be set up to govern international economic relations after the Second World War; the other two were the World

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Bank and the International Monetary Fund (IMF). However, ITO could not be materialised because the United States (US) did not ratify its charter. Yet, the trade rules and tariff concessions were put into effect. The GATT remained the only legal framework governing international trade since 1948 until the *'Marrakesh Declaration'* and the establishment of the WTO in 1995.

During that period, there occurred some additions and modifications in the basic GATT. These were realised through *'trade rounds'*, Annecy (France, 1949), Torquay Round (England, 1950-51), Geneva Tariff Cuts (1955-56), Dillon Round (Geneva, 1960-61), the Kennedy Round (Geneva, 1964-67), and Tokyo Round (1973-79). While the earlier trade talks were covering only tariff concessions, the Kennedy and Tokyo Rounds included also anti-dumping measures, non-tariff and para-tariff barriers, and some *'plurilateral'* (based on voluntary membership) agreements like the International Dairy Agreement, the International Bovine Meat Agreement, the Government Procurement, etc.

The WTO was established on January 1, 1995. 76 governments became members on its first day. 36 other governments became members during 1995 after completing various procedures. The WTO has 140 member countries as of December 2000. Out of 56 OIC members, 37 countries have already become members of the WTO, 8 other OIC countries are in the process of becoming members.

The WTO has produced the most fundamental reform of the world trading system since the establishment of the General Agreement on Tariffs and Trade (GATT) in 1948. The WTO Agreements, which are the outcome of the 1986-94 Uruguay Round of multilateral trade negotiations, introduce disciplines on a wider range of trade issues and testify to a wider and deeper commitment to trade liberalisation. The scope of these Agreements extends beyond the traditional trade issues, which primarily addressed the reduction of tariffs and quota as barriers against trade in goods at country borders.

A wide range of non-tariff barriers to trade is now the subject of a number of multilateral and legally binding WTO Agreements. These Agreements deal with technical and bureaucratic measures or legal issues that could involve hindrances to trade or be used as instruments for restrictive and discriminatory trade policies. They include Agreements on

Technical Barriers to Trade, Sanitary and Phytosanitary Measures, Import Licensing Procedures, Rules of Origin, Customs Valuation, Pre-shipment Inspection, Anti-dumping, Subsidies and Countervailing Measures, Safeguards and Trade-related Investment Measures.

The Agreements on Technical Barriers to Trade, Anti-dumping, Subsidies and Countervailing Measures, Import Licensing, and Customs Valuation are modified and amended versions of the agreements concluded at the end of the Tokyo Round. They were rather in "*plurilateral*" status; that is, they were binding only on those parties that have accepted them. However, after the Uruguay Round, they have acquired *"multilateral"* status, i.e. they became binding on all members. On the other hand, the Agreements on Sanitary and Phytosanitary Measures, Safeguards, Pre-shipment Inspection and Rules of Origin are the results of the Uruguay Round and they shall also be applied by all the WTO members.

Amongst the agreements on non-tariff barriers, Technical Barriers to Trade, Sanitary and Phytosanitary Measures, Import Licensing Procedures, Rules of Origin, Valuation of Goods at Customs, Pre-shipment Inspection are related to the harmonisation of trade regulations while the others, Anti-dumping, Subsidies and Countervailing Measures, Safeguards and Trade-related Investment Measures, are viewed as related to trade competition policies (market access).

Non-tariff barriers may create problems that can be as serious as the actual tariff and duty rates charged at country borders. Thus, it is not surprising that the overall objective of these Agreements is to prevent obstacles and reduce uncertainties facing the trading community. They seek to ensure transparency of laws, regulations and practices regarding various rules of trade and, ultimately, to harmonise these rules to facilitate international trade.

The implementation of these Agreements will undoubtedly influence the structure of trade regulations in many developing countries, for which the notion of trade facilitation has apparently not yet replaced the more classical notion of trade control. This would forcefully entail fundamental trade reform measures to be taken by these countries to accommodate and secure their commitments to the new system. Perhaps the most important outcome is that the range of measures previously viewed as falling within the scope of national policy has now been brought under multilateral discipline and linked to the rights and obligations governing international trade and market access.

This paper sheds light on the objectives and principles of those WTO Agreements on Import Licensing Procedures, Rules of Origin, Valuation of Goods at Customs, and Pre-shipment Inspection. It also attempts to highlight some implications for developing country members of the WTO including the OIC countries in terms of the difficulties encountered by these countries in implementing these Agreements.

It has been observed that many developing country members have not notified the WTO Secretariat of their application of these Agreements and several have requested extensions of the delay period for implementation available to developing countries under some provisions of these Agreements. In this context, it can be argued that many of the difficulties encountered by developing country members in implementing these Agreements are compounded in African countries. Vast borders of lands between and among these countries, lack of trade finance infrastructure and resources in some areas, economic policies which rely on high customs duties, and extensively developed informal economic sectors in many African countries all contribute to this situation.

Considering this situation and given the fact that the OIC African member countries of the WTO (21 countries) account for more than half the OIC member countries in the WTO (so far 36 countries), the paper gives special attention to this group of OIC countries. Nevertheless, it should be noted that the situation with respect to these countries does not differ significantly from other OIC members and from many developing country members of the WTO in other regions.

## 2. CUSTOMS VALUATION

Customs duties can be either specific or ad valorem. Specific duties are levied on a certain quantitative measure of goods, for example some US$ per unit or per metric ton. On the other hand, ad valorem duties are based on the value of goods. In this system, determining the value of a good or, in other words, customs valuation becomes important.

