

# WCO Knowledge Academy for Customs and Trade

## Rules of Origin

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Mette Werdelin Azzam  
Technical Officer  
Origin Sub-Directorate  
World Customs Organization  
[Mette.azzam@wcoomd.org](mailto:Mette.azzam@wcoomd.org)

# Master Class in Rules of Origin

## Sessions I-VII

### Day 1

- I Basic concepts of Rules of Origin and the role of WCO in Rules of Origin
- II Benefits & Risks of preferential Rules of Origin

### Day 2

- III Preferential Rules of Origin – why should they be harmonized?
- IV Recap on the basic elements of Rules of Origin
- V Group exercises and case studies
- VI Summary and closing remarks

# Objectives

By the end of this program, you will have acquired knowledge on:

- concept of origin
- impact of rules of origin on world trade
- difference between preferential and non-preferential treatment of goods
- technical concepts related to the rules of origin

# Rules of origin give the nationality of a product

- Why do we have rules of origin?
  - Collect statistics
  - To apply the correct rate of duty
  - To apply certain policy measures
- Is knowing the origin important?
  - Affects the price of goods
  - Know if a good is foreign or domestic
  - Can affect the image of a country

# Use of origin in international trade

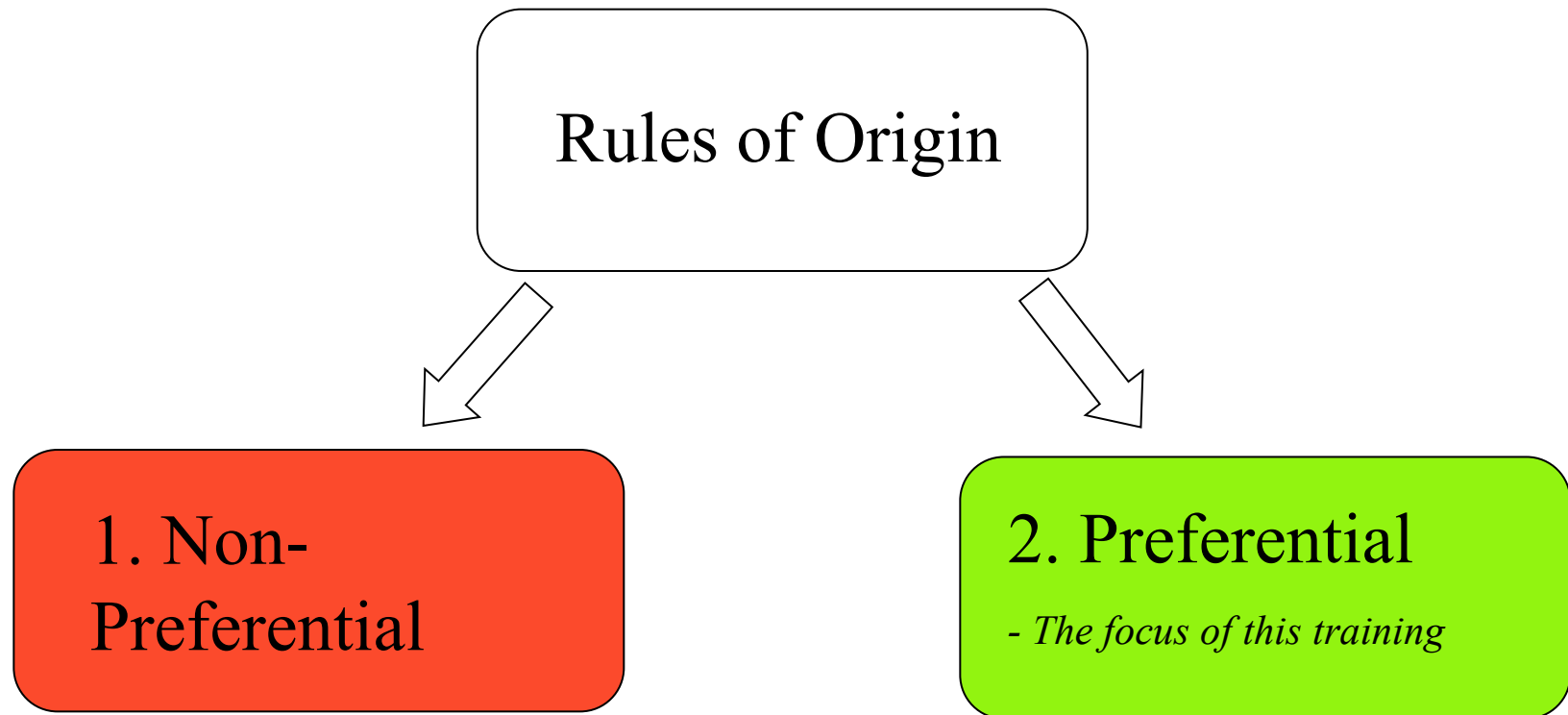
- Preferential duty treatment; granted when the goods are "originating in XX";
- Import/export statistics are referring to the origin of goods;
- The application of trade policy measures requires the determination of the origin:
  - ✓ anti-dumping;
  - ✓ monitoring of goods;
  - ✓ quantitative restrictions;
  - ✓ Origin labelling; and
  - ✓ import/export embargo
- *The incorrect determination of the origin may lead to incorrect duty application, incorrect marking, etc., with consequential delays and interruption of the trade flow*

