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**Rules of Origin as Non-Tariff Measures:  
Towards Greater Regulatory Convergence**

Bernard Hoekman and Stefano Inama



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## **Abstract**

This paper examines some of the features of rules of origin (RoO) that makes these policy instruments nontariff measures, reflects on the causes of the longstanding deadlock in the WTO on multilateral harmonization of non-preferential RoO, and reviews recent trends in RoO included in recent preferential trade agreements (PTAs) involving the EU and/or the US. These reveal a steady and substantial movement towards adoption of similar approaches and illustrate that cooperation to reduce the trade-impeding effects of differences in RoO across jurisdictions is feasible. We argue that from a trade facilitation perspective such cooperation can and should pursue greater convergence between preferential and nonpreferential RoO, building on the developments observed in PTAs.

## **Keywords**

Rules of origin, WTO, nontariff measures, trade agreements, convergence

**JEL codes:** F13, F15, F53



## Introduction\*

Trade agreements require the parties to agree on the rules (regulations) that will determine whether a product is eligible to benefit from whatever provisions are embodied in the agreement. Thus, to be eligible for preferential market access benefits an exporter will need to document that the product has been produced in an eligible country. Such *preferential* rules of origin (RoO) have been the focus of much research, lobbying and policy debate. To a significant extent the more difficult it is for exporters to satisfy RoO – the more restrictive or stringent the RoO are – the less valuable preferential access will be. Less well-known and studied are *non-preferential* RoO. These are needed to determine whether a product is subject to a nation's trade policy. For example, if the EU imposes an antidumping measure on imports of a product originating in China, there is need to determine the origin of that product to avoid possible circumvention.<sup>1</sup> The same is true when it comes to access to government procurement markets: if India opens up access to public procurement contracts to firms from China, it will be necessary to determine whether goods are eligible – i.e., what constitutes a Chinese product. More generally, all countries regulate what constitutes the origin of a product (so-called marks of origin or country of origin labelling) for consumer information reasons, to be able to implement health and safety-related regulations, for statistical purposes, and so forth.

RoO differ across countries and products. The most commonly used approaches are based on whether a manufacturing or other processing operation results in: (i) an *ad valorem* percentage calculated according to different approaches;<sup>2</sup> (ii) a change in tariff heading (how a product is classified in the Harmonized Commodity Description and Coding System (the Harmonized System or HS), the WCO tariff classification nomenclature used by WTO members; or (iii) involves a specific technology, method or process. A recent trend is the adoption of an upper bound on the amount or share of imported (non-originating) physical materials that may be embodied in a product. The latter is easier for firms to understand and to comply with than value added based criteria, and has been advocated by low-income countries in the context of non-reciprocal preferential market access programs implemented by OECD nations and emerging economies.

Differences in specific RoO across products that are applied by importing countries increase the complexity of trade policy for businesses, generates trade costs and affects investment and sourcing decisions in ways that can reduce efficiency. In addition, differences between countries in the RoO for the same product further increases complexity for traders that sell to multiple markets. Differences across RoO regimes maintained by importing countries create costs for firms as they imply that firms seeking to benefit from preferential access regimes will need to ensure that production processes are tailored so as to satisfy each RoO regime that prevails in each market they sell to. Such effects also arise in the case for non-preferential RoO: differences across countries, both in terms of substantive requirements and in terms of labelling, will imply specific fixed costs of exporting to different markets. Thus, RoO act as NTMs for any given market, and differences in RoO across markets have analogous effects as difference in regulatory requirements for the same product in different countries. Reducing this heterogeneity is an obvious way to reduce the costs that are associated with RoO. As discussed below, this has long been on the multilateral trade policy agenda, but only for non-

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<sup>1</sup> In practice the link with trade defence mechanisms like antidumping is addressed in major jurisdictions such as the US and EU through special anti-circumvention measures. See Inama, Vermulst and Eeckhout (2009).

<sup>2</sup> Such approaches may be summarized as i) whether a minimum share of the value added embodied in a product was the result of activities in the last country in which the product was processed/produce according to different calculation techniques or ii) a given percentage of non-originating materials has not been exceeded or a minimum percentage of originating inputs has been used in the manufacturing of the finished product.

preferential RoO. The reason is that preferential RoO have long been held to fall outside the ambit of the WTO because i) non-reciprocal trade preferences are granted at the discretion of importing countries and ii) in the case of reciprocal trade agreements (FTAs) there has been a tacit consensus that each WTO members would be better off to have free hands in this area, i.e. acceptance of policy space

Economic research on RoO has largely been focused on estimating their trade-distorting effects, often using methodologies that are centred on determining the ad valorem tariff equivalents of RoO<sup>3</sup> or classifying RoO into types and constructing indexes in order to assess patterns of convergence or divergence across countries and trade agreements.<sup>4</sup> While such efforts are useful in determining how RoO can (and do) act as nontariff barriers to trade, this type of research is not particularly useful in informing efforts by governments to cooperate on RoO with a view to facilitate trade. This requires detailed analysis of the specific RoO adopted by different countries and trade blocs and their evolution, and an understanding of where governments have been able to adopt rules that are similar. Such analysis has been lacking as an input into the WTO Harmonization Work Programme (HWP) for non-preferential RoO. Recent PTAs provide important information on this question.

In what follows we first briefly review the state of play in the WTO and private sector perspectives on RoO (Section 1). In section 2 we discuss evidence for a reduction in regulatory heterogeneity in the area of preferential RoO as a result of recent PTAs. Ongoing research suggests that many of the preferential RoO adopted in recent PTAs are not very different from the draft harmonized non-preferential RoO that emerged from WTO deliberations in some sectors. While there are still significant differences in RoO across products and countries, there is also a trend towards a greater degree of convergence. Section 3 discusses approaches towards developing a taxonomy for codifying RoO as NTMs as opposed to efforts to measure trends in convergence and divergence in the RoO used by major trading powers. Section 4 concludes.

## 1. WTO Rules and Negotiations on Harmonization of Non-preferential RoO

The GATT left importing nations free to define what criteria or conditions they apply to determine the origin of a product as long as this applies on a most-favoured-nation basis. The same applies to preferential access programs for developing countries: these may not discriminate across eligible developing exporting countries.<sup>5</sup> However, there have been efforts over time to establish greater multilateral discipline on RoO during the Uruguay round that culminated with adoption of the WTO Agreement on Rules of Origin (ARO). In the case of implementation of unilateral preferential programs, starting in 2005 developed countries committed to facilitate exports of the least-developed countries (LDCs) by providing these nations with duty-free, quota-free (DFQF) access for at least 97 percent of product lines. A number of OECD countries, including the EU member states, have implemented programs that provide DFQF access to all products except arms. This gave rise to discussion in the WTO on RoO as the LDCs argued that strict RoO substantially reduced the value of

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<sup>3</sup> See, e.g., Cadot and Ing (2016), Cadot, Carrere, de Melo and Tumurchudur (2006) and Conconi et al. (2016).

<sup>4</sup> Estevadeordal et al. (2009).

<sup>5</sup> RoO are an important dimension of free trade agreements, but the GATT/WTO does not impose any rules on the RoO that signatories of such agreements apply notwithstanding the general recognition that such RoO are not just a matter of concern to participating countries but can affect third parties. For example, in the context of the 1972 FTA between the EEC and EFTA States, the US argued that the rules of origin would generate ‘...trade diversion by raising barriers to third countries’ exports of intermediate manufactured products and raw materials. This resulted from unnecessarily high requirements for value originating within the area. In certain cases the rules disqualify goods with value originating within the area as high as 96 percent. The rules of origin limited non-originating components to just five percent of the value of a finished product of the same tariff heading [for] nearly one-fifth of all industrial tariff headings. In many other cases a 20 percent rule applied’ (GATT, 1974:152-53 cited in Hoekman and Kosteci, 2009). For further discussion of WTO rules on PTAs and RoO, see Mavroidis (2016).

DFQF access. As a result there have been deliberations and some progress in agreeing to adopt RoO that are simpler and easier to satisfy.