Customs valuation is a set of customs procedures used to determine the customs value of imported goods for the purpose of determining the actual incidence of duty. For importers, the process of estimating the value of a product at customs may create problems that can be as serious as the actual duty rate charged. Customs administrations generally expect undervaluation in the invoices. For this reason, the officers examine in detail every invoice to catch a fraud in documents. Examination, in general, results in the imposition of penalties. This, in turn, means an increase in the cost of the imported products, "according to one estimate by some 7-10 percent of the value of the world trade." (Cited in Messerlin and Zarrouk, 2000, p.580)

The Agreement on the Implementation of Article VII of the General Agreement on Tariffs and Trade 1994, better known as the Agreement on Customs Valuation, is a modification of the Tokyo Round Code on Customs Valuation, one of the agreements covering non-tariff measures concluded during the multilateral trade negotiations held between 1973 and 1979. The latter Agreement, which entered into force on 1 January 1981, harmonised and replaced many different national customs valuation systems in force prior to its conclusion. The 1994 Agreement on Customs Valuation replaced the earlier agreement, which was terminated on 1 January 1996, one year after the WTO came into effect. Although the earlier agreement had limited membership, the new WTO Agreement applies to all members. The Agreement intends to establish fair, uniform and neutral methods (or systems) of determining the value of imported goods for customs purposes. It aims to prevent the use of arbitrary or fictitious customs values.

As it is defined in Article 1 of the Agreement, the primary basis for the customs value of imported goods is the "transaction value", which is the price **actually** paid or payable by the importer for the particular good, adjusted in accordance with Article 8 of the Agreement. Article 8 "provides, inter alia, for adjustments to the price actually paid or payable in cases where certain specific elements which are considered to form a part of the value for customs purposes are incurred by the buyer but are not included in the price actually paid or payable for the imported goods. Article 8 also provides for the inclusion in the transaction value of certain considerations which may pass from the buyer to the seller in the form of specified goods or services rather than in the form of money."(Agreement on Customs Valuation, Introductory Commentary)

The basis of the “transaction value” is different from the earlier practice of the “notional value” which is also known as the Brussels Value Definition (BVD). Previously, customs duties were determined according to the latter definition. It is based on the idea of a normal market price of a good instead of its actual transaction price. In other words, it is the expected list price of a good between a buyer and seller independent of each other in an open market economy. The system was not allowing actual deviations from the normal list price, and the customs duties were computed on the basis of a pre-determined price. This method caused widespread problems between the customs authorities and the traders and delayed the clearance of goods at customs. Furthermore, the fact that these lists do not include some products, as in the case of rare and new items, complicated matters and caused further delays and friction between the parties. A new technique was needed to overcome such difficulties. As a result, the old system of the “notional value” was replaced by the “transaction value”.

Where the customs value of an imported commodity cannot be determined within the framework of the provisions of Article 1, the Agreement provides (in Articles 2 through 7) further methods of determining it. These methods expand and give greater precision to the provisions on customs valuation in the original GATT. In such cases, a process of consultation is started between the customs administration and an importer with a view to arriving at a basis of value under the provisions of Article 2 or 3, which make use of the transaction value of identical or similar goods. If a solution cannot be reached, Articles 5 and 6 provide two bases for determining the customs value. Under paragraph 1 of Article 5, the customs value is determined on the basis of the price at which the goods are sold in the condition in which they are imported to an unrelated buyer in the country of importation. Under Article 6 the customs value is determined on the basis of the computed value. Both these methods present certain difficulties and because of this the importer is given the right, under the provisions of Article 4, to choose the order of application of the two methods.

Furthermore, Article 17 of the Agreement and paragraph 6 of Annex III to the Agreement recognise that in applying the Agreement, customs administrations may need to make enquiries concerning the truth or accuracy of any statement, document or declaration presented to them for customs valuation purposes. Similarly, the *Ministerial Decision Regarding Cases where Customs Administrations Have Reasons to Doubt the Truth or Accuracy of the Declared Value* gives customs administrations the right to request further information in cases where they have reasons to doubt the accuracy of the declared value of imported goods. If the administration maintains a reasonable doubt, despite any additional information, it may be deemed that the customs value of the imported goods cannot be determined on the basis of the declared value, and the customs would need to establish the value taking into account the provisions of the Agreement.

On the other hand, Article 18 of the said Agreement established a Committee on Customs Valuation (CCV) composed of representatives from each of the members. The Committee aims to provide a forum for the member countries for consultations on matters relating to the operation of the Agreement, the administration of the customs valuation system, or the furtherance of its objectives. The Committee also examines the national legislations of the member countries to ensure conformity with the provisions of the Agreement. In this context, it assumes a role in conciliation and settlement of disputes among the members. The Agreement also established a Technical Committee on Customs Valuation (TCCV) under the auspices of the World Customs Organisation[1] (WCO), formerly Customs Co-operation Council (CCC), to promote at the technical level uniformity in implementation and operation of the Agreement.

In addition, the Agreement includes certain provisions in favour of developing countries (Article 20 under the title of Special and Differential Treatment). It provides that the developing countries, not party to the Agreement on Implementation of Article VII of the GATT (Customs Valuation) done on 12 April 1979, may delay application of the provisions of this Agreement for a period not exceeding five years from the date of entry into force of the WTO Agreement for such members. Developing countries were also given the possibility of delaying the application of the "computed value" method of valuation

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[1] After it was established as the Customs Co-operation Council in 1952, it adopted the name of World Customs Organisation in 1994. Now, having 156 members, it aims to enhance the effectiveness and efficiency of customs administrations.

for a further 3 years. However, during the Seattle Ministerial Conference, the developing countries called for the extension of the five-year transition period.