# Definition of rules of origin

Rules that determine the “economic nationality” of goods in international trade.

This is done by dictating the sufficient level of processing that must take place in a given country in order for the product to be considered as having its origin in that country.

# There are two kinds of Rules of Origin



# Non-preferential rules of origin

- Used for determining the economic nationality of products subject to commercial policy measures
  - anti-dumping
  - tariff quotas etc.
- For statistical purposes
- For government procurement
- For application of "Made in"-labelling in some countries



# Preferential rules of origin

- Determine the nationality of a product subject to preferential tariff rates within an FTA/PTA
- *“Except as otherwise provided in this Agreement, each Party shall eliminate its customs duties on **originating** goods of the other Party”*
- Each FTA/PTA has its own sets of rules of origin

# Rules of origin in Free Trade Agreements

- define the conditions under which a product is deemed as originating and therefore suitable for preferential treatment
- prevent deflection of trade and transshipment in an effort to (falsely) obtain origin and therefore preferential treatment

# Why do we need to understand preferential rules of origin?

## **Traders?**

- RoO need to be complied with in order to obtain trade preferences
- RoO affect the ability to source inputs
- RoO require certain administrative steps – such as acquiring an origin certificate

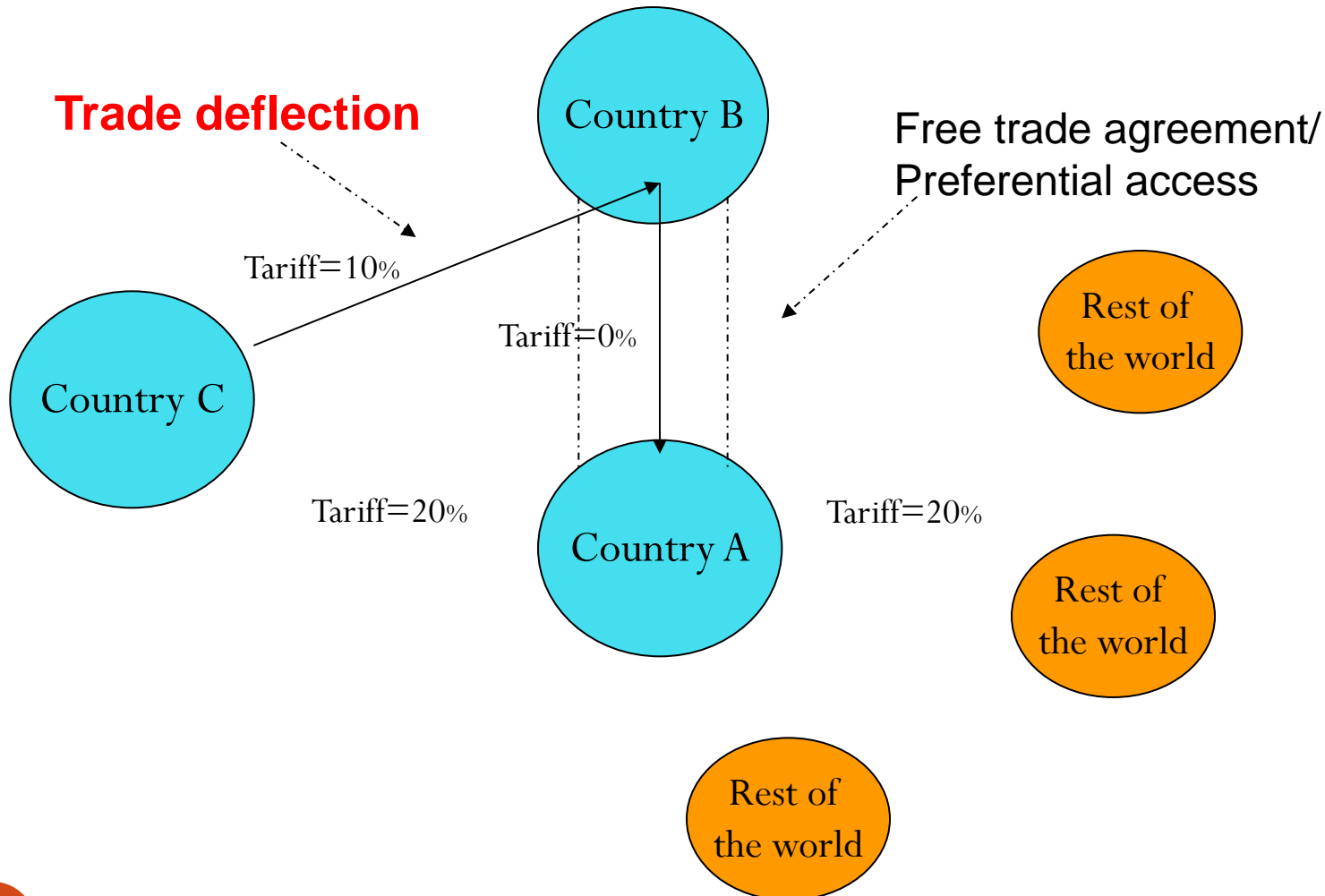
## **Customs officials?**

- RoO discriminate between goods
- RoO determine your country's revenue from customs duties
- RoO's administrative requirements can distort trade

## **Trade officials/negotiators?**

- Defining the origin of a good is increasingly difficult with globalization
- RoO influence trade flows
- RoO can be used as a development policy tool

