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A Consideration of Localization within the Saudi Arabian Rules of Origin

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Abstract

On the 2nd of July 2021, The Kingdom of Saudi Arabia introduced new Rules of Origin (RoO) to clarify when products can be said to originate from within a Gulf Cooperation Council (GCC) state. The foundation of the Rules is that if a good is not wholly obtained within the GCC then, there must be at least a 40% value added to the good during its production process carried out within a GCC state. In addition, there must be a minimum of 25% local workforce (localization) in the manufacturing company. A free trade area was established within the GCC in 1981 by virtue of the Unified Economic Agreement (UEA). It granted the tariff free movement of goods produced within member countries. Since 1981, member states have relied on the RoO espoused by the UEA. Saudi Arabia's new rules have fundamentally changed the business practice of companies exporting to the country from within the GCC as many struggle to satisfy the localization requirements. The Kingdom was a stalwart founding member of the GCC; it is critical that it furthers the purpose of integration and cooperation of the GCC by adhering to its legal commitments. This paper considers Saudi Arabia's legal obligations pertaining to the localization content of its RoO within GCC law.

Introduction

In May 1981 the Gulf Cooperation Council (GCC) was created to strengthen the bond between and further integrate the countries of the Arabian Gulf in all aspects of society. Later that year, the Unified Economic Agreement (UEA) was signed between the member states to coordinate economic cooperation including establishing preferential trade amongst the members. The Agreement created a free trade area (FTA)¹ and in addition, provided for the free movement of persons and capital.² Although the words 'free trade area' were not used in the UEA, the 1994 General Agreement on Tariffs and Trade (GATT) which is both the agreement establishing the international trading system and the cornerstone of the World Trade Organization – the body charged with bolstering the system - defines an FTA in Article XXIV(8)(b). It states that "a free-trade area shall be understood to mean a group of two or more customs territories in which the duties and other restrictive regulations of commerce ... are eliminated on substantially all the trade between the constituent territories in products originating in such territories." A free trade area thus exists where two or more countries remove substantially all tariffs and Non-Tariff Barriers (NTB) to trade (such as quotas) on the import and export of substantially all goods originating from within those countries and destined for another signatory state. Article 1 and 2 of the UEA bring the GCC under this definition because it provides that "Member States shall permit the importation and

¹ Article 1 & 2 of Unified Economic Agreement of the GCC (1981). See also, Introductory notes of the Economic Agreement of the GCC (2001).

² Article 8 of Unified Economic Agreement of the GCC (1981).

exportation of agricultural, animal, industrial and natural resource products that are of national origin”³ and that all such products “shall be exempted from reciprocal charges.”⁴

With the growing complexities of commerce and the economy, the GCC member states felt it necessary to update the UEA. Thus in 2001 the Economic Agreement (EA) was signed. This agreement created a customs union (CU) which took effect on the 1st of January 2003.⁵ Article XXIV(8)(a) of the GATT states that a “A customs union shall be understood to mean the substitution of a single customs territory for two or more customs territories, so that duties and other restrictive regulations of commerce ... are eliminated with respect to substantially all the trade between the constituent territories of the union or at least with respect to substantially all the trade in products originating in such territories, and ... substantially the same duties and other regulations of commerce are applied by each of the members of the union to the trade of territories not included in the union.” A CU thus exists where firstly, two or more countries remove substantially all tariffs and NTBs on the import and export of substantially all goods originating from within those countries and destined for another signatory state; and secondly, where the member countries form one customs territory by placing substantially the same tariffs and NTBs on imports from non-member countries.