For developing countries, it seems that the main implementation difficulties are related to the fear that the Agreement would limit their customs administrations to deal with the cases where goods were deliberately undervalued, which in turn would result in a loss of revenue from customs duties. It is clear that the tendency to declare customs values that are less than the actual transaction values is more pronounced in developing countries where the customs duties are relatively high. In many countries, the high rates of customs duties are maintained for government revenue and not for protectionist purposes. This is often made evident by the fact that in many African countries, customs duties account for as much as 50 to 60 percent of the national budget (WTO: Libreville 2000).

Given this situation, many member developing countries would maintain that the provisions of the Agreement (particularly Article 17) are insufficient to enable customs administrations to deal with and decide on cases when the declared price is less than that noticed in earlier transactions of identical goods. The Agreement obliges the customs to provide importers, in writing, with the reasons why the transaction value is not accepted, but allows the importers the right to prove their case. This would create implementation difficulties in many member developing countries where customs officers are often unaware of these provisions and/or how they are to be put into practice. Implementation of the Agreement would require customs administrations trained to question importers, understand the evidence presented, physically control the movement of goods across borders, and allow an effective clearance audit system to work.

It should, therefore, be noted that application of the Customs Valuation Agreement should go hand in hand with customs reform and modernisation. While the latter is not a necessary condition for the former, it certainly would contribute to a more effective outcome. However, customs reform involves considerable financial and human resources, which are often out of reach of many developing member countries. Table 1 gives an idea about the costs of customs reform projects in selected countries.

**Table 1: Costs of Customs Reform Projects in Selected Countries**

| Country | Major Elements | Cost (Million US $) |
|---|---|---|
| Armenia | Draft new customs law, train staff, and computerise procedures--component of an institution building project. | 1.604 |
| Lebanon | Train staff, introduce new tariff classification, computerise procedures--component of a revenue enhancement and fiscal management project. | 3.82 |
| Tunisia | Computerise and simplify procedures | 16.21 |
| Tanzania | Buildings, equipment, new processes, training | 10.00 |

Source: Finger, Michael, J., and Schuler, Philip, (2000) "Implementation of Uruguay Round Commitments: The Development Challenge", *The World Economy*, Vol.23, No.4, April 2000, p.516.

**Table 2: Situation of OIC African Members under the Agreement on Customs Valuation As of 28 February 2001**

| Applying Agreement | | Five-year delay and date of expiration (Article 20.1) | Extension of delay (Annex III.1) | |
|---|---|---|---|---|
| Assumption based on lack of request for extension of delay | Reservation for min. values (Annex III.2) | | Granted (Date of expiration) | Requested but not yet granted |
| Burkina Faso<br>Djibouti<br>Gambia<br>Guinea<br>Guinea-Bissau<br>Mali<br>Mozambique<br>Nigeria<br>Sierra Leone<br>Togo<br>Uganda | Gabon<br>Morocco | Benin (22/2/2001)<br>Cameroon (13/12/2000)<br>Chad (19/10/2001)<br>Niger (13/12/2001) | Egypt (30/6/2001)<br>Mauritania (31/5/2002)<br>Tunisia (28/9/2001) | Senegal |

Source: WTO, *Agreement on Customs Valuation (MM/LIB/WS1/4)*, Libreville 2000: Meeting of African Trade Ministers, Libreville, Gabon, 13-15 November 2000, p.5.

Concerning the situation of the OIC African members under the Agreement on Customs Valuation, Table 2 shows that out of the 21 members, 10 have invoked the five-year delay period available to developing countries under Article 20.1 of the Agreement. 4 countries have requested extensions of this delay period, 3 requests have been granted for periods ranging from one to two years, and one request is still pending agreement by the Committee. Of the 21 members, only two countries (Gabon and Morocco) have notified the WTO about their legislation putting into effect the Agreement. Another 11 members have never invoked this special and differential provision, nor have notified their legislation. According to their WTO obligations, these countries are supposed to be applying the Agreement. However, the lack of notification raises the question as to whether, in reality, they are.

## 3. PRE-SHIPMENT INSPECTION

Pre-shipment inspection (PSI) activities are all activities relating to the verification of the quality, the quantity, the price, including currency exchange rate and financial terms, and/or the customs classification of goods to be exported to a country (Article 1). Pre-shipment inspection is, by definition, carried out prior to shipment on the territory of the exporter country, and only in exceptional circumstances in the country of the manufacturer.

The Agreement on Pre-shipment Inspection (PSI Agreement) recognises the practice of employing specialised private companies or "independent entities" to undertake pre-shipment activities. Used by governments of many developing countries, the purpose of this practice is to safeguard national financial interests such as prevention of capital flight and commercial fraud and evasion of customs duty, and to compensate for inadequacies in administrative infrastructures.

The independent and specialised PSI companies guarantee that the goods conform to the terms of the sales contract and also that the declared invoice price is the actual transaction price. That is, there has been no under- or overpricing. In this manner, governments aim to prevent capital flight through overpricing, and/or any loss in customs revenue as a result of undervaluation or mis-classification of the goods. They also provide services such as the verification of origin of the product, maintenance of data for statistical purposes, technical assistance and training.