The pursuit of incremental convergence in the RoO that apply for LDCs has complemented the long-running effort to agree to harmonize RoO for non-preferential trade policy purposes. Talks on harmonizing non-preferential rules of origin have long been deadlocked because of differences between the EU and the US, in part because of concerns relating to the implications of harmonization for the use of trade policy instruments such as antidumping. Although a deal in the WTO proved elusive, the EU and the US have in recent years engaged in the negotiation of reciprocal PTAs that require agreement on the RoO that will apply. A number of ‘mega-regional’ trade initiatives, most notably the CETA (Canada-EU), bilateral agreements between South Korea and the EU and the US, respectively, and the Trans-Pacific Partnership (TPP) are cases in point. These agreements have required deals to be struck on RoO.

The WTO Agreement on Rules of Origin (ARO) requires that non-preferential RoO be applied in non-discriminatory manner, are transparent, are not designed to be a barrier to trade, and are administered in a consistent, uniform, impartial, and reasonable manner. It does not impose substantive obligations on the content or design of RoO during the transitional period. The ARO set the ambitious objective of the adoption of a single set of nonpreferential rules of origin “*equally for all purposes*”<sup>6</sup> to avoid a situation where RoO may vary across products and may even vary for a given product depending on the type of trade policy instrument they apply to. In practice, a country may use more restrictive RoO for antidumping actions than it does, for example, to trade in the same product(s) that occurs under the umbrella of a mutual recognition agreement pertaining to applicable technical standards.

Besides the goal of using the same RoO for all purposes (which does not require harmonization across countries), the most important objective of the ARO is to work towards the harmonization of non-preferential RoO (Art. 9) across countries. This has been pursued through a Harmonization Work Programme (HWP) managed by the WTO Committee on Rules of Origin, and primarily executed by a Technical Committee that involves the active participation of the World Customs Organization (WCO). The ARO provides for the development a set of nonpreferential harmonized set of RoO based on the change of tariff classification (using the Harmonized System) as the preferred method to define substantial transformation<sup>7</sup>. In cases where the HS nomenclature does not allow substantial transformation to be determined by a change in tariff classification test, the Technical Committee will consider the use of supplementary tests such as value added criteria or to agree on ‘specific manufacturing processes’ that if used will confer origin (imply sufficient transformation of a product).

The HWP was to be completed in July 1998. Results of the technical review undertaken by the WCO were submitted to the WTO by a revised deadline of November 1999. As of today, however, the HWP and the associated draft text has yet to be completed by the Committee on Rules of Origin. Despite considerable progress, as witnessed by the development of a draft text, a final consensus could not be obtained. This reflects opposition of some World Trade Organization (WTO) members, including the United States, to the implications of the results of the HWP on across different WTO agreements. That is, there is resistance to adoption of a set of rules of origin that would harmonize RoO across trade policy instruments – e.g., antidumping vs. health and safety standards vs. labelling – and the associated reduction in discretion for the implementation of the associated policies. This so-called “implications issue” led to the cessation of formal negotiations in the mid-2000s. Discussions since 2007 have been limited to updating the draft text to reflect a new versions of the Harmonized System and informal workshops on the implications of the absence of harmonised RoO for business.

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<sup>6</sup> See article 9 (1) (a) of the WTO agreement on rules of origin.

<sup>7</sup> See article 9 (1) (c) ii of the WTO agreement on rules of origin.

## **2. RoO in recent PTAs**

Despite the stalemate on non-preferential RoO, negotiations on preferential RoO have thrived as a result of preferential trade agreements (PTAs) and efforts by developing countries to enhance the economic salience of non-reciprocal preferential market access programs. A basic tenet (the conventional wisdom) of most RoO experts and trade officials is there are no possible spillovers among preferential and non-preferential RoO, since they serve different trade policy objectives. Preferential RoO serve to determine whether a preferential tariff is applicable under a RTA or a unilateral arrangement, while non-preferential RoO serve to determine the application of a most-favoured nation (MFN) tariff or specific WTO agreements.

Recent research on private industry views and experience and views on dealing with RoO reveals that this distinction is not very important for firms. For many firms compliance with rules of origin is a normal part of a business transaction that has a cost. The main difference between preferential and non-preferential RoO is that the former are associated with an expected benefit of reduced duty or duty free entry in the export market, but in many cases companies are obliged to comply with RoO in any event. A recent survey (Anliker, 2016) revealed a 100 percent awareness by respondent companies of non-preferential RoO, with some 55 percent of firms perceiving non-preferential rules to be relevant to their daily operations. Reasons for this included such RoO being demanded by clients, by importing country Customs authorities and/or financial service providers (e.g., for letters of credit). This helps to explain why large companies are prepared to incur the cost of buying and maintaining sophisticated IT systems and related personnel to be able to more efficiently assure compliance with RoO – both preferential and non-preferential. Smaller companies are generally less aware and less able to assess the importance of RoO in their day to day business. Most companies favour harmonizing RoO to as a measure to facilitate trade and bring down cost of compliance, with a clear preference for greater acceptance and use of self-declaration of origin by firms as opposed to having to use certificates of origin issued by certifying authorities or Chambers of Commerce (the latter generally give rise to fees associated with obtaining such certification).

There has been considerable evolution in the technique and content of drafting RoO in PTAs. South-South agreements — e.g., the Southern African Development Community (SADC); the Common Market for Eastern and Southern Africa (COMESA); Southern Common Market (MERCOSUR) and the Association of Southeast Asian Nations (ASEAN) — traditionally adopted a simple formula, such as an across-the-board percentage criterion mirroring the percentage rules in the US Generalized System of Preferences (GSP) scheme. In addition they often adopted as an alternative a change of tariff heading criterion following the EU model. In short, these PTAs have not developed their own RoO model. Over time they started to develop product specific rules of origin (PSRO), but again borrowing the drafting techniques from the existing US and EU models. Indeed, there have been cases where following negotiation of a PTA with the EU or US countries have imposed the associated RoO on their regional partners in the South.

Despite the claimed rigid separation between non-preferential and preferential RoO, the border between the two regimes has always been porous. NAFTA had a major influence on the ARO. It was US insistence that resulted in the ARO making the change of tariff classification (CTC) the preferred methodology for drafting rules for non-preferential RoO – as opposed to the EU approach of using a combination of criteria – the CTC, percentage criterion and specific working and processing requirements. By itself this could be interpreted as a first sign of convergence, even though there are different modalities across PTAs in drafting RoO according to the CTC criterion. This primacy of the CTC over other methodologies for determining substantial transformation gave rise to some differences in view during the initial phases of the HWP negotiations among the EU and NAFTA partners in the Technical Committee on Rules of Origin (TCRO) and later in the WTO Committee on Rules of Origin (CRO). In fact, the 1996-1999 TCRO negotiations on non-preferential RoO was the first time the EU and the US had confronted each other. Until then the EU had for some 20-plus years been dealing with RoO in the context of its PTAs with European Free Trade Association (EFTA)

members and the African, Caribbean, and Pacific (ACP) countries. These countries were confronted with the then newly matured experience of the US and its partners obtained in negotiating the Canada-US Trade Agreement (CUSTA) and the NAFTA.

While none of the negotiators in the TCRO at that time would have admitted that preferential RoO had a bearing on the HWP, it was clear, as demonstrated by the dynamic of the negotiations, that the discussions on non-preferential RoO started from the respective preferential RoO backgrounds, at least at the technical level. In other words, each “bloc” proposed and defended its own model of RoO. The eventual draft text that emerged from the HWP was therefore the result of a compromise between the EU and NAFTA models, with a number of innovations and some disagreement on specific sectors, like machinery.<sup>8</sup> In retrospect, the 1999 draft harmonized rules of origin (HRO) text represents a tangible sign of convergence that, even if not agreed, influenced the way RoO were negotiated in subsequent PTAs. An example is the progressive acceptance of the use of the wholly obtained criterion as a requirement for the list of product-specific rules (a typical EU feature) included in the EU-Mexico agreement and later in the Canada-EU Comprehensive Economic and Trade Agreement (CETA). Another example is the use of chemical reaction, a concept inherited from the HWP work, as a specific requirement for some chemical products given the inherent technical difficulty of determining the corresponding CTC for chemical products.

