

# **Rules of Origin as Non Tariff Measures**

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# Topics of discussion

- **Concepts of RoO**
- **Non-preferential RoO in WTO**
- **Preferential Rules of Origin in PTAs**
- **RoOs as barriers to trade**

# Rules of Origin

- Rules of origin are criteria used to determine the “nationality” of a product i.e. where the product was ‘made’.
- A product’s raw materials or components might come from a number of countries, but customs officials must determine the product’s origin to decide how to treat it, including what tariff to charge or apply any NTMs, if applicable, as the product enters their jurisdiction.
- Issue of origin is also important in determining the anti-dumping or safeguard duties, regulate quotas and capturing trade statistics.
- Since the preferential treatment provided for in a DFQF/GSP/PTA/FTA is normally granted only to products originating from the members or beneficiaries, rules of origin are therefore an important part of these arrangements.

# Types and Objectives

## TYPES

- Non-preferential RoO in WTO
- Preferential Rules of Origin in PTA/FTA

## OBJECTIVES?

- Promote or facilitate trade?
- Restrict trade?
- Restrict trade deflection?

**By definition RoO is an NTM**

# **Non Preferential Rules of Origin**

# WTO – non preferential

- In 1981 GATT Secretariat prepared a note on RoO and in November 1982 Ministers agreed to study the RoO used by GATT Parties.
- Due to increased number of RTAs, increase in disputes relating to origin and increased use of anti-dumping measures an Agreement on RoO was reached during the Uruguay round negotiations.
- The Agreement on Rules of Origin aims at Harmonisation of non-preferential RoO.
- Defines: *“Rules of Origin are laws, regulations and administrative determination of general application to determine the country of origin of goods (that is, where made, grown, etc.).”* [Article 1.1]

# Agreement on NPROO

- Harmonisation Work Programme – 3 years.
- Ensure that rules are transparent.
- Do not have restricting, distorting or disruptive effects on international trade.
- Administered in a constant, uniform, impartial and reasonable manner.
- Based on positive standard (should state what *does constitute origin rather than what does not*).

# Application

- **ARO prescribes that RoO are to be used for various non-preferential commercial policy instruments. Illustrative examples are:**
  - **Extending MFN treatment under various GATT Articles (I, II, III, XI, XIII, XIX etc.).**
  - **Anti-dumping and countervailing duties.**
  - **Safeguard measures.**
  - **Origin marking requirements.**
  - **Application of QRs or TRQs.**
  - **Government procurement.**
  - **Trade statistics.**



# **Preferential Rules of Origin**

# Preferential Rules of Origin

- ▶ **Checking trade deflection/circumvention of third country goods.**
- ▶ **Facilitate value addition in the exporting country.**
- ▶ **Augmenting intra-regional trade and investment only if there is a cumulation provision.**
- ▶ **Should not be used to impede the trade and therefore should not be too stringent. However, it should not be too liberal so that it can create trade deflection. Therefore, a balance needs to be established.**
- ▶ **Simpler - if origin not determined from RTA partner; products are still allowed for imports on payment of applied MFN duty.**

# Product Classification

- Wholly obtained
- Not wholly obtained or produced (NWOP).
- Cumulation

**Origin criteria is defines in terms of:**

- General Rules
- Sectoral Rules
- Product Specific Rules

# Criteria

- **Components:**
  - ✓ **Wholly obtained or produced**
  - ✓ **Substantial transformation clause for not wholly obtained or produced:**
    - **CTC - CC, CTH, CTSH.**
    - **Valued added criteria.**
    - **Specific Tests**
  - ✓ **Minimal operations or processes that do not confer origin (examples: packaging, preservation operations).**
- **CERTIFICATE OF ORIGIN**
- **COST OF ISSUANCE**
- **CIRCUMVENTION – ENFORCEMENT**

**Complying with them entails costs.**

# Criteria for CTC

- **CC-Change of Chapter ( 2 digit)**
- **CTH- Change of Tariff Heading (4 digit)**
- **CTSH- Change of Tariff Sub-heading (6 digit)**

# CHANGE OF TARIFF HEADING

- How does it work ?
  - ✓ A product is considered to be **sufficiently worked on or processed** when the product obtained is classified in a **4-digit heading** of the HS Nomenclature which is **different** from those in which all the **non-originating materials** used in its manufacture are classified.