In this context, the PSI Agreement recognises the need to establish an agreed international framework of rights and obligations of member countries using services provided by pre-shipment inspection entities (PSI entities). The term "PSI entities" is any entity contracted or mandated by a member country to carry out PSI activities (Article 1). The main objective of the Agreement is to provide transparency of the activities, laws and regulations of PSI entities.

The obligations of PSI-user members include non-discrimination amongst exporters, publishing all applicable laws and regulations relating to PSI activities (transparency), protection of confidential business information, avoidance of unreasonable delay, the use of specific guidelines for conducting price verification and the avoidance of conflicts of interest by the PSI entities (Article 2). The obligations of exporting member countries towards countries using PSI include non-discrimination in the application of domestic laws and regulations, prompt publication of all applicable laws and regulations relating to PSI activities and the provision of technical assistance by exporter members to user members (Article 3).

In addition, the Agreement establishes an independent review procedure to resolve disputes between exporters and PSI entities (Article 4). Although in existence since 1995, this mechanism has never been used. Under Article 5, the Agreement obliged member countries to notify the WTO Secretariat of laws and regulations putting the PSI Agreement into force, as well as any other laws and regulations relating to PSI. Finally, under Article 6, the Ministerial Conference is mandated to review the provisions, implementation and operation of the Agreement at the end of the second year from the date of entry into force of the WTO Agreement and every three years thereafter. As a result of such a review, the Ministerial Conference may amend the provisions of the Agreement. In November 1996, the Council for Trade in Goods established a Working Party for that purpose. This Working Party completed its work in March 1999 and submitted its final report to the General Council. It recommended, inter alia, that future monitoring of the PSI Agreement should be undertaken by the WTO Committee on Customs Valuation.

Given that the Agreement on PSI is the only WTO Agreement which does not have a standing body (Committee) to monitor its implementation, it is difficult to assess the level of implementation of the rules it contained; whether there are difficulties associated with implementation and what they might be. In this regard, it should be noted that implementation of the Agreement is not a specific topic of the biennial review undertaken by the Working Party in accordance with Article 6 of the Agreement. This might be invoked as a possible reason why exporters may still be facing difficulties with the operations of the PSI companies. The question could also be raised as to whether or not WTO members, who employed the services of PSI companies, are actually incorporating the provisions of the Agreement into their contracts with PSI companies.

**Table 3: OIC Countries Using Services of PSI Companies**

| COUNTRY | TYPE | SPLIT |
|---|---|---|
| Bangladesh | CUSTOMS | GEOGRAPHICAL |
| Benin | FOREX/CUSTOMS | - |
| Burkina Faso | CUSTOMS | IMPORTERS CHOICE |
| Cameroon | CUSTOMS | - |
| Comoros | FOREX/CUSTOMS | - |
| Gambia | CUSTOMS | - |
| Guinea | CUSTOMS | - |
| Iran | QUALITY/QUANTITY | IMPORTERS CHOICE |
| Mauritania | CUSTOMS | - |
| Mali | FOREX/CUSTOMS | |
| Mozambique | FOREX/CUSTOMS | - |
| Niger | FOREX/CUSTOMS | - |
| Nigeria | FOREX/CUSTOMS | GEOGRAPHICAL |
| Senegal | CUSTOMS | IMPORTERS CHOICE |
| Sierra Leone | CUSTOMS | - |
| Togo | FOREX/CUSTOMS | - |
| Uganda | CUSTOMS | - |
| Uzbakistan | CUSTOMS | - |

Source: WTO, *Agreement on Pre-shipment Inspection (MM/LIB/WS1/2),* Libreville 2000: Meeting of African Trade Ministers, Libreville, Gabon, 13-15 November 2000, p.5-6.
Notes:
CUSTOMS: Customs contracts where the main aim is to ensure that there is no loss in customs revenue as a result of undervaluation or mis-classification of the goods.
FOREX: Foreign exchange contracts where the basic objective of the government is to prevent capital flight which takes place through over-invoicing.

The nature of the Agreement is such that while it is seeking to regulate the activities of private PSI companies, it can only do so through the governments that employed such companies' services. This is because the WTO represents agreements binding among governments only and cannot control or regulate the activities of private companies. In this regard, it is worth mentioning that as of June 2000, 35 of the 40 countries worldwide that employ the services of such companies are African countries (WTO: Libreville 2000). Of these countries, 18 are OIC countries, 14 of them are OIC African member countries of the WTO (see Table 3).

## 4. RULES OF ORIGIN

Rules of origin are the criteria needed to determine the national origin of a product (where a product was made). By definition, each product can only originate in one territory. This conventional definition is known as the single country of origin. It is based on the idea that when country A exports a product to country B, and country B, after further processing, exports it to country C, this trade is considered as the export of country B to country C without considering the contribution of country A in this trade. International trade statistics and analyses are, in general, based on this conventional definition. In fact, such a trade exchange overestimates the exports of country B while underestimating the role of country A in the world trade.

However, in today's complex world where more and more products are produced from parts coming from other origins, defining the origin of a product is not always an easy task. In particular, within the framework of the recent intensified globalisation of the world economy, it becomes more and more difficult to find criteria in order to determine the origin of products.

The idea of rules of origin was used as one of the most effective instruments of trade protectionism in the past. In particular, when developed countries granted unilateral preferential tariffs to imports originating from developing countries under the programme of Generalised System of Preferences[2] (GSP), they tried to limit the negative

[2] Developed countries grant non-reciprocal trade preferences under the GSP programmes. They unilaterally determine and modify the preferences, product

effects of that programme on their domestic industries through the application of a set of rules of origin. The export products of manufacturing industries in developing countries were subject to this kind of trade protectionism. For instance, while extending certain quotas for the textile exports from developing countries, the US controlled the textile imports through changes in the rules of origin relating to this sector.