Despite the HWP coming to a standstill in 2007, the many PTAs that have been negotiated since then have implied that RoO are front and centre in the negotiating agenda of the majority of WTO members. The EU in particular has made substantial changes to its RoO model starting in the early 2000s. First, it progressively abandoned the “straight jacket” model that it imposed on itself as a result of its Pan-European RoO that were adopted in the early 1990s. According to the Pan European RoO model each EU partner in a FTA had to adopt an almost identical set of rules of origin set by the EU including the PSROs to allow cumulation among different FTAs and avoid a proliferation of divergent RoO across FTAs. While strictly adhered to for more than a decade this approach was revealed to be excessively rigid when EU was negotiating with significant trading partners because it did not allow concessions to be made on PSROs. Second, it introduced a sweeping and unprecedented reform of unilateral RoO, especially for the LDCs. While limited to this set of countries, this reform provides a potential base on which to build in further reforms of EU RoO.

The developments in preferential RoO in PTAs have led to some simplification and streamlining of the RoO, informed by lessons learned over more 20 years of operation of major PTAs. Progressively, the EU and the US, as well as counterpart OECD nations (e.g., Japan, South Korea, Australia, and New Zealand) have abandoned methodologies based on calculations of value added in favour of a value of materials used ad valorem percentage calculation. Some innovations have also been introduced, such as the deduction of cost of freight and insurance in recent US PTAs and in the Trans-Pacific Partnership (TPP). There are, of course, differences in the arithmetical calculations and definitions of what goes into the numerator and denominator, but there is convergence towards determining ad valorem percentages based on a value of materials calculation rather than a value added or net cost approach, as used in NAFTA for automotive products. This tendency is confirmed by the evolution of the use of the net cost method in US PTAs that has been gradually introduced in subsequent agreements, and the introduction of the build-up and build-down method that has replaced the transaction value used in NAFTA – see Table 1.

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<sup>8</sup> The “machinery package” allowed each member to choose either a “change of tariff classification rule” (the preferred US method for origin determination) or a “value-added rule” (the preferred EU method for determining origin in this specific sector and circumstance).<sup>8</sup> This is the so-called dual-rule approach. See WTO document JOB(07)/73).

**Table 1. Evolution of the NAFTA percentage-calculation based RoO**

<b>Regional value content criterion</b>	<b>NAFTA</b>	<b>CHL-USA</b>	<b>CAFTA</b>	<b>US-SIN</b>	<b>US-AUS</b>	<b>US-KOR</b>	<b>TPP</b>
No. of PSRO	1,125	1,043	1,017	2,974	965	758	1,245
of which:							
Net cost	323	0	6	0	0	6	22
Transaction	248	0	0	0	0	0	0
Build-up	0	164	146	239	148	147	398
Build-down	0	157	147	213	144	152	457

*Source:* Own calculations. *Note:* PRSO: product-specific RoO.

Thus, developments regarding preferential RoO in the PTAs that include the major players are pointing towards simplification and streamlining. This has supported greater trade as shown by the relatively high utilisation rate of major PTAs, which range from 80 percent to 90 percent (Swedish Board of Trade and UNCTAD, 2017). In a nutshell, there has been a lot of work on RoO that has had a pay-off.

The reforms of the Canadian GSP rules of origin for LDC (in 2003) and the EBA rules of origin (redefined in 2011) have contributed to the debate over simplification and relaxation of preferential RoO for LDC DFQF programs and brought new life to the discussions in the CRO. This has led to two Ministerial Decisions on preferential RoO for LDCs and is a tangible sign that progress can be made at the multilateral level as well. The challenge now is to build on this progress to resume work at the multilateral level on RoO.

### **3. Determining convergence in RoO and codifying RoO as NTMs**

#### *a) A taxonomy to identify convergence in RoO*

The lack of progress and meaningful discussions on RoO at the multilateral level since 2007 contrasts with the gradual movement towards *de facto* and *de jure* convergence across both preferential and non-preferential RoO in major jurisdictions. Divergence certainly continues to exist for some sectors, but it is important to recognize that the situation on the ground has been changing. This suggests that multilateral discussions can build on this and focus on the reasons for continued divergence in specific sectors.

In pursuing reforms and better understand RoO regimes it is necessary to distinguish between the policy-objectives that underpin a given set of RoO (the “substance”) from the specific criteria used and how they are administered, i.e., the “format” of a RoO. The substantive dimension of a RoO is the degree of restrictiveness it implies as regards the value chain it impacts on. It is the substance that matters. If countries have common objectives as to what RoO are supposed to do, it is much more straightforward to achieve convergence, since the form a RoO takes is mostly a matter of drafting methodology.

Although blocked for almost a decade at the time of writing, the mandate of the CRO to pursue harmonization of RoO provides a continuing opportunity to revitalize multilateral discussion on RoO at the WTO by drawing on and building on PTA experiences as well as unilateral reforms. Making progress in the CRO – or for that matter in developing the RoO associated with new PTAs – requires a better understanding of how different RoO evolved in international trade.

As discussed above the traditional type of research carried out on RoO has not been particularly conducive to lead governments towards a simplification of RoO. A new stream of research<sup>9</sup> aims at

<sup>9</sup> For a preliminary view of the results of this research in progress, see Crivelli and Inama (2017).

showing to governments the progress that they have been able to make through progressive rounds of negotiations with their partners in different PTAs, through consultations with their civil society, and practice. This research shows, at product specific level, where governments have adopted rules of origin that are similar, either as a result of natural evolution of the international trading system (presumably lowering of MFN tariffs and related trade barriers) and/or technological progress. Such analysis shows at product specific level a comparison of the WTO Harmonization Work Programme (HWP) for non-preferential RoO with recent PTAs providing important and factual information on how Government may simplify RoO. For each agreement there are around 6000 product-specific RoO observations.

One possible advantage of this approach is that simplification may be undertaken at sectoral level, if governments are not willing to embrace encompassing reforms. This *à la carte* approach may provide the kind of “comfort level” that may generate reflections in Government and movement in WTO circles. In fact hundreds of PTAs have been negotiated and progressively implemented since NAFTA. Each of these PTAs contain a set of rules of origin. While the negotiations on the HWP stagnated since 2007 thousands of PSRO have been negotiated and put to a test during PTAs implementation. The scope of the research is to revisit the overall “state of the art” of rules of origin by drawing a detailed comparison as follows:

- A sub-heading by sub-heading (6366 sub-headings) analysis of product specific rules of origin (PSRO) to identify where there is convergence, partial convergence or divergence among:
  - a) The results of the HWP process as last updated;
  - b) TPP and US-Korea FTA as A North American Model mainly based on CTC and RVC; and
  - c) CETA – the first instance of the European model and the North American model coming to confront each other – and the EU-South Korea FTA.

In order to draw such a comparison a taxonomy has been developed to compare each of the PSRO contained in the abovementioned PTA according to the following categories:

A. Totally or partial convergent

1. All rules of origin (the 4 FTA’s and the HW) are identical or similar in terms of stringency and drafting form
2. The majority of the RoO are identical or similar in terms of stringency and drafting form
3. Rules of origin are identical or similar in terms of stringency but have a different drafting form

B. Divergent

- 4 Ai) Different in terms of stringency and drafting form being more stringent compared with the Harmonized rules (4Ai)
- 4 Bii) Different in terms of stringency and drafting form being less stringent compared with the Harmonized rules (4Bii)

The preliminary result of this research (Crivelli and Inama, 2017) clearly show that there is a predominant tendency towards convergence and simplification: 53% of the total tariff lines at six digit level shows a degree of convergence albeit of different level (Table 2). If the percentage of tariff lines where the PRSO have been found to be more liberal in the PTAs examined than with the HWP<sup>10</sup>

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<sup>10</sup> The results of the HWP in terms of PSRO are widely considered to be more liberal since it involves a set of nonpreferential rules of origin.

(33%) is added we reach a total percentage of 85% where the PSRO taken together are either convergent and/or liberal.