# Prevention of trade deflection

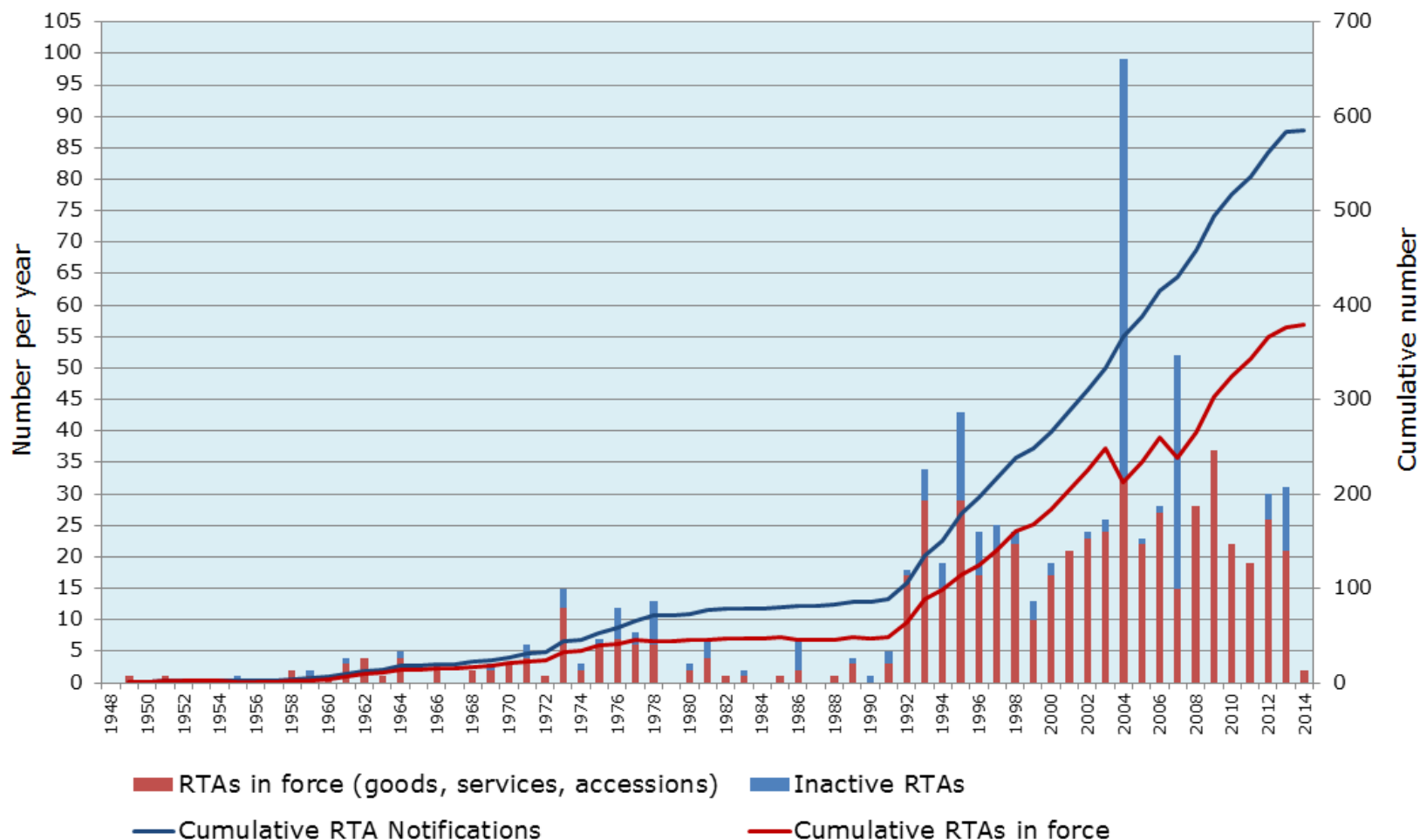


# Problems of rules of origin?

- Two apparent problems...
  - "The spaghetti bowl" of overlapping FTAs