In addition, in the past decade, the increasing trend of establishing regional economic groupings in various parts of the world also contributed to the intensified use of the rules of origin as a tool for trade diversion and trade policy. Indeed, regional economic groupings conclude and extend preferential trade arrangements in order to increase trade exchanges among their member countries. Under such schemes, it becomes a necessity to prevent the circumvention of the trade agreements by third countries. In this respect, rules of origin constitute one of the most fundamental and indispensable elements of such trade agreements.

Imported goods are, in fact, subject to certain discriminatory policies and measures depending on their origin. Rules of origin are used to determine whether imported products shall be eligible for any preferential treatment. They are also used to implement measures and instruments of commercial policy such as anti-dumping duties and safeguard measures. In addition, rules of origin are used for the purpose of trade statistics, labelling and marking requirements, and for government procurement. Because they have effects on a number of trade policy instruments, they themselves may easily turn into a commercial policy instrument.

Rules of origin vary depending on the regional economic groupings or the granting of the generalised system of preferences by the countries or other trade rules and regulations. The WTO Agreement on Rules of Origin was the first ever agreement on multilateral rules governing the determination of the national origin of goods in international commerce. The objective of the Agreement is to prevent rules of origin from being used as an instrument of restrictive trade policy. Furthermore, it seeks to secure transparency of laws, regulations and practices regarding rules of

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coverage and beneficiary countries. The beneficiary countries have no role in the determination or modification of these programmes.

origin and, ultimately, to harmonise rules of origin to facilitate international trade.

Article 1 of the Agreement defines the rules of origin as those laws, regulations and administrative determinations of general application as applied by any member state to determine the country of origin of goods except those related to the granting of tariff preferences under the preferential trade regimes. Thus, the Agreement includes only non-preferential rules of origin, such as MFN treatment, national treatment, general elimination of quantitative restrictions, anti-dumping and countervailing duties, safeguard measures, origin-marking requirements, as well as those used for government procurement and trade statistics.

The Agreement does not cover preferential rules of origin. In other words, it does not apply to origin rules relating to regional integration schemes such as free trade areas, customs unions, etc., and preferential trade terms extended to developing countries. These types of rules of origin may be determined independently by the members of the trade blocs and the individual countries concerned.

However, a “Common Declaration” annexed to the Agreement stipulates that the general principles and requirements applied to non-preferential rules of origin apply also to preferential rules of origin. But, it excludes the harmonisation programme of the rules of origin, which refers only to non-preferential trade exchanges.

Article 5 of the Agreement states that each member must notify the WTO Secretariat of its non-preferential rules of origin within 90 days after the entry into force of the WTO Agreement. Furthermore, each member must also notify the WTO Secretariat of its preferential rules of origin as soon as possible and provide its list of such arrangements.

Article 4 of the Agreement establishes a Committee on Rules of Origin (CRO) composed of the representatives of member states for the purpose of conducting consultations on the objectives and operation of the Agreement. It is also responsible for the harmonisation work programme of the non-preferential rules of origin. The same article also sets up a Technical Committee on Rules of Origin (TCRO) under the auspices of the World Customs Organisation (WCO), formerly the Customs Co-operation Council (CCC). The TCRO is assigned to carry out the technical work called for in Part IV (harmonisation of the non-preferential rules of origin). It is also responsible for advising the CRO on technical matters related to the Agreement.

The Agreement also launched a work programme on the harmonisation of the non-preferential rules of origin under the auspices of the CRO (Article 9). The aim of the programme is to make rules of origin objective, understandable and predictable. The results of the harmonisation programme are to be approved by the Ministerial Conference and the outcome will be annexed to the Agreement as a single set of common rules of origin to be applied by all WTO members in all circumstances, excluding preferential trade arrangements. For example, countries setting up regional integration schemes, like free trade areas or customs unions, are allowed to apply different rules of origin for the products traded under their preferential agreements.

Article 2 of the Agreement determines the principles relating to the national rules of origin to be followed by the member states until the completion of the harmonisation programme. They are to be clearly defined; not to be used to achieve commercial policy objectives; not to create restrictive or distorting effects on international trade; and not to discriminate among members. Rules of origin are to be based on a positive standard; to be administered in a consistent, uniform, impartial and reasonable manner; and not applied retroactively. They are to be transparent, published promptly and reviewed through judicial procedures.

Initially, the programme on harmonisation of the non-preferential rules of origin was to be completed in three years after the start of the work. This period was considered transitional. However, the CRO had to extend this period and still the harmonisation programme could not yet be completed.

Faced with the reality of globalisation and increasing multi-country production of a product (i.e., various materials and intermediate goods used as inputs in a number of stages of production), it seems very difficult to reach a consensus on rules of origin. Furthermore, the trade policy considerations in some sensitive product sectors, especially textiles, agricultural products, electronics, machinery and vehicles will add further difficulties to the efforts aimed at harmonising the rules of origin. The issues to be resolved are very complex and the related workload will be much larger than originally foreseen. It is not, therefore, surprising that the completion of the harmonisation work programme was considerably delayed with respect to the time frame foreseen in the Agreement

**Table 4: Notification of Non-preferential and Preferential Rules of Origin of the OIC African Members**

| Notified rules of origin (*) | Not notified rules of origin |
|---|---|
| Burkina Faso | Benin |
| Chad | Cameroon |
| Niger | Djibouti |
| Senegal | Egypt |
| Tunisia | Gabon |
| Uganda | Gambia |
| | Guinea |
| | Guinea-Bissau |
| | Mali |
| | Mauritania |
| | Mozambique |
| | Nigeria |
| | Sierra Leone |

Source: WTO, *Agreement on Customs Valuation (MM/LIB/WS1/3),* Libreville 2000: Meeting of African Trade Ministers, Libreville, Gabon, 13-15 November 2000, p.5, 7.
(*) Both preferential and non-preferential except Chad and Uganda, which notified that they do not have non-preferential rules of origin.