**Table 2. Comparison of 6-digit PRSO: HWP, CETA, US-Korea, EU Korea, and TPP**

Convergence/ Divergence categories	Category description	No. of tariff lines	Share	Average MFN	Total QUAD imports from the world (US\$ million)
1	Totally convergent	135	2%	1,52	641,546
2	Partially convergent	1'287	20%	2,76	2298,623
3	Partially convergent in stringency and different drafting form	1'994	31%	3,15	1648,448
4Ai	Divergent more stringent compared with harmonized rules	823	13%	5,49	960,754
4Bii	Divergent less stringent compared with harmonized rules	2'127	33%	6,00	1,321,871
<b>Total</b>		6'366	100%		

Source: Crivelli and Inama (2017).

A number of caveats should be made. The first is that these preliminary results need to be further refined and validated. Second, the details matter a lot for PSRO. Third, the degree of convergence may be assessed differently in a negotiating context. Fourth the convergence covers PRSO and does not deal with other ancillary concepts of rules of origin such as cumulation and *de minimis* thresholds. That said, the numbers reveal some clear message to those who may be ready to listen. These can be summarized as follows:

- There are sectors where there is significant convergence (chemicals for instance that was also one of the sector where there was an early harvest in the TTIP negotiations)
- The differences relates more on the “form”: i.e. the way in which the RoO are drafted than on substance i.e. the leniency/ stringency of the RoO
- For some sensitive sectors, e.g., clothing and fisheries there is a substantial divergence

The extent to which these PRSO are convergent/divergent is illustrated further in Tables 3 and 4. These tables provide examples of cases of convergence for some sectors, as well as continued areas of divergence. Parts of the text in Table 3 that are underlined indicate instances where there is significant convergence or equivalence among the agreements. To some extent recent progress towards convergence between preferential and non-preferential RoO and more generally simplification of RoO has been facilitated by the removal of MFN tariffs for products – e.g., because of the Information Technology Agreement (ITA) and analogous zero-for-zero sectoral agreements for chemical products. However, there are also other sectors with positive MFN duties where convergence has been occurring. What is needed now is further research to validate the initial findings and narrow down the results and most of all a political momentum to trigger the change. The results presented here suggest that there is value in seeking to identify emerging “best practices” for sectors where there is convergence and to identify sectors where there is continued divergence.

**Table 3. HRO, CETA, TPP, EU and US PTAs with South Korea: signs of convergence**

Example 1

HS Code	HRO	CETA	TPP	EU_KOR	US-KOR
28.50 Hydrides, nitrides, azides, silicides and borides, whether or not chemically defined, other than compounds which are also carbides of heading 28.49.	CTH	<u>A change from any other subheading</u> , or: A change from within any one of these subheadings, whether or not there is also a change from any other subheading, provided that the value of non-originating materials classified in the same subheading as the final product does not exceed 20 per cent of the transaction value or ex-works price of the product.	<u>A change to a good of heading 28.50 from any other heading.</u>	<u>Manufacture from materials of any heading, except that of the product.</u> However, materials of the same heading as the product may be used, provided that their total value does not exceed 20% of the ex-works price of the product	<u>A change to heading 28.10 through 28.53 from any other heading.</u>

Example 2

HS Code	HRO	CETA	TPP	EU_KOR	US-KOR
87.12 Bicycles and other cycles (including delivery tricycles), not motorized	<u>CTH, except from heading 87.14;</u> or 35% value added rule	<u>A change from any other heading, except from 87.14;</u> or A change from heading 87.14, whether or not there is also a change from any other heading, provided that the value of non-originating materials of heading 87.14 does not exceed 50% of the transaction value or ex- works price of the product	<u>A change to a good of heading 87.12 from any other heading, except from heading 87.14;</u> or No change in tariff classification required for a good of heading 87.12, provided there is a regional value content of not less than: a) 35% under the build-up method; or b) 45% under the build-down method; or 60 per cent under the focused value method taking into account only the non- originating materials of heading 87.12 and 87.14	Manufacture in which the value of all the materials used does not exceed 45% of the ex-works price of the product	<u>A change to heading 87.12 through 87.13 from any other heading,</u> except from heading 87.14; or, provided that there is a regional value content of not less than: (a) 35 percent under the build-up method, or (b) 45 percent under the build-down method.

**Table 4. HRO, CETA, TPP, EU and US PTAs with South Korea: signs of divergence**

## Example 1

HS Code	HRO	CETA	TPP	EU_KOR	US-KOR
16.04 Prepared or preserved fish; caviar and caviar substitutes prepared from fish eggs.	CTH	A change from any other chapter, except from Chapter 3	A change to a good of heading 16.05 from any other chapter.	Manufacture: -for animals of Chapter 1, and/or - in which all the materia1s of Chapter 3 used are wholly obtained	A change to heading 16.05 from any other chapter

## Example 2

HS Code	HRO	CETA	TPP	EU_KOR	US-KOR
6203.42 Men's Cotton Pants	Change to goods of this split chapter provided that the goods are assembled in a single country in accordance with Chapter Note.	Weaving accompanied by making up (including cutting); <b>or</b> Making up preceded by printing accompanied by at least two preparatory or finishing operations (such as scouring, bleaching, mercerising, heat setting, raising, calendaring, shrink resistance processing, permanent finishing, decatising, impregnating, mending and hurling), provided that the value of the unprinted fabric used does not exceed 47.5 per cent of the transaction value or ex-works price of the product.	A change to a good of heading 62.01 through 62.08 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12 <b>or</b> 54.01 through 54.02, subheading 5403.33 through 5403.39 <b>or</b> 5403.42 through 5403.49, <b>or</b> heading 54.04 through 54.08, 55.08 through 55.16, 58.01 through 58.02 <b>or</b> 60.01 through 60.06, provided the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.	Weaving accompanied by making-up (including cutting) <b>or</b> Embroidering accompanied by making up (including cutting), provided that the value of the unembroidered fabric used does not exceed 40 % of the ex-works price of the product <b>or</b> Coating accompanied by making up (including cutting), provided that the value of the uncoated fabric used does not exceed 40% of the ex works price of the product <b>or</b> Making-up preceded by printing accompanied by at least two preparatory finishing operations (such as scouring, bleaching, mercerising, heat setting, raising, calendaring, shrink resistance processing, permanent finishing, decatising, impregnating, mending and hurling), provided that the value of the unprinted fabric used does not exceed 47.5% of the ex-works price of the product	A change to subheading 6203.41 through 6203.49 from any other 4-20 chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, <b>or</b> 53.10 through 53.11, 54.01 through 54.02, subheading 5403.33 through 5403.39, 5403.42 through heading 54.08, <b>or</b> heading 55.08 through 55.16, 58.01 through 58.02, <b>or</b> 60.01 through 60.06, provided that the good is both cut and sewn or otherwise assembled in the territory of one or both of the Parties.

### ***b) RoO as NTMs***

Developing a taxonomy of RoO as constituting different types of NTMs may serve a number of purposes. One is simply to map the universe of RoO – to document the RoO used by different countries. Another is to characterize RoO regimes depending on qualitative dimensions – e.g., their complexity, stability over time, etc. Researchers frequently are interested in determining the trade restrictiveness of different RoO, and a taxonomy of RoO can be useful as an input into empirical analysis. In terms of quantification (counts) of RoO, a taxonomy should codify rules of origin is to codify RoO at the product specific level. To ensure this is comparable across countries and preferential trade regimes, such an effort needs to be undertaken at the 6-digit level of the HS (i.e., the subheading level). This spans over 5,000 categories, implying an upper bound for the total number of product-specific rules of origin (PSRO) to be codified of 200,000 given there are some 400 PTAs in force. Concording different sets of RoO and PSRO to each other and automating the codification of PRSO using algorithms to classify different RoO into “types” is a major challenge and in practice may not be a realistic option given the variation in the “format” and textual language used to define PRSO across different PTAs and non-reciprocal preferential trade arrangements.

Efforts have been made to classify RoO by type and to factor in an ex ante assessment of the restrictiveness of different types of RoO on the basis of a mix of judgment and econometric estimation. Estevadeordal (1999) pioneered such analysis, focusing on NAFTA RoO with the aim to assess the possible impact of extending the NAFTA model to other PTAs in the Americas. An important contribution of this research and subsequent efforts to assess the economic effects of RoO is a methodology for the measuring the restrictiveness of rules of origin in relation to a tariff phase-out schedule negotiated under a PTA. The approach was applied to a potential EU-Mercosur PTA using the framework of the pan-European RoO (Estevadeordal and Suominen, 2004; 2006). The index of restrictiveness developed by Estevadeordal and subsequent analysts that have built on his approach has been mostly used for econometric analyses of the impact of RoO.

