



Session 2: CARTIF Priority Chapters – Trade in Goods

Drafting of rules of origin protocol in FTA : Evidence from experience and lessons learned

Stefano Inama
Chief, Technical Assistance, Trade and Customs in the Division on African and Least Developed Countries (LDCs)
UNCTAD Geneva, Switzerland

Trade Policy Objectives of Rules of Origin in FTAs

- To avoid deflection of trade and tariff circumvention.
- To make sure that regional inputs are preferred over third country inputs ?
- To offset tariff concessions?

Basic tenets in drafting RoO in FTAs

- RoO can insulate an industry from the FTA: Ex US textiles industries in NAFTA/USMCA with a RoO requiring yarn- forward rules in order to qualify for NAFTA/USMCA treatment weaving has to be carried out in NAFTA/USMCA
- The Drafting of RoO matters :CTH,CTSH, Value added, Net cost methods-product specific rules
- Responses to RoO differs in terms of investment and trade flows : Business respond and relocate according to changes in RoO

Technical Drafting of RoO in FTAs: Do we have a Golden Model?

- Absence of Multilateral rules
- Very few analytical studies on drafting RoO
- Existence of models:
 - NAFTA/USMCA inspired rules and evolution
 - Pan-Euro RoO and evolution
 - EU reform
 - UK reform
- Absence of models in South-South FTAs
- Different practices in administering origin
- Emergence of Mega-regionals: AfCFTA, CP-TPP, and RCEP

Issues to Address and Lessons Learned

- There is not a model of RoO for FTAs.
- Despite a few studies there is no evidence on the best method for origin determination, the best level of percentage and the best practices for certification.
- There are several lessons learned...
 - Low utilization of FTA or PTAs.
 - Changes in the way RoO are drafted since administrations found that some RoO are easier to administer than others.
 - Need to adapt RoO to fragmentation of production vs vertical industrial vision.
 - There are countries and regions that are learning more and those who are learning less.

Basic content of a protocol on RoO in FTA

1) Main protocol to determine main provisions concerning

I) substantial transformation,

II) cumulation

III) Administrative provisions, COs.

2) Annex of product specific rules of origin

I) How many product specific rules of origin ?

II) what kind of technical drafting

Technical Methods to Draft RoO

- Kyoto conventions divide products in two categories
 - Wholly obtained products defined in a “standard” list
 - Products with non-originating inputs: Substantial transformation
- Defining the indefinable: How to determine substantial transformation?

Defining Substantial Transformation: The menu 1.0

- **Percentage criteria based on:**
 - Value added,
 - Max import content,
 - Value of materials based on ex-works, FOB price
 - Regional Value Content (RVC)
- **Change of tariff classification:**
 - CTH, CTH with exceptions,
 - Tariff shift at CTSH with exceptions and regional value content
- **Specific working or processing:**
 - Manufacture from...

Parameters for Designing an FTA Model RoO

- **The form of RoO** - Index of technical soundness:
 - RoO should be technically sound, producing the same outcome, transparent, easy to administer and to comply with
- **The substance of RoO** - Index of restrictiveness:
 - RoO should reflect actual manufacturing capacity in the partner countries ensuring sourcing from most efficient suppliers

Addressing the “Form” of RoO: Trends and Techniques

- The form of a RoO refers to the technical drafting of the RoO independently from the content of the RoO i.e., the stringency
 - **Trend 1:** Move to Product Specific RoO (PSROs) versus across the board. But how specific should they be ?
 - **Trend 2:** Move away from value added calculation by addition
 - **Trend 3:** FTAs increasingly adopt a CTC-North American style approach in drafting PSROs.
 - **Trend 4:** Cumulation may not be a panacea.
 - **Trend 5:** Move away from paper based-certifying authorities-based administration to self-declaration of origin and be aware that Digital solutions may be complicated

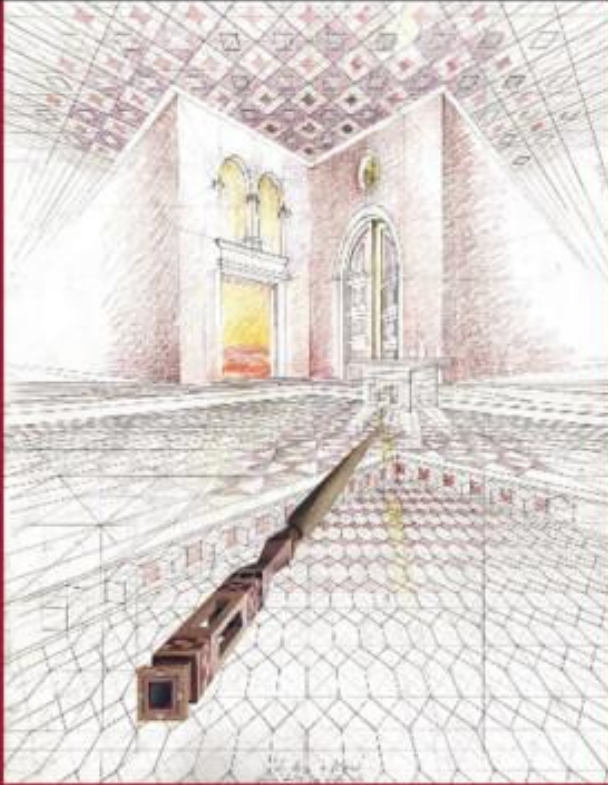
Addressing the “substance” of RoO: Trends and techniques