Though transparency provisions contained in the Agreement on Rules of Origin presupposed notification of non-preferential and preferential rules of origin, a large number of notifications are still pending, particularly by developing member countries in Africa. For example, in the case of the 21 OIC African member countries, Table 4 shows that only 6 countries have notified the WTO Secretariat of their rules of origin.

## 5. IMPORT LICENSING PROCEDURES

Although less widely used now than in the past, import licensing procedures are subject to disciplines in the WTO. Article 1 of the Agreement on Import Licensing Procedures defines import licensing as administrative procedures used for the operation of import licensing regimes requiring the submission of an application or other documentation (other than that required for customs purposes) to the relevant administrative body as a precondition for importation into the customs territory of the importing member country.

The present WTO Agreement on Import Licensing Procedures is a modification of the Tokyo Round ‘Import Licensing Code’ with the objective of preventing import licensing procedures from unnecessarily hindering international trade. The latter Agreement entered into force in 1980 and was terminated at the end of 1995, one year after the WTO came into effect. One important point of dissimilarity between them is that the new WTO Agreement applies to all the members whereas the Tokyo Round Code on Import Licensing had only 27 signatories when it was terminated. The Agreement tries to minimise the importers’ burden in applying for licenses so that the administrative work does not in itself restrict or distort imports. The main objective is to simplify and bring transparency to import licensing procedures without any restrictive or distorting effects on international trade.

The Agreement states that member countries are to apply import procedures neutrally, and administer them in a fair and equitable manner. It requires them to publish rules and information on import licensing procedures, including the eligibility criteria for applicants, the administrative bodies to be approached and lists of products subject to import licensing (Articles 1 through 8).

It makes a distinction between automatic and non-automatic import licences. Automatic import licences are, in general, intended to serve for the collection of import statistics. They should be granted within ten days following the application (Article 2). Non-automatic import licences serve to administer trade restrictions. But they must not have the effect of introducing trade restrictions (Article 3).

The Agreement offers guidance on how member countries should assess applications for import licences. It simplifies application forms and procedures for import licensing. For example, the number of administrative bodies in connection with an application shall not be more than three (Articles 1.6). The period for processing applications shall not normally be longer than 30 days, and not longer than 60 days if applications are considered simultaneously (Article 3.5). Applications or licensed imports are not to be refused for minor documentation errors or minor variations in value, quantity or weight from the amount shown on the license for reasons consistent with normal commercial practices (Articles 1.7 and 1.8).

Article 4 of the Agreement establishes a Committee on Import Licensing (CIL) composed of representatives from the member countries. The CIL will be responsible for conducting consultations on matters relating to the operation of the Agreement or the furtherance of its objectives. In this regard, the Agreement requires member countries to notify the CIL when they introduce new import licensing procedures or change existing ones within 60 days of publication (Article 5.1). The Committee is to review the implementation and operation of the Agreement at least once every two years. For this purpose, member countries undertake to complete the questionnaire on Import Licensing Procedures promptly and in full (Article 7.3).

**Table 5: OIC African Members that Have Notified under the Various Articles of the Agreement on Import Licensing**

| Article 1.4(a) and/or 8.2(b) publications and/or legislation (date of latest communication) | Article 7.3 Replies to Questionnaire-Annual (date of latest communication) |
|---|---|
| Benin (18.12.96) | Burkina Faso (8.1.97) |
| Burkina Faso (8.1.97) | Chad (18.7.2000) |
| Chad (18.7.2000) | Gambia (31.10.97) |
| Morocco (3.7.96) | Mali (9.5.97) |
| Niger (10.12.97) | Morocco (18.2.99) |
| Nigeria (16.2.98) | Nigeria (16.2.98) (*) |
| Tunisia (21.1.99) | Senegal (20.1.97) |
| Uganda (16.8.96) | Tunisia (23.11.99) |
| | Uganda (17.6.97) |

Source: WTO, *Agreement on Customs Valuation (MM/LIB/WS1/1),* Libreville 2000: Meeting of African Trade Ministers, Libreville, Gabon, 13-15 November 2000, p.4.
(*) Notified also under Article 5-Ad hoc.

The fulfilment of notification obligations by member countries is one way to judge the implementation of this Agreement. In this context, it has been observed that only one third (14 out of 41) of the African

WTO members had made their obligations in that regard (WTO: Libreville 2000). In the case of the 21 OIC African member countries, Table 5 shows that only 8 of them have notified the WTO with their publications and/or legislation of the Import Licensing Procedures.

It is not quite clear as to why so few members have met their obligations under this Agreement. Reasons could be found in the complexity involved in fulfilling the variety of notification obligations under the Agreement coupled with the workload related to other notification obligations in the WTO system, or more troubling, in the unwillingness of some members to reveal their domestic policies. In this context, it would appear that more technical assistance on notification obligations is called for under this Agreement.