With any FTA and CU it is crucial that goods originating from within the area/customs territory are identified so that parties may take advantage of intended preferences pertaining to tariffs and quotas. Due to the complex nature of global supply chain structures however, the origin of a good might not be easy to determine. For example, the component parts of a product might be sourced from multiple countries; the production might be carried out in a different country; and the final assembly performed in yet another country. The rules identifying where a product comes from for customs purposes are known as Rules of Origin (RoO). They are an integral part of international trade and exist in most trade agreements. To prove origin, most countries apply the wholly obtained test first. If it cannot be established that a product is wholly obtained from a territory then the country of substantial transformation test is used. Substantial transformation of a product is generally said to have occurred if the good’s tariff classification changes at the end of the production process; if a minimum value is added to the product (ad valorem) by the end of the production process; or if a specific production process is carried out.

The World Customs Organization (WCO) defines the country of origin of goods as the country in which goods have been produced and manufactured.⁶ Article 1(1) of the WTO’s 1994 Agreement on Rules of Origin (RoO Agreement) defines RoO “as those laws, regulations and administrative determinations of general application applied by any Member to determine the country of origin of goods...” The WCO’s International Convention on the Simplification and Harmonization of Customs Procedure (As amended) also known as the Revised Kyoto Convention states that RoO mean “the specific provisions, developed from principles

³ Article 1 Unified Economic Agreement (1981).

⁴ Article 2(1) Unified Economic Agreement. ‘Reciprocal charges’ refer to customs duties. Article 2(2) clarifies this by excluding demurrage, storage, transportation, freight and unloading fees from being considered as customs duties.

⁵ The customs union took effect on the 1st of January 2003 but was not fully implemented until 2015 due to a lack of consensus concerning the collection of tariffs.

⁶ Specific Annex K Chapter 1 Revised Kyoto Convention which entered into force on February 3, 2006.

established by national legislation or international agreements ("origin criteria"), applied by a country to determine the origin of goods."⁷ According to these definitions, laws including regulations and administrative determinations (and not some other discipline) are what are used to determine the country in which a good is produced. Each state applies these laws which may be developed through national legislation or international agreements.

In 2016, Saudi Arabia launched its vision 2030 with the aim of reducing its reliance on oil and diversifying its economy. In furtherance of this objective, Saudi Arabia enacted a series of laws including the new National Rules of Origin that apply to GCC manufactured products. The Saudi Arabia Minister of Finance issued Ministerial Decree no. 3852, dated 22/11/1442 (2nd July 2021) approving the new set of rules. The Ministerial Decree is based on the Cabinet Decision no.620 dated 20/10/1442 (1st June 2021) that authorises the Minister of Finance to issue and approve all decisions related to National, Arabic and GCC RoO. These rules are immediately effective and are applicable until the entry into force of the GCC Unified Rules of Origin.⁸ They determine the conditions to be met by products manufactured within the GCC to qualify as national goods when imported into Saudi Arabia for the purpose of the application of preferential treatment within GCC Economic law. The fundamental requirement of the new RoO is that where products are not wholly obtained from within the GCC, the manufacturing process within the GCC must represent at least 40% of added value on the final product price and; the manufacturing entities should achieve a localization rate of national workforce of not less than 25% of the total workforce. The RoO are flexible because there is the possibility to offset the added value and localization rates. Meaning, if a manufacturer has an added value of less than 40% but has achieved a localization rate of more than 25%, or *vice versa*, any deficiency in one of the variables can be balanced by the excess of the other, as long as the added value is not less than 20% and the localization rate is not less than 10%.⁹

Saudi Arabia's new rules have fundamentally changed the business practice of companies exporting to the country from within the GCC as many struggle to satisfy the localization requirements. For example, the volume of Emirati imports into Saudi Arabia slumped by about a third in the month following the imposition of the new RoOs.¹⁰ As Saudi Arabia was an ardent founding member of the GCC it is critical that it furthers the purpose of integration and cooperation of the GCC by adhering to its legal commitments.

This paper considers the lawfulness of the localization requirement contained in the new National Rules of Origin vis a vis GCC law.

⁷ Ibid.