NAFTA RoO were negotiated at the product level (mostly at the six-digit tariff line level) and were defined using three methods: (1) a tariff shift, (2) a regional value content (RVC), or (3) a technical requirement. The first criterion can be specified as requiring a change at the section level (two-digit HS), heading level (four-digit HS), subheading level (six-digit HS), or item level (higher than six-digit HS), with the possibility of including specific exceptions. The three methods could also be combined, for example, a change of subheading plus a specific RVC and a technical requirement. Moreover, there are many cases in which the agreement defines alternative rules of origin for the same product.

To obtain the restrictiveness index, each rule or set of rules is codified according to different criteria and a qualitatively ordered index is constructed based on a set of assumptions. First, a change of tariff classification (CTC) at the chapter level is assumed to be more stringent than at the heading level, a change at the heading level more than at the subheading level, and so on. Second, a regional value content requirement increases the restrictiveness of a given rule, as do technical requirements. For each pair (or sometimes trio) of alternative rules being applied to the same product, Estevadeordal selects the one with the higher restrictiveness index. A categorical RoO variable is then constructed ranging from 1 (the most lenient) to 7 (the most restrictive). Level 1 occurs when the rule requires a change of tariff item or less. At level 2 the rule requires more than a change of tariff item but is equal to or less than a change of tariff subheading (CTSH). At level 3 the rule requires more than a CTSH but is equal to or less than a CTSH and RVC. At level 4 the rule requires more than a CTSH and RVC but is equal to or less than a change of tariff heading (CTH). At level 5 the rule requires more than a change of tariff level but is equal to or less than CTH and RVC. At level 6 the rule requires more than a change of tariff level and a RVC but is equal to or less than a change of chapter (CC). Finally, at level 7 the rule requires more than a CC but is equal to or less than a CC or technical requirement.

Although the HS increasingly is used for drafting RoO, it was conceived for tariff classification purposes and not for drafting RoO. It follows that assuming that a change of tariff classification at the eight-digit level is more lenient than a CTSH is rather arbitrary. As demonstrated in the WTO negotiations on nonpreferential RoO, there are entire chapters of the HS in which a CTSH may be extremely restrictive. This is the case for chemical products, for example, where a important chemical reactions that change the nature of a product may not be reflected in a change of subheading. It is quite difficult therefore to determine the level of restrictiveness of different RoO using criteria and classification of the type just discussed. To illustrate the problem, assume we want to classify the restrictiveness of the rules using the Estevadeordal index in the following cases (using NAFTA RoO):

- Rule 1**     *“A change to heading 6205.90 from any other chapter, except from heading Nos. 51.06 through 51.13, 52.04 through 52.12 . . . provided that the good is both cut and sewn or otherwise assembled in the territory of one or more of the NAFTA parties.”*
- Rule 2**     *“A change to heading 62.06 through 62.10 from any other chapter, except from headings Nos. 51.06 through 51.13 . . . provided that the good is both cut and sewn or otherwise assembled in the territory of one or more of the NAFTA countries.”*
- Rule 3**     *“A change to heading 61.05 through 61.06 from any other chapter, except from headings Nos. 51.06 through 51.13, 52.04 through 52.12 . . . provided that the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of one or more of the NAFTA parties.”*
- Rule 4**     *“A change to heading 63.02 from any other chapter, except from headings Nos. 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08 or 53.10 through 53.11, Chapters 54 through 55, or heading Nos. 58.01 through 58.02 or 60.01 through 60.02 provided that the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of one or more of the NAFTA parties.”*

Because none of these rules includes a RVC, the choice in terms of the level of restrictiveness according to the Estevadeordal index is either level 1 or level 2. Because the rules require more than a change of tariff item, one may classify all the rules under level. Alternatively, if one considers that requirements for cutting and sewing are technical requirements, they would fall under level 7.

A closer look at rules 1 to 4 indicates that they are very different in terms of “real world” restrictiveness. **Rule 1** depicts a single transformation requirement from woven silk to a silk shirt. **Rule 2** requires a double transformation: (1) the processing of the fabric and (2) the production of the apparel. **Rule 3** requires a triple transformation or yarn forward: from the manufacturing of the yarn to men’s shorts. **Rule 4** provides for an extremely stringent rule requiring a quadruple transformation. Thus the example shows that even if the drafting style of rules in this case, “*A change to heading... from any other chapter, except from headings ...*” is similar and maps the rules to similar levels of restrictiveness, the actual level of restrictiveness implied by the different rules may vary considerably.

These considerations have implications for the development of a taxonomy for codifying RoO for NTM classification purposes. They imply that any such classification should not incorporate a typology that maps RoO into different degrees of (presumptive) trade restrictiveness and builds this into the classification. The extent to which different RoO regimes – and differences in RoO regimes – impede trade should be left to empirical analysis. The key challenge in developing a classification for NTM purposes is to characterize and “map” different approaches and requirements into common and comparable categories at a useful level of disaggregation– what is denoted in this paper as the “form” taken by PSRO. If the classification is designed at too broad a level, limiting the coding to the main principles used to define origin, there is little value added since this will result in different sets of RoO being compared or lumped together on the basis of oversimplified assumptions that do not reflect the complexity and diversity of RoO. On the other hand, if the taxonomy is designed in a very detailed manner, the task of codification becomes very difficult to operationalize in a way that is useful.

A possible way to proceed in designing a taxonomy that reflects the reality of RoO that vary substantially is to use a limited set of codes that reflect the practices reflected in the major existing

models of rules of origin. Such a compromise approach brings the number of codes down to a manageable level while providing sufficient detail on the nature and criteria used in different RoO without implying (imposing) a value judgment as regards levels of implied restrictiveness. Appendix 1 illustrates what such an approach could look like, using examples taken from different RoO regimes to inform a codification exercise especially in the case of preferential rules of origin.<sup>11</sup>

The task is considerably easier in the case of drafting a taxonomy for codifying the administrative part of rules of origin i.e. related to the documentary evidence required to demonstrate compliance with RoO. This is because the administrative dimensions of RoO mostly apply across all products – there are seldom product-specific administrative requirements. When there are, they mostly apply at broad category levels (an example is textiles and apparel in certain US PTAs). There are only a limited number of ways of administering RoO. The most used methodologies are: (i) certificate of origin on paper issued by certifying authorities with use of stamps and/or signatures; (ii) certificate or statement of origin issued by the exporter (with or without registration with certifying authorities); and (iii) a statement of origin issued by the importer.

Overreliance by some customs administrations on archaic forms of administering RoO based on documentary evidence, i.e., a certificate of origin, the exchange of seals and signatures of certifying officers, or non-manipulation certificates issued in the country of transit, has made administration of RoO into a non-tariff barrier. Shifting to a Customs-authorized exporter declaration of origin with retroactive checks and post-clearance recovery offers one model for reducing RoO-related administrative costs. The 2017 reform of EU RoO for its GSP regime provides for listing registered exporters in a database administered by national customs agencies. Registered exporters will be given a number and may issue a declaration of origin. When this self-declaration is presented at an EU port of entry, customs will consult the joint database to ascertain whether the exporter has been registered and, if so, will grant preferential tariff rates. Verification of an exporter's declaration and post-clearance recovery are part of this administrative method. This is an example of a reform in the administration of RoO that may facilitate trade. There are other options as well, such as the method employed by US Customs and Border Protection, which is based on importer declarations and disregards evidence provided by exporters or certificates of origin issued by third parties. Whatever method is used, reliance on certificates of origin and the exchange of seals and signatures should be a thing of the past.

#### **4. Concluding remarks**

The subject of RoO and especially nonpreferential RoO has been contested for decades. The nature of RoO - a technical and tedious subject – is not one that attracts the interest of trade policy officials and Ministers. Yet these same actors are prone to use RoO when convenient, to please or displease lobbies and trading partners. Business has been ambivalent on the issue of RoO. On the one hand they often complain about the complexity of RoO but on the other hand they do not push Governments to make the extra effort required to seek a multilateral solution. The focus instead has been on “easy fixes” in bilateral deals (PTAs), which are seen as more appealing and less costly. A focus on PTAs may also reflect the evolving nature of international (regional) trade – e.g., the rise in the intensity of regional value or supply chains – which has led businesses to push negotiators and governments to simplify the RoO applying to PTAs.