  - Restrictive rules of origin distort trade

# INCREASING NUMBER OF PREFERENTIAL AGREEMENTS

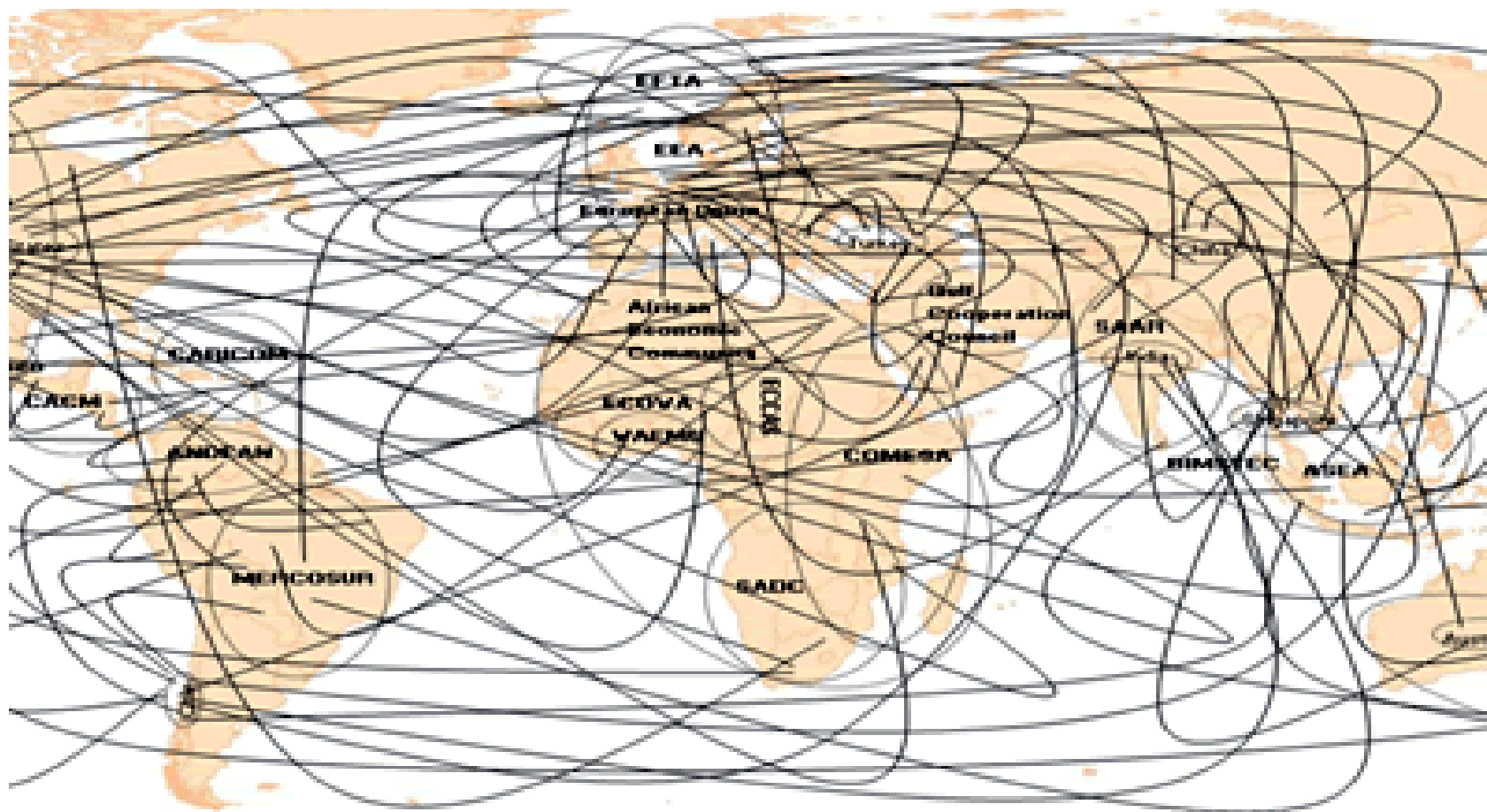
RTAs notified to the GATT/WTO (1948-2014) by year of entry into force