⁸ Tax and Legal Service, *Saudi Arabia: Introduction of New National Rules of Origin*, PwC Middle East, July 2021, p2 (accessed October 10, 2021) [saudi-arabia-introduction-of-new-national-rules-of-origin](https://www.pwc.com/middleeast/saudi-arabia-introduction-of-new-national-rules-of-origin)

⁹ Ibid. P3.

¹⁰ Andrew England & Simon Kerr, *Gulf Tensions: Saudi Arabia Flexes its Economic Muscles*, Financial Times, 24 October, 2021 (accessed 24 October, 2021), https://amp-ft-com.cdn.ampproject.org/v/s/amp.ft.com/content/79abe724-0e42-4933-8305-61524f24e1ae?amp_gsa=1&_js_v=a6&usqp=mq331AQIKAGwASCAAgM%3D#amp_tf=From%20%251%24s&aoh=16351126989923&csi=0&referrer=https%3A%2F%2Fwww.google.com&share=https%3A%2F%2Fwww.ft.com%2Fcontent%2F79abe724-0e42-4933-8305-61524f24e1ae

GCC Rules of Origin

The GCC was established in May 1981 to integrate and facilitate cooperation in all aspects of society. By December 1981, the UEA was signed to further economic integration. It created an FTA and defined at Article 3(1), the RoO to be used within the said area; “For products of national origin to qualify as national manufactured products, the value added ensuing from their production in Member States shall not be less than 40% of their final value as at the termination of the production phase. In addition, member states citizens’ share in the ownership of the producing plant shall not be less than 51%.” Two elements must be fulfilled in order to prove origin from within the GCC. The first is that member states must have added at least 40% value to the finished good; and the second is that GCC citizens must have at least 51% ownership of the production factory.

The economic arrangement between the member states was updated in 2001 by way of the EA which supersedes the UEA.¹¹ Although this treaty does not define RoO, Article 32(3) of the EA provides that “Until the GCC Customs Union is established, the provisions of Article 3 of the GCC Economic Agreement signed in 1981 AD (1402 AH) shall continue to be applied.” It further states that “the percentage of the added value provided for in said Article (Article 3 UEA) may be amended by a decision of the Financial and Economic Committee.” The meaning of the second part of this article is unclear. Does it mean that only the percentage of the added value of a good can be changed in order for the RoO to be lawfully amended? And further, does it mean that a lawful amendment can only be made by the Financial and Economic Committee? Or does it simply mean that if the percentage of added value is amended, then it can be amended by the Financial and Economic Committee? Because of the use of the word ‘may’ instead of ‘shall’ in the article, I believe the correct interpretation is that Article 3 of the UEA will continue to apply until the establishment of the GCC customs union and if the percentage of the added value is changed, then it can be amended by the Financial and Economic Committee.

The GCC customs union came into effect in January 2003. So what then are the RoO which apply to the CU? Article 1 of the EA establishes the CU. It states that a CU must be established no later than the 1st of January 2003 and must have as a minimum: a common external customs tariff (CET); common customs regulations and procedures; a single-entry point where customs duties are collected; the elimination of all tariff and non-tariff barriers amongst member states; and that goods produced in member states shall be accorded the same treatment as national products. The common customs regulations and procedures that are applicable in the GCC are the Common Customs Law (CCL). The CCL entered into force in January 2002 by a resolution of the Supreme Council following the recommendation of the Ministerial Council and the Financial and Economic Committee. When this Law was being prepared, it took into account that it would both be utilized in the customs work at that time and would also prepare the customs administrations of the Member States for the forthcoming phase of the GCC Customs Union as it met all the requirements thereof.¹²

¹¹ Article 32(2) of the Economic agreement (2001).