# ILLUSTRATION



**The calculation of value addition is done in the following manner:-**

$$\frac{\text{FoB value of exports} - \text{Value of non-originating inputs}}{\text{FoB value of exports}} \times 100 \% = X\%$$

**Value added = X%.**

**Non-originating = Values of imported imports + undetermined origin inputs**

**Calculation can be done by both Direct or Indirect method.**

**Local profits, transportation, handling charges etc. are included in the value addition.**



# **Rules of origin criteria in different RTAs of Asia Pacific**

| <b>RTA</b>           | <b>Type</b>     | <b>Qualifying Criteria</b>   |
|----------------------|-----------------|--|
| <b>ATIGA</b>         | <b>Regional</b> | <ul style="list-style-type: none"> <li>- Value content needs to be at least <b>40 percent</b></li> <li>- <b>Rules for Textiles – co-equal</b></li> </ul>   |
| <b>ANZCERTA</b>      | <b>Regional</b> | <ul style="list-style-type: none"> <li>- Value content needs to be at least <b>50 per cent</b></li> </ul>  |
| <b>APTA</b>          | <b>Regional</b> | <ul style="list-style-type: none"> <li>- Value content needs to be at least <b>45 percent (35 percent for LDCs)</b></li> </ul>   |
| <b>China - ASEAN</b> | <b>Regional</b> | <ul style="list-style-type: none"> <li>- Value content needs to be at least <b>40%</b></li> <li>- <b>CTH</b></li> </ul>  |
| <b>SAFTA</b>         | <b>Regional</b> | <ul style="list-style-type: none"> <li>- <b>Change in Tariff Heading (CTH)</b></li> <li>- Value content needs to be at least <b>40 per cent (for India &amp; Pakistan ), 35 percent for Sri Lanka and 30 percent for LDCs</b></li> </ul> |

|  |                  |   |
|--|------------------|---|
| <b>Singapore – Australia</b>             | <b>Bilateral</b> | - Value content needs to be at least <b>50 percent</b><br>(Product specific rule: <b>30 percent</b> ) |
| <b>Singapore - New Zealand (ANZSCEP)</b> | <b>Bilateral</b> | - Value content needs to be at least <b>40 percent</b>  |
| <b>ASEAN – Japan</b>                     | <b>Regional</b>  | - <b>CTH</b> or<br>- <b>40 percent regional value added content</b><br>- <b>PSRs</b>                  |
| <b>Republic of Korea - India</b>         | <b>Bilateral</b> | - <b>CTSH</b><br>- <b>35 percent value added content</b><br>- <b>PSRs allowed as derogation</b>       |
| <b>TPP</b>                               | <b>Regional</b>  | - <b>PSR</b>  |
| <b>RCEP</b>                              | <b>Regional</b>  | - <b>PSR (under negotiation)</b>  |

# Cumulation

## Bilateral cumulation

Bilateral cumulation is the most basic form of cumulation as it operates between two parties and allows producers in either partner country to use materials and components originating in the other's country as if they originated in their own country.

## Diagonal cumulation

Diagonal cumulation operates between more than two countries and allows producers to use materials and components *originating* in either country that is part of the agreement. In one form this is an extension of bilateral cumulation by extending it to the regional level.

# Cumulation 2

## Partial cumulation

Partial cumulation is the most common form of cumulation under which an input originating in one member of PTA will be considered as originating input in other member country(ies) of PTA. In such a case the full value of the input/material is taken as originating and not the actual value content of processing in the PTA partner. On the other hand if the input is not originating the value added in one country is totally disregarded as it does not meet the origin criteria.

## Full cumulation

Full cumulation takes into account all of the operations conducted within the countries who are members to PTA - even if they are carried out on non – originating material. Thus, there is no more restriction to only use originating materials and components for the final good. This concept allows more fragmentation of the production process among members of a trade agreement and increases economic linkages and trade in PTAs.