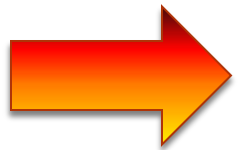
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# THE SPAGHETTI BOWL OF COMPLEX AND OVERLAPPING RULES OF ORIGIN LEGISLATIONS

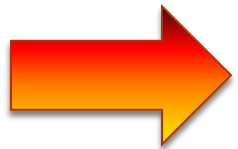


# How can RoO distort trade?

- Sourcing from third countries is fundamental in a fragmented world economy
- RoO are seen by exporters as a cost
  - Production-related costs
  - Administrative costs



These costs have to be balanced against the benefit from fulfilling the RoO – which is tariff preference



Strict RoO often lead to lower utilization of trade preferences



The purpose of rules of origin – to prevent trade deflection – has to be balanced against this fact



# Costs and advantages for business

- Costs:
  - Issuance fee for certificates in some countries
  - Internal costs (administration, staff, internal and external audits)
  - Longer processing times at the border in some countries
- Advantages:
  - Preferential treatment (lower duty rates)

# Conditions for preferential treatment

- Definition of “originating products”
- Territorial requirements
- Proof of origin



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# Definition of “originating product”

- Origin criteria
- Insufficient working and processing / Minimal operations
- Cumulation
- Tolerance rule (*de minimis*)
- Unit of qualification
- Accessories, spare parts and tools
- Sets
- Neutral elements
- Notes in the list of product specific rules

# Definition of “originating product”

- Wholly obtained goods
- Substantial/sufficient transformation of goods:
  - Change of Tariff Heading (CTH)
  - Added value
  - Technical requirements

# Definition of “originating product”

- **Wholly obtained goods**
  - Goods naturally occurring
  - Live animals born and raised in a given country
  - Plants harvested in a given country
  - Minerals extracted or taken in a single country
  - Etc.

List contained in the “rules of origin”-part of an agreement

# Wholly obtained



Source: Fotoakuten.se

1006, Rice: " Manufacture in which all the materials of Chapter 10 used are wholly obtained"

# Definition of “originating product”

- A criterion of a **change in tariff classification**

A good is considered substantially transformed when the good is classified in a heading or subheading (depending on the exact rule) different from all non-originating materials used

chapter level (2-digit)

**heading level (4-digit) – *most commonly applied***

sub-heading level (6-digit)

item level (8 or 10-digit)

# Change in tariff classification



## *Heading 1401*

## *Heading 4602*

The manufacture of a straw basket, classified in heading 4602 of the HS.