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<sup>11</sup> A version of this taxonomy was developed as a contribution to the Multi-Agency Support Team (MAST) established in 2006 to work on the taxonomy of NTMs. Discussions are still ongoing among the members of MAST (which comprises eight international organizations) and the approach in Appendix 1 is simply a proposal that we consider to be informative and operational but that may not be adopted by the group. This proposal includes preferential and nonpreferential RoO with the caveat that the section on nonpreferential rules requires further study to fine tune and better reflect existing practices.

The preliminary results of ongoing research outlined in this paper shows that the two large players, the EU and US, have made progress towards simplification of RoO in their PTAs. There have been some positive spillovers, as demonstrated by the high utilization rates recorded in some US and EU PTAs. The issue at stake for the trading system is how to leverage these various positive developments and to cross fertilize (multilateralize) the simplifications introduced on both sides of the Atlantic to span trade arrangements involving the rest of the world. One path to do so is to break the wall that has separated preferential and nonpreferential rules of origin. In a number of sectors like chemicals both business and the existing RoO have already built a bridge across the preferential and nonpreferential RoO divide. Discussions in the CRO and elsewhere that are aimed at greater harmonization and simplification of RoO would be facilitated by further development and use of the type of taxonomy proposed in this paper to measure convergence in PRSO. This would demonstrate to the sceptics that progress and simplification is possible and has already taken place.

Single transformation as a good rule of thumb for drafting RoO in a world characterized by global value chain-based production. Given that this type of production involves firms specializing in specific tasks or activities, RoO that entail a need for more extensive value addition or transformation will undercut the ability of countries to engage in this type of production and trade unless they are part of larger regional integration arrangements that permit cumulation for RoO purposes. This is not the case for many developing nations and the design of RoO therefore should reflect this reality. Traditional protectionist double or triple transformation requirements greatly impede participation in value chains. While it will be difficult to abolish such RoO for “sensitive sectors” – e.g., textiles and clothing for the US, certain processed agricultural products in the EU and Japan – the fact that progress on this front has proved possible in the context of implementing duty-free, quota-free market access programs for LDCs and that for many products PTAs have been moving to greater use of single transformation-based RoO criteria are positive signs. Sceptics may continue to argue that such a simple rule of thumb is unthinkable but the evidence from recent PTAs and developments in the administration of nonreciprocal preferences schemes suggests that efforts to bring together the relevant actors (firms, Customs and trade officials) can allow reforms to be agreed and implemented.

Such a process is distinct from efforts to categorize RoO as NTMs. Developing a taxonomy to codify rules of origin for NTM classification purposes is important to be able to determine the effects of RoO – i.e., as an input into empirical analysis. The aim here in our view should be simply to classify RoO regimes and approaches so as to provide a better sense of how RoO are defined and thus the degree to which they are similar or different. RoO have characteristics that distinguish them from other regulatory policies that can be characterized as NTMs such as product standards. In the case of SPS and TBT measures, compliance with a regulation is a necessary condition for being able to export (sell) a product – e.g., a TBT labelling requirement to show the quantity of sulphites in a bottle of wine. In the case of RoO the NTM-effect takes the form of a conditional tax: if the RoO is not satisfied an importer must pay the relevant MFN tariff, the applicable antidumping duty, etc. It is never the case that a product would be prohibited from entering the market as would be the case when binding quotas are in place or specific SPS or TBT measures must be met. That said, clearly different types of RoO and the specific criteria that apply will have a differential impact on the cost of production and thus the probability that an exporter will choose (or be forced) to pay the applicable MFN tariff.

The technicalities of RoO and the heterogeneity in how they are worded makes this instrument of trade policy a difficult subject for any NTM taxonomy. The approach presented in Appendix 1 for grouping and classifying RoO that is based on the main models used in PTAs may be useful as one input into a typology of RoO that in turn could be used as the basis for empirical assessments of the effects of RoO. Such an effort could also be useful in identifying where RoO have largely converged and where they differ.

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## **Appendix 1. A draft taxonomy of RoO for NTM purposes**

### **O1 Preferential ROO**

Paragraph 2 of Annex 2 of the WTO Agreement on Rules of Origin defines preferential rules of origin as follows: “*Preferential rules of origin shall be defined as those laws, regulations and administrative determinations of general application applied by any Member to determine whether goods qualify for preferential treatment under contractual or autonomous trade regimes leading to the granting of tariff preferences going beyond the application of paragraph 1 of Article I of GATT 1994.*”

Preferential rules of origin are those rules of origin generally contained in autonomous arrangements such as those called for by the Generalized System of Preferences, Everything But Arms (EBA) or the African Growth and Opportunities Act (AGOA) and reciprocal trade preferences negotiated in free trade agreements.

#### ***O11 - Origin criterion***

This criterion determines the origin of a good. A good is either originating in a country since a) it is wholly obtained in a country i.e. it does not contain any non- originating material, b) it has undergone substantial transformation in that country.

The category of wholly obtained products is often a general standard list of products, albeit with notable differences, that is contained in every set of rules of origin. Substantial transformation may be defined by a) ad valorem percentage criterion, b) change of tariff classification, and c) specific working or processing requirement.

#### **O111 - Wholly Obtained**

The origin status is conferred to a good that is entirely produced or manufactured in a country without using non-originating materials.

**Example:** live animals born and raised in a country; vegetables that have been grown and harvested in a country.

#### **O112 - Substantial transformation: ad valorem percentage criterion for value addition**

The originating status is conferred to a good that has complied with a given percentage of value added. The calculation of such value-added results from adding the cost of originating materials used in its production plus the direct cost of processing as a percentage of a given finished price of the good, normally ex-factory price.

The formula is normally made of the following components: Cost of originating materials + direct cost of processing  $\times 100 \geq$  than a given value added / appraised value (ex – factory price)

**Example:** “For an imported article to be GSP-eligible, it must be the growth, product, or manufacture of a BDC, and the sum of the cost or value of materials produced in the BDC plus the direct costs of processing must equal at least 35 percent of the appraised value of the article at the time of entry into the United States<sup>12</sup>.”

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<sup>12</sup> See US GSP Handbook 2015 available at For an imported article to be GSP-eligible, it must be the growth, product, or manufacture of a BDC, and the sum of the cost or value of materials produced in the BDC plus the direct costs of processing must equal at least 35 percent of the appraised value of the article at the time of entry into the United States.

O113 - Substantial transformation: ad valorem percentage criterion **as value of materials**

The originating status is conferred to a good that does not exceed a given amount of non-originating material out of a given finished price of the good, normally ex-works price or FOB price or achieve a minimum content of originating materials. The value of material can be calculated by subtraction.

*Example of a rule* providing not to exceed a given percentage of non-originating materials: Manufacture in which the value of all the (non-originating) material used does not exceed 70 % of the ex-works price of the product<sup>13</sup>.

*Example of a rule* providing to comply with a value of materials calculated by subtraction:

Build-down Method<sup>14</sup>: Based on the Value of Non-Originating Materials.

$$\text{RVC (X \%)} = \frac{\text{Value of the Good} - \text{VNM}}{\text{Value of the Good}} \times 100$$

*Example of rule* providing to comply with a minimum value of originating materials:

Build-up Method<sup>15</sup>: Based on the Value of Originating Materials:

$$\text{RVC (X \%)} = \frac{\text{VOM}}{\text{Value of the Good}} \times 100$$

Where:

- RVC is the regional value content of a good, expressed as a percentage;
- VNM is the value of non-originating materials, including materials of undetermined origin, used in the production of the good;
- VOM is the value of originating materials used in the production of the good in the territory of one or more of the Parties.