**The box illustrates the case of ASEAN FTA.**

**A manufacturer in Lao produces transmission line for motor vehicles. He plans to export the transmission line to ASEAN market and uses the inputs which are sourced from Indonesia (another member of ASEAN and from outside ASEAN). The process of manufacturing by using different inputs are as follows:**

| <b>Description of Materials/Others</b> |                      | <b>Origin</b>    | <b>Origin Status</b> | <b>Value (US\$)</b> |
|--|----------------------|------------------|----------------------|---------------------|
| <b>a.</b>                              | Part A               | <b>Lao</b>       | Originating          | 1500                |
| <b>b.</b>                              | Part B               | <b>Indonesia</b> | Originating          | 1500                |
| <b>c.</b>                              | <b>Part C</b>        | China            | Non-originating      | <b>2000</b>         |
| <b>d.</b>                              | Other costs + profit | Lao              | Originating          | 500                 |
| <b>F.O.B Price (a + b + c + d )</b>    |                      |                  |                      | 5,500               |

**The ASEAN FTA rules of origin prescribes for a regional value content (RVC) at least 40%. Part B which is produced in Indonesia is considered to be originating in Lao due to the cumulation rules. In this case, due to cumulation, the transmission line will be considered as originating due to the following calculation:  $RVC = [(5500 - 2000)/5500] \times 100 = 63.6\%$  and thus it will get preference in ASEAN market.**

**However, if the cumulation was not allowed in ASEAN rules of origin, the calculations would have been:  $RVC = [(5500 - 3500)/5500] \times 100 = 36.3\%$  and therefore will not get preference when exported from Lao.**

# Cumulation

| Agreements                 | Type      | Criteria                                       | Cumulation |
|----------------------------|-----------|--|------------|
| AFTA, China – ASEAN, SAPTA | Regional  | RVA  | Full       |
| APTA                       | Regional  | RVA  | Full       |
| SAFTA                      | Regional  | 50% RVA with at least 20% in exporting country | Diagonal   |
| India – Sri Lanka FTA      | Bilateral | CTH + 35% with at least 25% in exporting party | Bilateral  |
| Singapore - Australia      | Bilateral | BVA  | Bilateral  |
| Singapore - USA            | Bilateral | CTC, BVA, PSRs - mixed                         | Bilateral  |
| Singapore - India          | Bilateral | CTH + BVA                                      | Bilateral  |
| Australia - USA            | Bilateral | CTC, PSRs, BVA - mixed                         | Bilateral  |

## Cumulation cases

- **SAFTA: 50% RVA with at least 20% in exporting country**
- **India - Sri Lanka FTA: 35% BVA with at least 25% in exporting country**
- **ASEAN: 40% total RVC, no VA obligation on exporting country.**
- **EU GSP: Regional cumulation between countries within the same group applies**
- **DFQF: No cumulation allowed among the LDCs**



# **Product Specific Rules**

# Japan - ASEAN

| Tariff item number   | Description of goods  | Product specific rules           |
|--|---|----------------------------------|
| <b>Section I - Live animals; animal products (chapter 1-5)</b> |   |                                  |
| <b>Chapter 1</b>   | <b>Live animals</b>   | <b>CC</b>                        |
| <b>Chapter 2</b>   | <b>Meat and edible meat offal</b>   | <b>CC, except from chapter 1</b> |
| <b>Chapter 3</b>   | <b>Fish and crustaceans, molluscs and other Aquatic Invertebrates</b>   | <b>CC</b>                        |
| <b>Chapter 4</b>   | <b>Dairy produce; birds' eggs; natural honey; edible products of animal origin, not elsewhere specified or included</b> |                                  |
| <b>Chapter 5</b>   | <b>Products of animal origin, not elsewhere specified or included</b>   | <b>CC</b>                        |

# Japan - ASEAN

## Chapter 9 Coffee, tea, maté and spices

**09.01 Coffee, whether or not roasted or decaffeinated; coffee husks and skins; coffee substitutes containing coffee in any proportion.**

### - Coffee, not roasted:

|                |                             |           |
|----------------|-----------------------------|-----------|
| <b>0901.11</b> | <b>-- Not decaffeinated</b> | <b>CC</b> |
|----------------|-----------------------------|-----------|

|                |                          |           |
|----------------|--------------------------|-----------|
| <b>0901.12</b> | <b>-- Decaffeinated:</b> | <b>CC</b> |
|----------------|--------------------------|-----------|