The rule for the whole of Chapter 46 is "manufacture in which all the materials used are classified within a heading other than that of the product". As the basket is classified in HS4602, while the straw material was imported in HS1401, the origin criterion is clearly satisfied.



# Definition of “originating product”

- A criterion of **value added** (ad valorem percentages)

Regardless a change in its classification, a good is considered substantially transformed when the value added of a good increases up to a specified level expressed by ad valorem percentage

- The value added criterion can be expressed in two ways,
  - a maximum allowance for non-originating materials or
  - a minimum requirement of domestic content

# Definition of “originating product”

- A criterion of **specific manufacturing or processing operations** (technical requirement)

Regardless a change in its classification, a good is considered substantially transformed when the good has undergone specified manufacturing or processing operations

- So-called “Ottawa-type” rule
- Ex: “manufacture from yarn”

# Definition of “originating product”

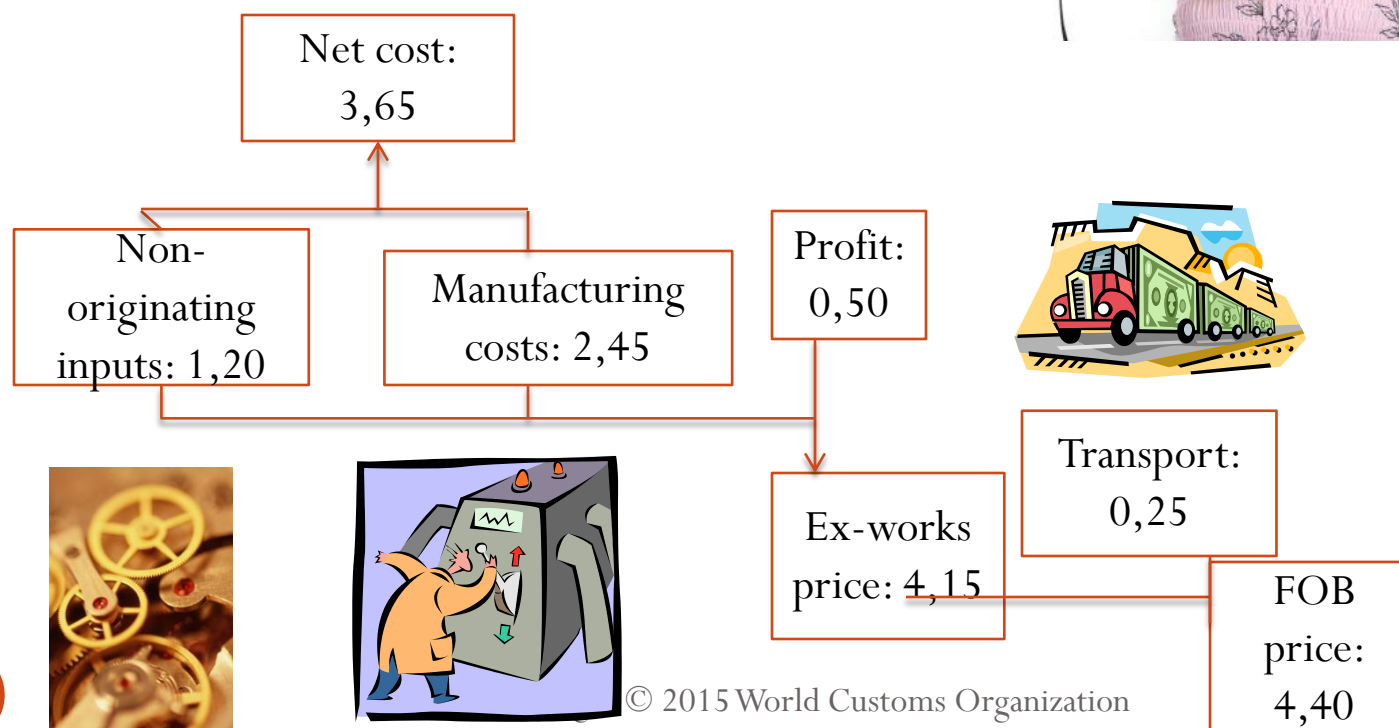


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HS Code No.		Description of Goods	Origin Criteria
03.04		Fish fillets and other fish meat (whether or not minced), fresh, chilled or frozen.	
ex03.04 (a)		- <u>Fish surimi</u>	
ex03.04 (b)		- <u>Fish fillets, fresh, chilled or frozen</u>	[The country of origin of the goods of this split heading shall be the country in which the live fish have been captured - “Ottawa” type rule]
			[CTH - <b>Change of tariff classification rule</b> ]
			[The country of origin shall be the country in which the CIF value of non-originating materials imported and used in the production does not exceed 75% of the ex-factory price of the goods. - <b>Value added rule</b> ]
ex 03.04 (c)		- <u>Other</u>	

# Originating or not?

- An electric hair curling iron (subheading 8516.32) made in EU from Japanese parts (8516.90)



# Originating or not?

List rule for hair curling iron (8516.32) in a given FTA:

HS heading	Description of the product	Working or processing, carried out on non-originating materials, which confers originating status	
(1)	(2)	(3)	or (4)