¹² Introductory notes of the Common Customs Law of the GCC States (1999). The Common Customs Law was adopted by the Supreme Council at its 20th Session held in Riyadh on 27-29 November 1999. It was to be

Because the CCL is a founding regulation of the CU further to Article 1 of the EA and was prepared in consideration of the forthcoming CU, it is expected that it would contain the applicable RoO. The CCL states at Article 2(25) that the 'origin of the goods' is the producing country. The criterion required to establish origin is contained in Article 25 which provides that "imported goods are subject to the proof of origin according to the rules of origin adopted within the framework of the international and regional economic agreements in force." Thus, the RoO applicable within the GCC are whatever rules are applicable within the international and regional agreements to which the parties belong.

International Rules of Origin

There is no one unified global rule for the determination of origin. Organizations such as the United Nations Conference on Trade and Development (UNCTAD), the WCO and the WTO have tried but failed to produce one harmonized rule. For the purpose of this paper, I will focus on the definition espoused by the WTO because although there are numerous international trading agreements and regulatory institutions, the foundation of the global trading system is the WTO - its rules on commerce are not only by far the most detailed and expansive by number of signatories, but they are also binding and can be enforced at a supranational level. Its 164 members represent 98% of world trade¹³ and it is the minimum trade framework upon which preferential trade agreements can then be built.¹⁴

The draftsmen of the GATT 1947 determined that the RoO should be left "... within the province of each importing country to determine, in accordance with the provisions of its law, for the purpose of applying the MFN provisions (and for other GATT purposes), whether goods do in fact originate in a particular country."¹⁵

As the number of preferential trade agreements (PTA) – and their various RoO - and anti-dumping laws – and the subsequent claims of circumvention through the use of third country facilities - increased, the number of origin related disputes also increased signalling the need for greater transparency. This led negotiators to tackle 'origin' during the negotiations leading to the establishment of the WTO.¹⁶ In 1994 when the WTO was birthed, the RoO Agreement was included as one of the treaties establishing the Organization. It does not provide a unified global RoO but contains a legal guideline on the formulation of RoO to which all the members of the WTO must adhere.¹⁷ All GCC member states are members of the WTO.

implemented as a reference law for one year from the date of adoption and to be revised in the light of the comments received by the Secretariat General from the Member States. The Supreme Council, at its 22nd session held in Muscat on 30-31 December 2001, approved the amendments proposed to the Common Customs Law and its Rules of Implementation and Explanatory Notes. The law came into force in January 2002.

¹³ Fact File, World Trade Organization (accessed 10th October 2021), wto.org.

¹⁴ Article XXIV(5) of the General Agreement on Tariffs and Trade.

¹⁵ Technical Information on Rules of Origin, WTO, accessed 29 October 2021, https://www.wto.org/english/tratop_e/roi_e/roi_info_e.htm.

¹⁶ These negotiations were the Uruguay Round of trade negotiations which lasted from 1986 – 1994 and led to the establishment of the WTO.

¹⁷ Amrita Narlikar, *The World Trade Organization A Very short Introduction*, Oxford University Press (2005)

The Agreement defines RoO as follows: “...rules of origin shall be defined as those laws, regulations and administrative determinations of general application applied by any Member to determine the country of origin of goods ...”.¹⁸ It does not however, specify the ‘laws, regulations and administrative determinations’ to be used. Instead, it does two things: It aims at harmonizing¹⁹ the non-preferential rules and regulations of WTO member states through the work of the Committees on Rules of Origin and provides interim guidelines for the formulation of RoO before the harmonization work is complete. It also provides a narrower guideline for the formulation of RoO in preferential trade agreements. RoO pertaining to non-preferential trade refer to concessions granted under Article I of the GATT - Most Favoured Nation treatment (MFN) - and are used for implementing trade policy on anti-dumping; countervailing duties and safeguard measures; tariffs and quotas; as well as labelling and statistic requirements. This is distinguished from RoO pertaining to preferential trade which refer to concessions that go beyond Article I of the GATT and are granted to parties to a PTA. FTA and CU agreements such as the UEA and EA are both PTAs.