O114 - Substantial Transformation: change in tariff classification (CTC) with product specific rules of origin (PSRO) at HS chapter and HS heading level and exceptions at HS 4 digits

The originating status is conferred to a good that is classified in a different tariff classification of the non- originating materials used and the product specific rules of origin are set at chapter and heading level. The CTC exceptions are usually contained in an additional annex or protocol attached to the tariff preferences or the trade agreement. The CTC exceptions are expressed in the form of CTC at HS chapter level or heading level but not at subheading level (6 digits of the HS).

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<sup>13</sup> See list of product specific rules in COMMISSION REGULATION (EU) No 1063/2010 of 18 November 2010 amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code.

<sup>14</sup> Example excerpted from TPP text available at <https://ustr.gov/sites/default/files/TPP-Final-Text-Rules-of-Origin-and-Origin-Procedures.pdf>

<sup>15</sup> Example excerpted from TPP text available at <https://ustr.gov/sites/default/files/TPP-Final-Text-Rules-of-Origin-and-Origin-Procedures.pdf>

**Example of a general rule.** Working or processing operations will be considered sufficient when the resulting goods are classified under an HS tariff heading (4 digits) other than that covering each of the non-originating materials or parts used in the production<sup>16</sup>.

**Example of an exception to the general CTC rule using HS chapter exclusion:** heading 17.01 - Cane or beet sugar and chemically pure sucrose, in solid form - Manufactured from products other than those of Chapter 12 or 17<sup>17</sup>.

**Example of a product specific rules of origin (PSRO) exception to the general CTC rule using HS heading exclusion (a):** heading 72.29 - Wire of other alloy steel - Manufactured from products other than those of heading 72.27 to 72.29<sup>18</sup>.

**Example of a product specific rule of origin (PSRO) using HS heading exclusion (b):** heading 7217 - Wire of iron or non-alloy steel - Manufacture from semi-finished materials of heading 7207<sup>19</sup>.

**O115 - Substantial Transformation: change in tariff classification: with product specific rules of origin (PSRO) at HS heading level and subheading level with single or multiple exceptions of CTC, including Change of tariff subheading at six digit level**

The originating status is conferred to a good that is classified in a different tariff classification of the non-originating materials used and the product specific rules of origin may be set at chapter level, heading level or subheading level<sup>20</sup>. The CTC exceptions are expressed at HS chapter level (HS 2 digits), heading level (HS 4 digits), at subheading level (6 digits of the HS) or a combination thereof.

**Example of a product specific rule of origin (PSRO) set at tariff item level using exception at chapter level.** A change to tariff items 1901.20.02, 1901.20.05, 1901.20.15, 1901.20.20, 1901.20.25, 1901.20.30, 1901.20.35 or 1901.20.40 from any other chapter, except from chapter 4<sup>21</sup>.

**Example of a product specific rule of origin set at tariff item level using exceptions at heading levels.** A change to tariff items 2106.90.12, 2106.90.15 or 2106.90.18 from any other tariff item, except from headings 2203 through 2209<sup>22</sup>.

**Example of a product specific rule of origin set at subheading level using exceptions at heading levels.** 2008.11 A change to a good of subheading 2008.11 from any other chapter, except from heading 12.02<sup>23</sup>.

**Example of a product specific rule of origin set at subheading level using multiple exceptions at heading level.** 6110.12 to 6110.19: A change to a good of subheading 6110.12 through 6110.19 from any other chapter, except from heading 51.06 through

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<sup>16</sup> See Japan GSP scheme general rule at <http://www.mofa.go.jp/policy/economy/gsp/explain.html#section8>

<sup>17</sup> See List of product specific rules of origin in the GSP scheme of Japan at <http://www.mofa.go.jp/files/000077857.pdf>

<sup>18</sup> See List of product specific rules of origin in the GSP scheme of Japan at <http://www.mofa.go.jp/files/000077857.pdf>

<sup>19</sup> See EU list of product specific rules of origin of EBA at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:307:0001:0081:EN:PDF>

<sup>20</sup> In the case of NAFTA it may be set at tariff items level) 8 Digits.

<sup>21</sup> See NAFTA list of products specific rules of origin at <https://hts.usitc.gov/currentfile>

<sup>22</sup> See NAFTA list of products specific rules of origin at <https://hts.usitc.gov/currentfile>

<sup>23</sup> See TPP product specific rules of origin at <https://ustr.gov/sites/default/files/TPP-Final-Text-Annex-3-A-Product-Specific-Rules.pdf>

51.13, 52.04 through 52.12 or 54.01 through 54.02, subheading 5403.33 through 5403.39 or 5403.42 through 5403.49, or heading 54.04 through 54.08, 55.08 through 55.16, 56.06 or 60.01 through 60.06, provided the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties<sup>24</sup>.

*Example of a product specific rule of origin set at heading level using exceptions at heading levels and chapter level.* Heading 38.25 A change to heading 38.25 from any other chapter, except from Chapters 28 through 37, 40, or 90<sup>25</sup>.

*Example of a product specific rules of origin set at subheading level using exceptions at subheading level.* 2008.99 - Other - Change of HS chapter except from subheading 0810.90 and 0812.90, or taro of subheading 0714.90<sup>26</sup>.

#### O116 - Substantial Transformation: **working of processing requirement**

The originating status is conferred to a good that has undergone a specific working or processing requirement.

*Example.* Articles of apparel and clothing accessories, not knitted or crocheted: Manufacture from fabric<sup>27</sup>.

#### O117 - **Alternative requirements**

The originating status may be conferred to a good that has fulfilled one of two alternative requirements.

*Example (a).* Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles; except for: Manufacture from materials of any heading, except that of the product or Manufacture in which the value of all the materials used does not exceed 70 % of the ex-works price of the product<sup>28</sup>.

*Example (b).* 8411.22 Turbo-propellers: of a power exceeding 1,100 kW: Regional Value content of (40) or CTS, except from subheadings 8411.11 through 8411.82.

### **O12 – Cumulation**

#### O121 - **Bilateral**

This cumulation is granted as donor country content rules in the context of the GSP and is also common in bilateral FTAs.

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<sup>24</sup> See TPP product specific rules of origin at <https://ustr.gov/sites/default/files/TPP-Final-Text-Annex-3-A-Product-Specific-Rules.pdf>

<sup>25</sup> See product specific rules of origin for US-Korea at [https://ustr.gov/sites/default/files/Annex\\_6-A\\_SPECIFIC\\_RULES\\_OF\\_ORIGIN.pdf](https://ustr.gov/sites/default/files/Annex_6-A_SPECIFIC_RULES_OF_ORIGIN.pdf)

<sup>26</sup> See text of ASEAN –Japan EPA product specific rules of origin at <http://www.mofa.go.jp/policy/economy/fta/asean/annex2.pdf>

<sup>27</sup> COMMISSION REGULATION (EU) No 1063/2010 of 18 November 2010 amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code.

<sup>28</sup> COMMISSION REGULATION (EU) No 1063/2010 of 18 November 2010 amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs.

**Example.** In addition, a total of up to 15% of the 35% local content value (as appraised at the US port of entry) may consist of US-originating parts and materials. This concept is called “bilateral cumulation of origin”<sup>29</sup>.

#### **O122 - Diagonal**

This cumulation is usually granted on a regional basis under autonomous preferential arrangements like the GSP or in the context of the FTAs. It allows to consider originating material the materials that are already originating in other member states of the regional grouping.

**Example.** “Originating in a country of one regional group shall be considered as materials originating in a country of the other regional group when incorporated in a product obtained there, provided that the working or processing carried out in the latter beneficiary country goes beyond the operations described in Article 78(1) and, in the case of textile products, also beyond the operations set out in Annex 16.”<sup>30</sup>

#### **O1123 - Full**

This cumulation is usually granted in the context of the FTAs. It allows to consider working and processing carried out in the other partner(s) as being carried out in the country where the last transformation takes place.

**Example.** “Working or processing carried out in the EU, in the other EAC Partner States, in the other ACP States or in the OCTs shall be considered as having been carried out in an EAC Partner State when the products produced undergo subsequent working or processing in this EAC Partner State”<sup>31</sup>.

#### **O1124 - n.e.s**

This cumulation is provided for in some EU FTAs agreement and in the EBA as well as in Canada-Peru FTAs Agreement usually defined as cross- cumulation. It allows to cumulate among different kind of agreements or preferential arrangements.