### -Coffee, roasted:

|                |                             |                |
|----------------|-----------------------------|----------------|
| <b>0901.21</b> | <b>-- Not decaffeinated</b> | <b>RVC 40%</b> |
|----------------|-----------------------------|----------------|

|                |                         |                |
|----------------|-------------------------|----------------|
| <b>0901.22</b> | <b>-- Decaffeinated</b> | <b>RVC 40%</b> |
|----------------|-------------------------|----------------|

|                |                |           |
|----------------|----------------|-----------|
| <b>0901.90</b> | <b>- Other</b> | <b>CC</b> |
|----------------|----------------|-----------|

# Singapore USA FTA RoO

## 1806

### Chocolate and other food preparations containing cocoa.

- 180610 - Cocoa powder, containing added sugar or other sweetening matter.
- 180620 - Other preparations in blocks, slabs or bars weighing more than 2 kg or in liquid, paste, powder, granular or other bulk form in containers or immediate packings, of a content exceeding 2 kg
- 180631 - Other, in blocks, slabs or bars, filled
- 180632 - Other, in blocks, slabs or bars, not filled
- 180690 - Other

Change to subheading 180610 from any other heading, provided that such products of 180610 containing 90percent or more by dry weight of sugar do not contain non-originating sugar of chapter 17 and that products of 180610 containing less than 90percent by dry weight of sugar do not contain more than 35percent of non-originating sugar of Chapter 17 nor more than 35percent by weight of non-originating cocoa powder of heading 1805.

Change to subheading 180620 from any other heading.

Change to subheading 180631 from any other subheading.

Change to subheading 180632 from any other heading.

Change to subheading 180690 from any other subheading.

# **RoO as barriers to trade**

# Japan - ASEAN

**Chapter 16      Preparations of meat, of fish or of crustaceans, molluscs or other aquatic invertebrates**

**1610.00            Sausages and similar products, of meat, meat offal or blood; food preparations based on these products.**

**CC except from chapter 1 or 2.**

**16.04    Prepared or preserved fish; caviar and caviar substitutes prepared from fish eggs.**

**- Fish, whole or in pieces, but not minced:**

**1604.11            -- Salmon            CC except from chapter 3.**

**1604.12            -- Herrings            CC except from chapter 3.**

# Singapore USA FTA RoO

- Annex 3 A – PSR**

| Tariff item<br>(HS96) | Description of products   | Specific Rule  |
|-----------------------|---|--|
| CHAPTER 1             | (e) LIVE ANIMALS  |  |
| 0101                  | Live horses, asses, mules and hinnies.  | Change to heading 0101 from any other chapter.                             |
| 0102                  | Live bovine animals.  | Change to heading 0102 from any other chapter.                             |
| 0103                  | Live swine.   | Change to heading 0103 from any other chapter.                             |
| 0104                  | Live sheep and goats.   | Change to heading 0104 from any other chapter.                             |
| 1511                  | .....<br>Palm oil and its fractions,<br>whether or not refined, but not<br>chemically modified.                                   | Change to heading 1511 from any other chapter<br>except from heading 3823. |
| 1512                  | Sunflower-seed, safflower or<br>cotton-seed oil and fractions<br>thereof, whether or not refined,<br>but not chemically modified. | Change to heading 1512 from any other chapter<br>except from heading 3823. |

**3823 Industrial monocarboxylic fatty acids; acid oils from refining; industrial fatty alcohols**

# Singapore USA FTA RoO

210320 - Tomato ketchup and other tomato sauces

Change to subheading 210320 from any other chapter provided that tomato ketchup of heading 210320 does not contain non-originating products from subheading 200290.

2002 Tomatoes prepared or preserved otherwise than by vinegar or acetic acid 2002.10.00 -Tomatoes, whole or in pieces

2002.90 -Other:

2002.90.40 --In powder

2002.90.80 --Other

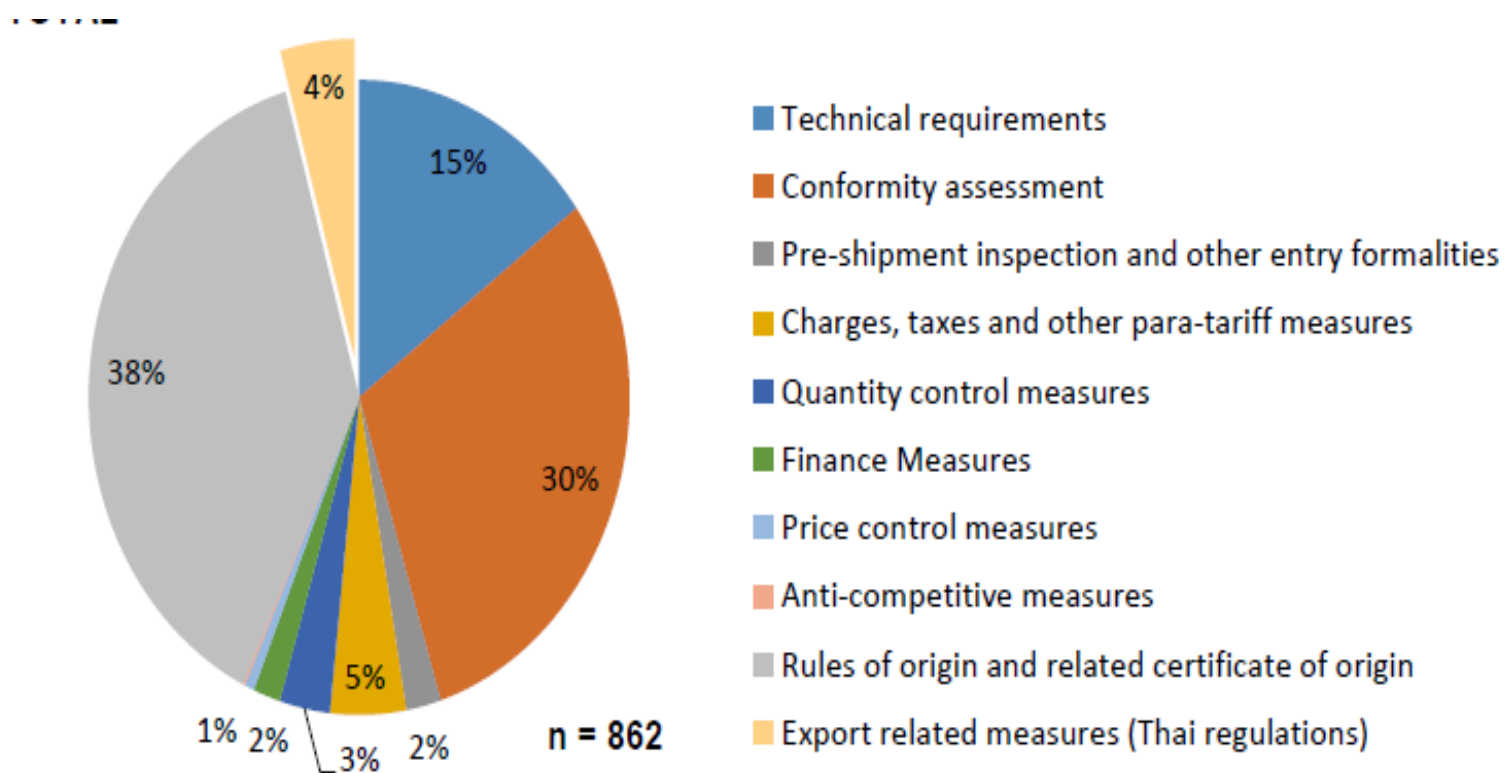


# Case of Thailand

ITC series of NTMs (Thailand) found:

- Overall, the ASEAN bloc is one of Thailand's largest trading partners with ASEAN members importing 23% of Thai exports. Despite the regional economic integration among ASEAN countries, results in increased trade, the share of NTM cases originating from ASEAN countries (20.5%) is also relatively high.
- Issues related to rules of origin **or the process of obtaining certificate of origin** has also been frequently reported by exporters to be a problem (38%).
- The most common complaint relates to the time required by the Ministry to process the request, which could last from a few days to a couple of weeks. Part of the problem, especially among SMEs, is that they are not familiar with all the necessary requirements and processes.