The harmonization work was to be carried out within 3 years of the coming into force of the Agreement by the Committee on Rules of Origin (established under the WTO framework) and the Technical Committee of Rules of Origin (established under the auspices of the WCO). The work has still not been completed. As a result, there is no one international definition of RoO. Different countries and preferential trading agreements apply different RoO to different products and sometimes even these may vary depending on the policy being implemented. In the absence of a multilateral rule to determine origin, there are thousands of RoOs.²⁰

The RoO Agreement however, puts in place interim measures to be taken whilst the harmonization work is being completed – these interim measures provide specific principles each member state is to adhere to whilst formulating their non-preferential RoO. These principles include Article 2(b) and (c) which state that:

(b) notwithstanding the measure or instrument of commercial policy to which they are linked, their rules of origin are not used as instruments to pursue trade objectives directly or indirectly;

(c) rules of origin shall not themselves create restrictive, distorting, or disruptive effects on international trade. They shall not pose unduly strict requirements or require the fulfilment of a certain condition not related to manufacturing or processing, as a prerequisite for the determination of the country of origin.

Article 2(b) states that RoO are ‘not to be used as instruments to pursue trade objectives directly or indirectly. In determining whether a commercial policy is used as an ‘instrument,’ the WTO panel in *United States – Rules of Origin for Textile and Apparel Products* case said we are to look to the *design*, the *architecture*, and the revealing *structure* of a measure to

¹⁸ Article 1 Agreement on Rules of Origin 1994.

¹⁹ The WTO defines ‘harmonization’ as the of rules of origin be applied by all countries and that will be the same whatever the purpose for which they are applied.

²⁰ Presenter Matteo Fiorini Global Governance Programme EUI, Rules of Origin Episode 1 Introduction Stefano Inama UNCTAD, 22 November 2019, accessed 27 October 2021, https://www.youtube.com/watch?v=Mg_QdTAddx8&list=PLWQJgqH2uC5-ChjaKEY3E_o45L21y4jCX&index=6

determine its protective application.²¹ In resolving whether a commercial policy is a ‘trade objective,’ the panel stated that any objective related to trade could be covered within the meaning of a trade objective – i.e. goals or aims related to trade.²² Saudi Arabia’s recent actions would suggest that its objective is within the meaning of Article 2(b).²³ Crown Prince Mohammed bin Salman declared vehemently through Vision 2030 that he wishes to boost economic activity within the Kingdom and appears to be taking steps accordingly. In February 2021, it was announced that in order to secure government contracts, firms would be required to establish a regional headquarters within Saudi Arabia by January 1, 2024. Later, the Kingdom amended its RoO to withdraw tariff concessions from goods manufactured within GCC free zones and narrow concessions granted to goods manufactured within the GCC (non-free zone). These measures are protective of domestic industry and relate to trade.

Article 2(c), first sentence states that RoO shall not ‘themselves create restrictive, distorting or disruptive effects on international trade.’ The above panel report found that “the first sentence of Article 2(c) prohibits rules of origin which create the effect of limiting the level of international trade ("restrictive" effects); of interfering with the natural pattern of international trade ("distorting" effects); or of interrupting the normal continuity of international trade ("disruptive" effects).”²⁴ The new rules have already had a limiting effect on international trade. As previously mentioned, the volume of Emirati imports into Saudi Arabia slumped by about a third in the month following the imposition of the new RoOs. Unless the additional tariff costs can be borne by the customers these new rules will likely have a disruptive effect on trade because companies will need to adjust their manufacturing process and supply chains to ensure preferential treatment to enter the Saudi Arabian market. They may need to employ more workers from other GCC countries, outsource production to factories with the required localization content or open factories in Saudi Arabia which has a large national population of over 20 million in order to satisfy the Rules. This latter action however will have a distorting effect on trade because commercial activity will be moved to the Kingdom to meet rules rather than because of its economic efficiency thus interfering with the natural pattern of international trade.