**Example. Extended cumulation.** At the request of any beneficiary country’s authorities, extended cumulation between a beneficiary country and a country with which the European Union has a free-trade agreement in accordance with Article XXIV of the General Agreement on Tariffs and Trade (GATT) in force, may be granted by the Commission, provided that each of the following conditions is met: (a) the countries involved in the cumulation have undertaken to comply or ensure compliance with this Section and to provide the administrative cooperation necessary to ensure the correct implementation of this Section both with regard to the European Union and also between themselves. (b) the undertaking referred to in point (a) has been notified to the Commission by the beneficiary country concerned.<sup>32</sup>

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<sup>29</sup> <https://agoa.info/about-agoa/rules-of-origin.html>

<sup>30</sup> See EU regulation COMMISSION REGULATION (EU) No 1063/2010 of 18 November 2010 amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code.

<sup>31</sup> See Paragraph 3 of article 4 of Protocol 1 of the EU –EAC Economic Partnership Agreement available at [http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc\\_153845.compressed.pdf](http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153845.compressed.pdf)

<sup>32</sup> See paragraph 7 of article 86 of see EU regulation COMMISSION REGULATION (EU) No 1063/2010 of 18 November 2010 amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code.

### **O13 - Proof of origin**

A proof of origin is a document or statement which serves as a documentary evidence of the originating status of the goods to which it relates. Proofs of origin include certificates of origin issued by certifying authorities, a self-declaration of origin by exporters, or a declaration of origin made by the importer.

#### **O131 A certificate of origin issued by a certifying authority**

A document where a government authority or body empowered to issue proofs of origin expressly certifies that the good is considered originating according to the applicable rules of origin.

*Example.* RULE 1. The Certificate of Origin shall be issued by the Government authorities of the exporting Party. RULE 2 (a) The Party shall inform all the other Parties of the names and addresses of their respective Government authorities issuing the Certificate of Origin and shall provide specimen signatures and specimen of official seals used by their said Government authorities. (b) The above information and specimens shall be provided to every Party to the Agreement and a copy furnished to the ASEAN Secretariat. Any change in names, addresses, or official seals shall be promptly informed in the same manner<sup>33</sup>.

#### **O132 - A certificate of origin issued by exporter**

A document where the exporter certifies that the good is considered originating according to the applicable rules of origin either by delegated authority or by registration.

*Example.* The Registered Exporter system (the REX system) is the system of certification of origin of goods that will be applied in the Generalised System of Preference (GSP) of the European Union as from 1 January 2017. It is based on a principle of self-certification by economic operators who will make out themselves so-called statements on origin. To be entitled to make out a statement on origin, an economic operator will have to be registered in a database by his competent authorities. The economic operator will become a "registered exporter"<sup>34</sup>.

#### **O133 - Importer declaration**

A document where the importer expressly certifies that the good is considered originating according to the applicable rules of origin.

*Example.* Whenever articles are entered with a claim for the duty exemption provided in this paragraph-- (1) the importer shall be deemed to certify that such articles meet all of the conditions for duty exemption<sup>35</sup>.

### **O14 - Proof of direct shipment**

A proof of direct shipment is required.

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<sup>33</sup> See ASEAN China FTA at <http://www.asean.org/wp-content/uploads/images/2013/economic/afta/ACFTA/3-%20ACFTA%20TIG%20Annex%203.pdf>

<sup>34</sup> See [https://ec.europa.eu/taxation\\_customs/business/calculation-customs-duties/rules-origin/general-aspects-preferential-origin/arrangements-list/generalised-system-preferences/the\\_register\\_exporter\\_system\\_en](https://ec.europa.eu/taxation_customs/business/calculation-customs-duties/rules-origin/general-aspects-preferential-origin/arrangements-list/generalised-system-preferences/the_register_exporter_system_en)

<sup>35</sup> See general notes to the US Harmonized tariff schedule at [file:///Users/stefanoinama/Downloads/General%20Notes%20\(4\).pdf](file:///Users/stefanoinama/Downloads/General%20Notes%20(4).pdf)

**Example.** The goods must be shipped directly on a TBL to a consignee in Canada from the beneficiary or LDC in which the goods were certified. Evidence in the form of a TBL (or a copy) showing that the goods have been shipped directly to a consignee in Canada must be presented to the CBSA upon request. An importer may be requested to submit further documentation to substantiate the TBL, such as sales order, report of entry documents, and cargo control documents<sup>36</sup>.

## **O2 Non-preferential ROO<sup>37</sup>**

Article 1 of part 1 of the WTO agreement on Rules of Origin defines non – preferential rules of origin as follows “*For the purposes of Parts I to IV of this Agreement, 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 provided such rules of origin are not related to contractual or autonomous trade regimes leading to the granting of tariff preferences going beyond the application of paragraph 1 of Article I of GATT 1994.*”

Non-preferential RoO are normally used to apply MFN rates of duty and other WTO agreements. Non-preferential rules are distinct from preferential RoO since compliance does not provide for preferential tariffs.

### **O21 - Origin criterion**

#### **O211 - Wholly Obtained**

The origin status is conferred to a good that is entirely produced or manufactured in a country without using non-originating materials.

**Example.** Live animals born and raised in one country; vegetables that have been grown and harvested in one country.

#### **O212 Substantial transformation: ad valorem percentage criterion as value addition**

The originating status is conferred to a good that has complied with a given percentage of value added. The calculation of such value-added results from adding the cost of originating materials used in its production plus the direct cost of processing as a percentage of a given finished price of the good, normally ex-factory price.

**Example.** 84.40 - Book-binding machinery, including book sewing machines - CTH; or 45% value added rule<sup>38</sup>.

#### **O213 - Substantial transformation: ad valorem percentage criterion as value of materials**

The originating status is conferred to a good that does not exceed a given amount of nonoriginating material out of a given finished price of the good, normally ex-works price or FOB price or achieve a minimum content of originating materials. The value of material can be calculated by subtraction.

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<sup>36</sup> See Canadian rules at <http://www.cbsa-asfc.gc.ca/publications/dm-md/d11/d11-4-4-eng.html>

<sup>37</sup> This part of the taxonomy on nonpreferential RoO requires further study and validation.

<sup>38</sup> See EU common customs code at:  
[http://ec.europa.eu/taxation\\_customs/sites/taxation/files/resources/documents/roo\\_chap\\_84-85\\_en.pdf](http://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/roo_chap_84-85_en.pdf).

**O214 - Substantial Transformation: change in tariff classification: without exception**

The originating status is conferred to a good that is classified in a different tariff classification of the non-originating materials used and the product specific rules of origin are set at chapter and heading level. The CTC exceptions are usually contained in an additional annex or protocol attached to the tariff preferences or the trade agreement. The CTC exceptions are expressed in the form of CTC at HS chapter level or heading level but not at subheading level (6 digits of the HS).

**O215 - Substantial Transformation: change in tariff classification: with exception**

The originating status is conferred to a good that is classified in a different tariff classification of the non-originating materials used and the product specific rules of origin may be set at chapter level, heading level or subheading level. The CTC exceptions are expressed at HS chapter level (HS 2 digits), heading level (HS 4 digits), at subheading level (6 digits of the HS) or a combination thereof.

**O216 - Substantial Transformation: technical requirement**

*Example.* Certain apparel exports receive originating status in the country where they are both cut and sewn.

**O217 - Alternative requirements** (in the explanatory text: this refers to "or")

A good's origin can be determined by using one of two or more criteria available to prove a substantial transformation.

**O22 - Proof of origin**

A proof of origin is a document or statement which serves as a prima facie evidence to support that the goods to which it relates satisfy the origin criteria under applicable rules of origin. Proofs of origin include certificates of origin, a self-issued certificate of origin, or a declaration of origin.

*Example.*

O221- issued by authority

A document where a government authority or body empowered to issue proofs of origin expressly certifies that the good is considered originating according to the applicable rules of origin.

*Example.*

O222 - issued by exporter

A document where the exporter expressly certifies that the good is considered originating according to the applicable rules of origin.

*Example.*

O223 - self- declaration

O224 - importer declaration

A document where the importer expressly certifies that the good is considered originating according to the applicable rules of origin.

*Example.*

O229 - Proof of origin: n.e.s.

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