- The **substance** of a RoO refers to the content of a RoO : what a manufacturer needs to carry on non originating inputs to acquire origin independently from the form of a RoO **i.e., the form**
 - **Trend 1:** Difficult to detect trends as this is linked to import sensitivities of partners. Overall, focus on sectors where you need protection rather than overall protectionist attitude
 - **Trend 2:** Difference in North-North FTAs from South-South FTAs: South South FTAs are by far most protectionist as stringent RoO are” expected to create industries and favour regional integration”
 - **Trend 3:** Developing techniques to measures FTAs. As many countries are entering FTAs, there is need to monitor their utilization
 - **Trend 4:** How to Draft substance of PSRO? Use I/O output model

Drafting RoO: Factors to be Considered...

- Set a negotiating proposal on the basis of a text
- Limit RoO negotiations on a tariff line basis
- Introduce liberal RoO by adopting a modern formulation of a percentage rule based on value of materials
- Do not overrate cumulation
- Focus on the administrative aspects of RoO
- Provide for data exchange on URs

Rules of Origin in International Trade



Stefano Inama

Resources

- [Rules of origin in International Trade \(2022\)](#)
Stefano Inama, Cambridge University Press.
- [The Utilization of Trade Preferences by COMESA Member States: Intra-regional Trade and North-South Trade \(2023\)](#)
- [Getting to better rules of origin for LDCs using utilization rates - from the WTO Ministerial decision in Hong Kong \(2005\) to Bali \(2013\), Nairobi \(2015\) and beyond, Geneva.](#)
- [Compendium of technical notes prepared for the LDC WTO group on preferential rules of origin \(2020\). UNCTAD/ALDC/2020/6](#)

Additional Resources I

- **Crivelli, P. and S. Inama. 2021.** “Improving market for LDCs: The impact of the EU Reform of Rules of Origin on Utilization Rates and Trade Flows under the Everything But Arms Initiative (EBA)”, *UN LDC5 Conference paper*
https://www.un.org/ldc5/sites/www.un.org.ldc5/files/t6_inama_eu_reform_2021_16_helsinki_final_20210816_clean.pdf
- **Crivelli, P., Inama, S., and J. Kasteng. 2021.** “Using utilization rates to identify rules of origin reforms: the case of EU free trade area agreements”, *EUI RSC*, 2021/21, Global Governance Programme-437 <https://cadmus.eui.eu/handle/1814/70396>
- **Ghetti, PP. and S. Inama, 2020.** The Real Cost of Rules of Origin: A Business Perspective to Discipline Rules of Origin in a Post COVID-19 Scenario, *Global Trade and Customs Journal*, Vol. 15, Issue 10, pp. 479-486, <https://doi.org/10.54648/gtcj2020086>

Additional Resources II

- **UNCTAD website of utilization rates** of trade preferences granted by QUAD countries available at: <https://gsp.unctad.org/>
- **UNCTAD website** of Integrated trade statistics, tariff offers and rules of origin under the African Continental Free Trade Area available at: <https://afcfta.unctad.org/>
- **UNCTAD-EUI platform of experts**, researchers, practitioners, government officials and the private sector to discuss developments in the area of RoO and URs on an annual basis (June 2019, February 2020, October 2021)
 - Rules of Origin | Interview Series: <https://globalgovernanceprogramme.eui.eu/rules-of-origin-interview-series/>
 - Trade Facilitation and Rules of Origin: <https://globalgovernanceprogramme.eui.eu/trade-facilitation-and-rules-of-origin/>

Additional Resources III

- Ongoing cooperation with researchers from the Asian Development Bank on studying Rules of Origin and URs in the Asian region and especially mega-regionals (CPTPP and RCEP).
 - Crivelli, P. and S. Inama. 2021. Making RCEP Successful Through Business-friendly Rules of Origin. Asian Development Blog. <https://blogs.adb.org/blog/making-rcep-successful-through-business-friendly-rules-origin>.
 - Inama, S., P. Crivelli, and P.M. Ha, 2022. The Low Use by Firms of ASEAN Trade Preferences: Will RCEP Follow the Same Destiny? An Agenda for Rescue to Reform Rules of Origin in the Asian and Pacific Region. Global Trade and Customs Journal, 17(6). <https://doi.org/10.54648/gtcj2022033>
 - Crivelli, P., S. Inama, and M. Pearson. 2022. An Analysis of the Product-Specific Rules of Origin of the Regional Comprehensive Economic Partnership. Manila: Asian Development Bank <https://dx.doi.org/10.22617/TCS220167-2>

Thank you!