# Types of burdensome regulations experienced by Thai exporters



# **US COOL – Canada (DS 384) - 2008**

- **United States — Certain Country of Origin Labelling (COOL) Requirements provisions in the Agricultural Marketing Act of 1946 as amended by the 2008 Farm Bill and as implemented through an Interim Final Rule of 28 July 2008. These include the obligation to inform consumers at the retail level of the country of origin in respect of covered commodities, including beef and pork. The eligibility for a designation of a covered commodity as exclusively having a US origin can only be derived from an animal that was exclusively born, raised and slaughtered in the United States. This would exclude such a designation in respect of beef or pork derived from livestock that is exported to the United States for feed or immediate slaughter.**
- **Article 2 of AROO was stated to be violated in addition to articles of GATT 1994 and TBT (2).**
- **29 June 2012- Appellate Body ruled – violated Article 2.1 of TBT.**

# Date of events

|   |                         |
|---|-------------------------|
| <b>Request for Consultations received:</b>                    | <b>1 December 2008</b>  |
| <b>Panel Report circulated:</b>                               | <b>18 November 2011</b> |
| <b>Appellate Body Report circulated:</b>                      | <b>29 June 2012</b>     |
| <b>Article 21.3(c) Arbitration Report circulated</b>          | <b>4 December 2012</b>  |
| <b>Article 21.5 Panel Report circulated</b>                   | <b>20 October 2014</b>  |
| <b>Article 21.5 Appellate Body Report circulated:</b>         | <b>18 May 2015</b>      |
| <b>Recourse to Article 22.6 Arbitration Report circulated</b> | <b>7 December 2015</b>  |

**Only 7 disputes in WTO on RoO out of a total of 514 cases files so far.**

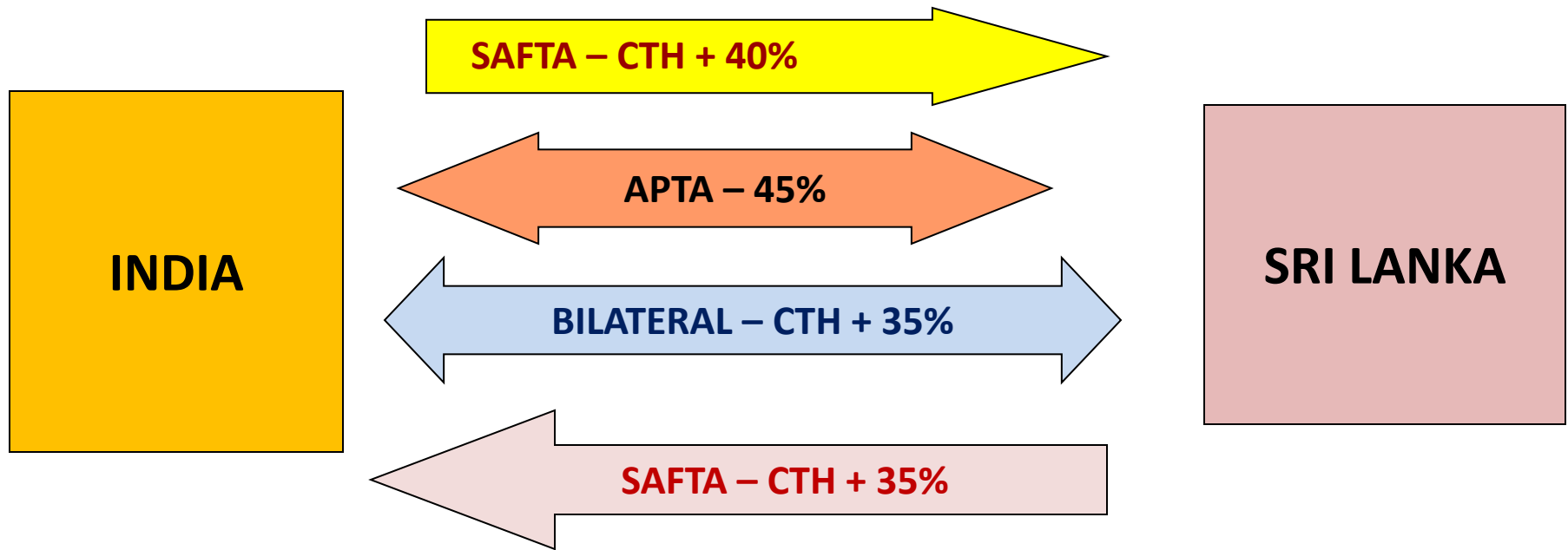
## Overlapping cases

- **Between same countries often there are different RoO which are simultaneously in place (noodle-bowl phenomena).**
- **Same manufacturing process may get different treatment on export to same market - due to different criteria.**
- **One would also need to examine the PTA RoO with the non preferential RoO in order to estimate the costs of compliance/NTM.**