The first part of the second sentence of Article 2(c) states that RoO shall not ‘pose unduly strict requirements.’ The panel in the above case states that “‘strict’ requirements are therefore those requirements which make conferral of origin conditional on conformity with an exacting or rigorous (technical) standard” and that “origin requirement can be considered to be ‘unduly’ strict if it is excessively strict.”²⁵ A few of the GCC states would find the new RoO to be an excessively exacting and rigorous requirement because of their national to expatriate population ratio. For example, approximately 90% of Qatar’s 2.4 million and the United Arab Emirate’s 8.3 million population consist of foreign nationals; and in Kuwait, only

²¹ United States – Rules of Origin for Textile and Apparel Products, WTO Report of the Panel, WT/DS243/R, 20 June 2003. at 6.37 & 6.38.

²² Ibid. at 6.40.

²³ As was suggested by Aziz El Yaakoubi, Marwa Rashad and Davide Barbuscia, Saudi Arabia amends import rules from Gulf in challenge to UAE, Reuters, July 5, 2021, accessed 01/11/2021, <https://www.reuters.com/world/middle-east/saudi-arabia-amends-import-rules-gulf-challenge-uae-2021-07-05/>

²⁴ United States – Rules of Origin for Textile and Apparel Products, WTO Report of the Panel, WT/DS243/R, 20 June 2003. at 6.141.

²⁵ Ibid. at 6.205 & 6.206.

30% of its 3 million population are citizens.²⁶ These countries will struggle to satisfy the localization requirement. It is also important to note that the panel describes requirements for the conferral of origin in terms of a 'technical standard' suggesting that requirements should not be based upon a non-technical standard; such as the localization rate of a workforce.

The second part of the second sentence of Article 2(c) states that RoO shall not require "the fulfilment of a certain condition not related to manufacturing or processing, as a prerequisite for the determination of country of origin." When Article 2 is read in its entirety, the reference to 'manufacturing or processing' in Article 2(c) is likely to mean 'manufacturing or processing operation.' This is because Article 2(a) lists three criteria for identifying origin: "change of tariff classification," "ad valorem percentage," and "manufacturing or processing operation." It would appear that the localization requirement which is not a processing operation but rather a socio-economic policy is in conflict with Article 2(c).

Annex II to the RoO Agreement contains the Declaration on Preferential Rules of Origin. This Declaration pertains to PTAs and contains a narrower guideline for the formulation of RoO. It does not have provisions similar to Articles 2(b) and (c) but it also lists three criteria to be used for identifying origin: "change of tariff classification," "ad valorem percentage," and "manufacturing or processing operation." Article 3 (iii) of Annex II states that "in cases where the criterion of manufacturing or processing operation is prescribed, the operation that confers preferential origin shall be precisely specified." Again, the localization requirement appears to be in conflict with this provision as it is not an operation but rather a socio-economic policy.

The RoO Agreement, which is the relevant international economic agreement in force does not specify how origin is to be established. It simply provides a binding guideline on how proof of origin is to be determined for the purpose of both the GATT (Article 1) and PTAs. The localization content of Saudi Arabia's new National Rules of Origin appears to conflict with the legal guideline for the proof of origin contained in Articles 2(b) and (c) of the RoO Agreement. However, this article applies to non-preferential trade and not to preferential trade and thus cannot be said to be the applicable international law. At most, it serves as a best practice guideline.

The applicable international law therefore can be found in Annex II of the RoO Agreement which contains the Declaration on Preferential Rules of Origin. The new Saudi Arabian laws appear to conflict with Article 3(iii) which requires that where the criterion of manufacturing and processing operations is used then the precise operation establishing this is to be specified. Nonetheless, there is no evidence that the criterion enumerated for proof of origin in Article 3 is an exhaustive list.²⁷ Hence, it would imply that The Kingdom can use an unlisted

²⁶ Gulf Labour Market and Migration Programme, *GCC: Total Population and Percentage of Nationals and Foreign National in GCC Countries (National Statistics 2010 -2016) (with numbers)*, accessed 27th October 2021, <https://gulfmigration.org/gcc-total-population-percentage-nationals-foreign-nationals-gcc-countries-national-statistics-2010-2016-numbers/>