## 6. IMPLICATIONS FOR THE OIC MEMBER STATES

Regarding the Agreement on Customs Valuation, the most fundamental problems for the OIC countries like other developing ones are mainly related to limitations and partial loss of control over customs on the part of customs administrations and the resulting losses in customs revenues. Revenues from customs duties and charges constitute one of the most fundamental sources of government budgets in the least developed and low-income countries. Furthermore, public investment and spending are still important in generating income and employment in many developing countries. When these factors are considered, losses in customs revenues imply direct negative impacts on the whole economy and welfare of the people in such countries. Table 6 provides information on the share of import duties in government budget revenues of the OIC countries for which data is available. As will be observed, that percentage is quite high in some OIC member countries like Guinea, Maldives, Sierra Leone, and Uganda.

In addition to problems relating to revenue losses caused by undervaluation of goods at customs, another major problem may be caused by their overvaluation. Especially in countries with restrictions on capital outflows, overvaluation of imported goods is practised. Particularly, when the use of normal market value in customs documents is replaced by the actual transaction price (the price shown on the invoice of the imported good), the system becomes open to fraud in both cases under- and overvaluation. The concerns of developing countries regarding revenue losses from the customs and capital flight due to the application of the actual transaction price on customs documents must be taken care of.

**Table 6: Share of Import Duties in Government Budget Revenues of the OIC Countries**

| | Year | Percent |
|---|---|---|
| Albania | 1998 | 14.8 |
| Algeria | 1999 | 14.0 |
| Azerbaijan | 1999 | 8.5 |
| Bahrain | 1999 | 9.0 |
| Cameroon | 1999 | 25.2 |
| Egypt | 1999 | 13.2 |
| Gabon | 1997 | 18.1 |
| Guinea | 1999 | 40.1 |
| Indonesia | 1999 | 2.0 |
| Iran | 1999 | 7.5 |
| Jordan | 1999 | 19.0 |
| Kazakhstan | 1999 | 3.3 |
| Kuwait | 1998 | 2.4 |
| Kyrgyz Rep. | 1999 | 4.7 |
| Lebanon | 1999 | 28.1 |
| Malaysia | 1997 | 10.9 |
| Maldives | 1999 | 31.1 |
| Mozambique | 1999 | 16.8 |
| Oman | 1999 | 5.7 |
| Pakistan | 1999 | 12.2 |
| Sierra Leone | 1997 | 45.9 |
| Syria | 1998 | 9.4 |
| Tajikistan | 1998 | 12.2 |
| Tunisia | 2000 | 11.2 |
| Turkey | 1999 | 1.4 |
| Uganda | 1998 | 30.2 |
| Yemen | 1999 | 10.1 |

Sources:
Computed from IMF, Government Finance Statistics Yearbook 2000.
Egypt: www.interoz.com/economygoveg/English/quarterly/5_3Revenues.htm
Gabon: www.rbmt.com/finances.org.ga/english/budget1.htm
Mozambique: www.bancomoc.mz/english/estatisticas/tvia.htm
Uganda: www.imf.org

Although the Agreement also comprises certain measures against fraud to be utilised in determining the actual transaction price, customs officers in developing countries are not equipped to handle such cases and fully implement all these measures and provisions of the Agreement. For this reason, they need to be well-trained, and customs administrations must be modernised to tackle such issues of under- or over-valuation.

Furthermore, more practical ways and means must be developed to enable customs administrations of developing countries to seek and obtain information on actual export values in doubtful cases, and these solutions should be included in the Agreement to provide enough support for the governments of the developing countries.

On the other hand, due to the special case of developing countries, although the Agreement on Customs Valuation (Article 20.1) provided them with a transitional period of 5 years to implement its provisions and bring their customs procedures in line with the methods stipulated in the Agreement, many developing countries could not fulfil these obligations. Furthermore, they have requested a further extension of this period. The fact that many developing countries could not comply with these provisions and had to ask for an extension is actually a reflection of their difficulties in implementing the said Agreement.

Although the Agreement on Rules of Origin aims to prevent the use of rules of origin as an instrument of trade policy, they are still being used to protect some important domestic industries such as textiles, electronics, machinery and vehicles, etc. As is well known, multinational corporations, through direct investments in other countries, particularly the developing ones, scatter their production plants all over the world. Furthermore, companies of the developed countries sell their production technologies under various titles like franchising, know-how, licensing, etc. However, at the same time, they try to protect their own markets and do not permit other companies to access freely their markets. For this purpose, they apply a number of non-tariff barriers as trade policy instruments.

Rules of origin are being used mainly by developed countries. Some developing countries do not even have non-preferential rules of origin, like Chad and Uganda amongst the members of the OIC. However, the end result of the work programme on harmonisation of rules of origin will have a direct impact on their exports (through market access of goods) and indirectly over their economies. But the developing countries, including the OIC member countries, have hardly got the resources and capacity to participate in this very technical process of harmonisation work programme.

Here, a crucial point should be kept in mind. Rules of origin are used in the application of a number of commercial policy measures and instruments such as MFN treatment, anti-dumping and countervailing duties, safeguard measures, government procurement, elimination of discriminatory quantitative restrictions, etc. They will have a substantial impact on the exports and economies of the developing OIC countries through their effects on such trade policy instruments.