# China

- **NPRoO (WTO) – CTC**
  - **ASEAN – 40% (Lao PDR is member)**
  - **APTA – 45% VA (Lao PDR and RoK)**
  - **China – RoK bilateral – 60% VA**
  - **RCEP – PSRs (Lao PDR and RoK)**
- 
- **Thus same operations in Lao PDR or Republic of Korea will be treated differently in China.**

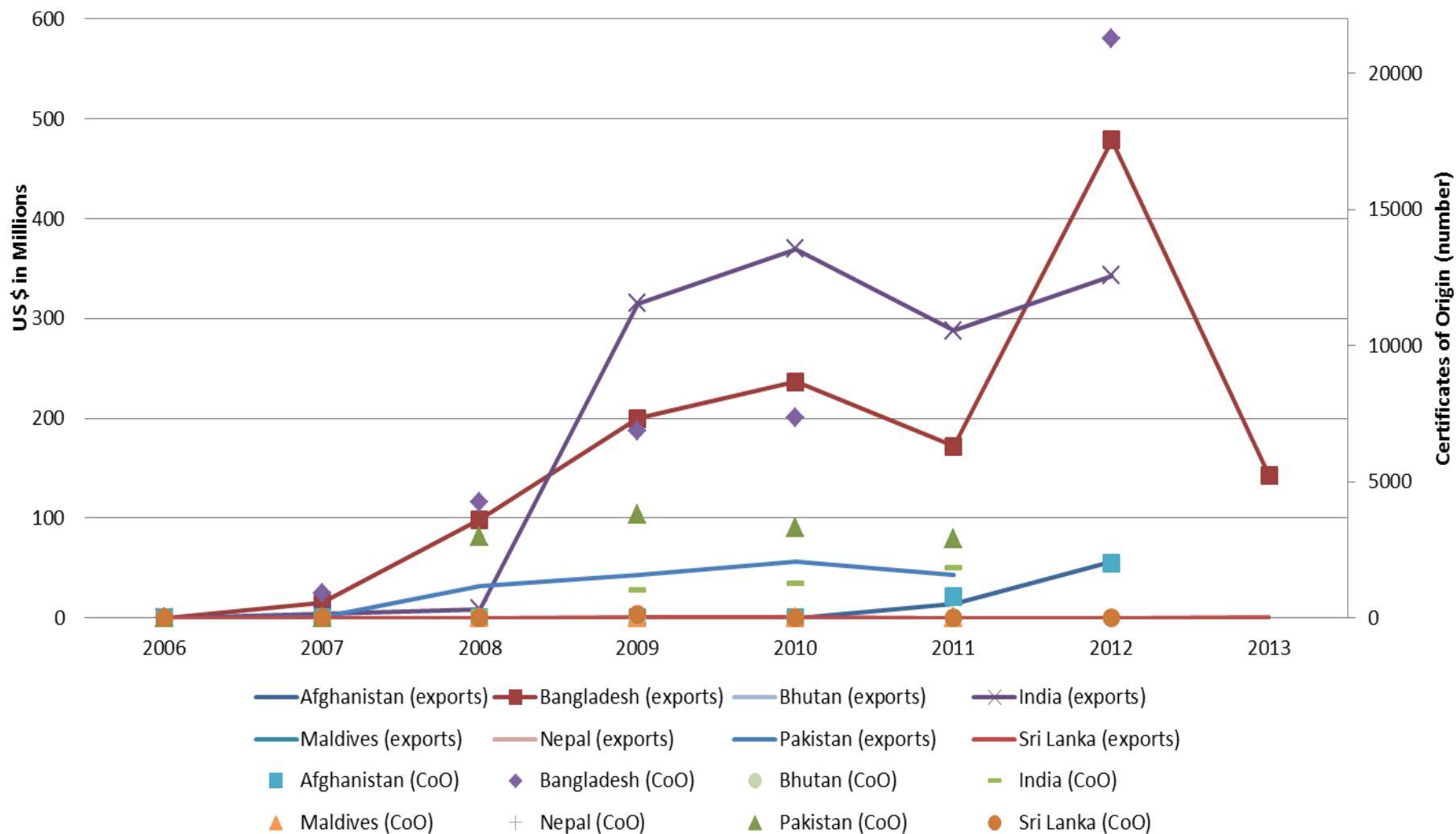
# India and Sri Lanka



- Sri Lankan exporter enjoys benefits of harmonization for exports to India under the bilateral agreement as well as SAFTA as the RoO is same. Have disadvantage for exporting under APTA.
- India exporter has to meet different RoO to export to Sri Lanka under all the agreements, i.e. APTA, SAFTA and bilateral.
- Due to different thresholds in value added, its sourcing opportunities and strategic investment decisions could be affected.