²⁷ See Article 9(2)(c)(iii) of the Agreement on Rules of Origin (1994). The Committee on Rules of Origin in carrying out its harmonization work is to consider and elaborate on first the use of change of tariff heading and then "other requirements, including ad valorem percentages and/or manufacturing and processing operations" when developing the criterion of substantial transformation. The use of 'including' in the provision suggests that the list of considerations is not finite.

criterion such as localization to prove origin. The new rules therefore appear to conform with the applicable international agreement. It is important to note that the localization criterion would likely be unlawful under the main RoO Agreement pertaining to non-preferential trade as that categorically prohibits at Article 2(c) “the fulfilment of a certain condition not related to manufacturing or processing, as a prerequisite for the determination of country of origin.” Annex II does not contain this clear-cut prohibition.

Regional Rules of Origin

The CCL states that the applicable RoO within the GCC are the RoO effective under any international and regional agreements in force. The Regional agreement which elaborates RoO is the UEA. Article 3(1) states that “For products of national origin to qualify as national manufactured products, the value-added ensuing from their production in Member States shall not be less than 40% of their final value as at the termination of the production phase. In addition, member states citizens’ share in the ownership of the producing plant shall not be less than 51%.” The superseding EA provides at Article 32(3) that the RoO established by the UEA shall continue to be applied “until” the CU enters into force. Article 3(1) of the UEA therefore should cease to be effective on the 1st of January 2003 upon entry into force of the CU. An alternative interpretation of Article 32(3) is that Article 3(1) UEA shall apply up until the CU is established and beyond should it not be repealed or amended. And Article 3(1) UEA should continue to apply as there has been no new unified GCC RoO. Further, GCC member states continued to rely upon Article 3(1) UEA after 1st January 2003²⁸ but in the absence of legal clarification, it is uncertain what the regional RoO are.

Conclusion

The Kingdom’s new RoO appear not to contradict any international and regional agreements and are therefore lawful under international law. The multilateral trading system’s RoO Agreement can be interpreted to permit the new RoO; and the regional GCC RoO are ambivalent.

It is also worth mentioning that Article 179 of the CCL provides that “the Common Customs Law of the GCC Member states shall, when implemented, supersede the customs regulations and law in force in the member states within the limits of the constitutional rules and regulations and the basic laws in force in each state without contradiction therewith.” The CCL supersedes national rules only within the limits of the constitution or basic laws in force in member states. The Ministerial Decree 3852 which approved the new National RoO are based upon Cabinet Decision no. 620. The Cabinet’s authority derives from Article 56 of the Basic Law of Governance of the Kingdom of Saudi Arabia (1992).²⁹ Hence if there is any contradiction between the CCL and Saudi Arabia’s Basic Laws of Governance, the Basic Law will overrule the former.

²⁸ *Rules of Origin Facilitator*, International Trade Centre, World Customs Organization, World Trade Organization, accessed 5 November 2021,

<https://findrulesoforigin.org/en/home/compare?reporter=634&partner=512&product=39262010>.

²⁹ The Basic Law of Governance (1992) is equivalent to the Kingdom of Saudi Arabia’s constitution.

Although the Kingdom's clarification of the RoO requirements for identifying a national product is legally permissible and from an economic policy perspective entirely justified, tying tariffs to the workforce composition of GCC companies places certain member states, such as the UAE and Qatar, which possess small local citizen to total population ratios, at a distinct disadvantage because of their demographics. This, together with unilaterally changing rules that have been relied upon by five other countries for almost twenty years seems inequitable and at odds with both international best practice and the GCC desire to effect "coordination, cooperation and integration between them(selves) in all fields."³⁰

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³⁰ Preamble to the Charter of the Cooperation Council for Arab States of the Gulf (GCC).

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