On the other hand, during the harmonisation process, the Technical Committee (TCRO) would develop common definitions of the country of origin of a good and minimal operations or processes. When a product is wholly produced in one country, there will be no problem. When more than one country is involved in its production, it will be the one where the last substantial value-added (transformation) is made that is considered the country of origin. Thus, some assembling and manufacturing processes will not be enough to identify a country as the country of origin. In other words, since the production plants scattered amongst the developing countries by multinationals generate rather less value-added, they may not be considered as the places of the last substantial transformation. So, they will not be eligible to be determined as the country of origin.

Furthermore, the Agreement on Rules of Origin does not include any special provisions in favour of developing countries and the LDCs, although the General Agreement on Tariffs and Trade accepts special and differential treatment of developing countries as a general and fundamental principle and many WTO agreements include special provisions to that effect.

## 7. CONCLUSION

The WTO Agreements on non-tariff barriers provide a rules-based multilateral trading system aiming at facilitating international trade through eliminating and reducing technical and bureaucratic or legal measures that involve hindrances to trade or could be used as instruments of restrictive and discriminatory trade policies. Member countries need to fulfil their obligations under the various provisions of these Agreements. In doing so, they will most likely promote their exports, gain from increased trade exchanges and further accelerate their economic growth and development. However, in order for such a situation to produce trade gains for all, it assumes equal or similar levels of economic development amongst the participants. In other words, there should not be any extra cost for some of the participants, or initial costs should, at least, be the same for all. If implementation of the provisions of various WTO Agreements on non-tariff barriers or trade facilitation requires extra or initial costs for only some of them, this means that the system would not definitely produce equal or proportional gains for all.

Obviously, in the whole system, we have developed members, developing members and the LDCs. The international standards determined by various WTO Agreements on non-tariff barriers are actually the domestic standards of the developed countries. The WTO Agreements incorporate these standards as part of the international standards. Modernisation and computerisation of customs procedures, reformation of customs administrations and legislation, management and training of customs officers, adaptation of new techniques and usage of newer equipment, etc, all mean initial and extra costs to the countries which have not been applying them. Actually, here we do not imply that these should not be implemented. Certainly, all the countries should adopt these new higher standards and implement them. However, the initial cost involved in the implementation of the provisions of the WTO Agreements under consideration is obviously high for the developing countries. Thus, the gains to be obtained will be reduced by these costs. In other words, the developing countries were in a comparatively disadvantageous position at the start of the new multilateral trading system. When this situation is combined with their inherent financial and economic development problems, their need for an international technical and financial assistance becomes pressing.

Although the WTO agreements relating to the customs formalities and procedures envisage technical co-operation among the members and, in particular, technical assistance by the WTO, and other international organisations and developed countries, these activities are quite far from being satisfactory in meeting the needs of the developing and OIC countries, in many respects.

Especially, when the limitations with respect to human resources in the OIC countries, particularly the least developed and low-income OIC members, are considered, it appears clearly that the need for augmenting the present low levels of technical assistance activities is pressing. In this regard, WTO facilities and services will be further utilised in providing consultancy with regard to the implementation of the Agreements relating to the customs formalities and procedures; and, in particular, for the modernisation and computerisation of customs services and administrations in OIC countries. In this context, the WTO, in collaboration with the other international organisations like the World Customs Organisation (WCO) and the World Bank, may raise a special fund to help finance such projects in developing and OIC countries.

On the other hand, developing countries and the OIC members can benefit only if they are capable of responding positively to the new multilateral trading system. Responding negatively, i.e., choosing to stay outside of the new trading system and adopting a full autarkic economic system, will not help solve their growth and development problems. The countries with open and market-oriented economies are more likely to be successful, while others with heavy government intervention and trade control are less likely to benefit from the new global trade system. Furthermore, the ability of developing countries, including OIC members, to implement and translate these Agreements into concrete trade advantages requires action by governments with the active support of the private sector to liberalise and modernise their trade systems.

It should be noted that the difficulties encountered by the OIC member countries in implementing the WTO Agreements on non-tariff barriers do not differ from those encountered by other developing countries, members of the WTO. Many of these members have also not notified application of these Agreements and several have requested extensions of the delay period. However, it can be argued that many of the difficulties encountered by OIC member countries are compounded in African countries.

Nevertheless, as an important step in their implementation of the WTO Agreements, some OIC member countries have undertaken necessary trade reforms and were able to effectively apply these Agreements. Through bilateral co-operation, these countries could, in turn, provide technical assistance to other OIC members in relatively similar situations. In this regard, the OIC must work through its specialised organs to spread the technical assistance and the experience of these countries so that those members which have concerns about applying the WTO Agreements may receive the benefits of the lessons learned.

One last point needs to be made. As mentioned in the section on Customs Valuation, valuation of goods at customs was previously based on the idea of a normal market price of a good. Later, this value definition was replaced by the actual transaction value to speed up customs formalities. The latter system has created many valuation problems, particularly in the case of the developing countries. However, the idea of normal value, not the transaction value, is still being practised in another WTO agreement: the Agreement on Implementation of Article VI of the GATT1994 which is better known as the Anti-dumping (AD) Agreement. The AD Agreement defines “dumping” as the introduction of a product into the commerce of another country ***at less than its normal value***, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country (Article 2). Within the framework of the AD Agreement, value definition is based on the idea of the normal value, not the transaction value. Article VI of GATT1994 on Anti-dumping clearly assumes that, in the market, there is also pricing other than the normal. But when one comes to the following Article VII of the GATT1994, the value definition suddenly changes to the idea of transaction value. In two adjacent articles, the WTO contracting parties shift from one definition to the other. There seems to be an indication of a double standard in this situation which should be examined in detail by the specialists of the developing countries in the field.

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