# Not all strict RoO can be barriers

## Exports and CoO Under SAFTA





# **Taxonomy on RoO**

- **A WG on RoO Taxonomy has been created (ITC, UNCTAD, ESCAP etc).**
- **Basically to look into Chapter O of the NTM classification.**
- **The taxonomy is distinguishing between preferential and non-preferential RoO.**
- **This is a work in progress.**

# Cost of compliance

- As RoO are by definition NTMs, even if consistent with the WTO or PTAs; they may impede trade due to high cost of compliance.
- The high cost is due to:
  - Getting information
  - Documentary burdens to establish origin
  - Procedural hassles
  - Lack of knowledge of exporters
  - Cost of verification by Customs
- In cases, where the MFN duties are low, the cost of compliance cost becomes relatively high and thus exporters prefer to export by paying MFN duties rather than seeking preferences.

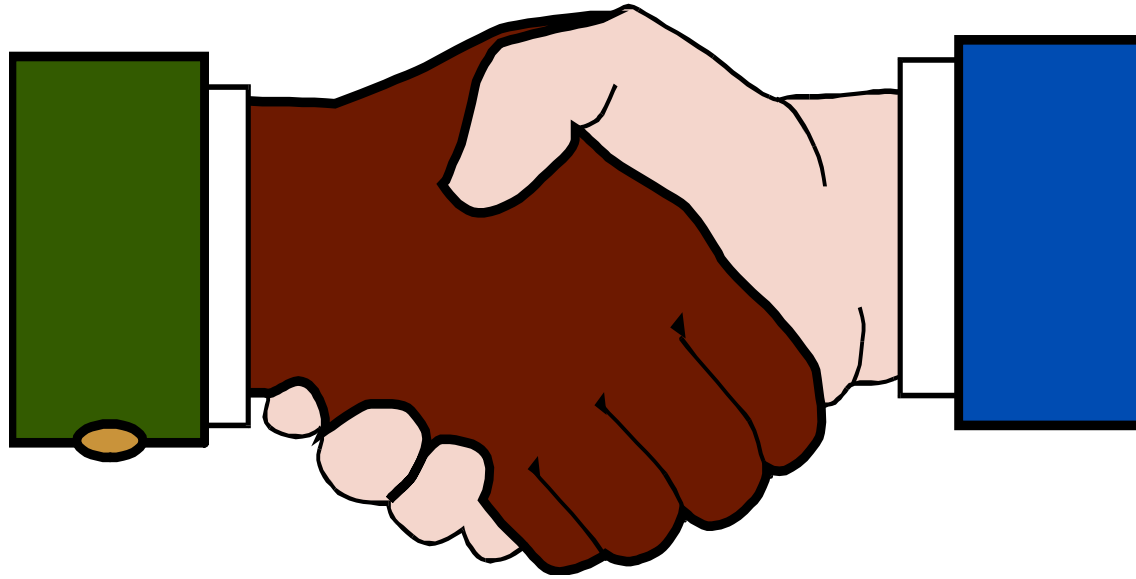
# Lessons to learn

- **The current proliferation of agreements has spun a complex web of Rules of Origin.**
- **Product Specific Rules are in fashion, creating further complexity.**
- **A manufacturing process that meets particular RoO may not meet other Rules of Origin. This brings difficult option to the business and trading community.**
- **Consolidation of multiple membership agreements around more liberal Rules of Origin will serve as a tool for diminishing spaghetti-bowl-related costs of trading under preferential regimes.**

# References

- Asia Pacific Trade and Investment Reports: 2013, 2014, 2015 and 2016 available at <http://www.unescap.org/publications/asia-pacific-trade-investment-report>
- Asia Pacific Trade and Investment Agreement Database available at <http://www.unescap.org/content/aptiad/>

<http://artnet.unescap.org/databases.html#second>



**Thank You**