ex Chapter 85	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	<p>Manufacture</p> <ul style="list-style-type: none"> <li>- from materials of any heading, except that of the product, and</li> <li>- in which the value of the materials used does not exceed 40 % of the ex-works price of the product</li> </ul>	Manufacture in which the value of all the materials used does not exceed 30 % of the ex-works price of the product

# Originating or not?

**Working or processing, carried out on non-originating materials, which confers originating status**

(3) or (4)

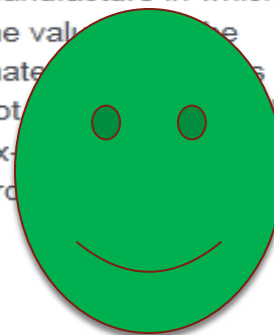
## (3) – Not originating!

Input materials cannot be from the same heading as the product

Manufacture  
- from any of the materials not originating in the country of origin of the product  
- in which the value added does not exceed 40 % of the ex-works price of the product



Manufacture in which the value added by the materials not originating in the country of origin of the product exceeds 40 % of the ex-works price of the product



## (4) – Originating!

$1.2 / 4.15 = 28.9\%$



# Definition of “originating product”

Insufficient working and processing / minimal operations

A reverse form of the specific manufacturing operations

Specifically identified manufacturing operations that are insufficient to confer origin (e.g. labeling, packaging or assembly)

# Definition of “originating product”

## Cumulation

- Definition of origin cumulation
- Exception to the principle of “originating” (list rules versus cumulation)
- Cumulation provisions only in preferential rules of origin





# Definition of “originating product”

## Cumulation

- Why is cumulation important?
- What are the requirements for using cumulation provisions?
  - Same rules of origin in FTAs
  - Agreement on mutual administrative assistance

# Definition of “originating product”

## Different kinds of cumulation

- Bilateral cumulation
- Diagonal / regional cumulation
- Full cumulation
- Extended cumulation

# Definition of “originating products”

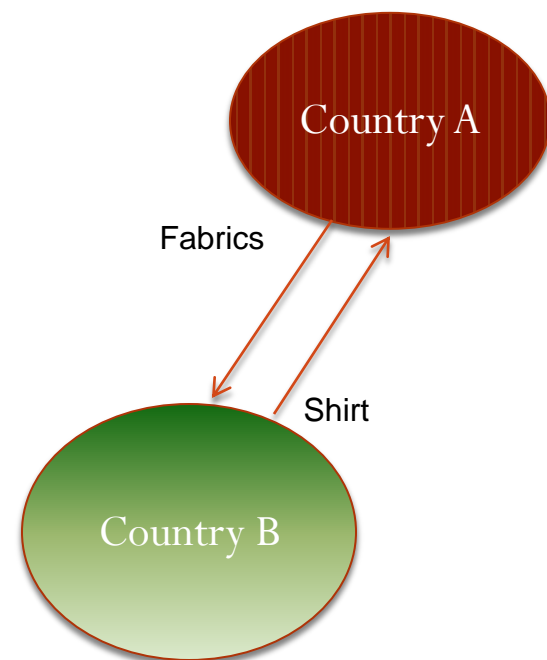


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## Bilateral cumulation

Operates between contracting parties to a FTA

Allows the use of originating products from the partner country as if they were already originating cumulation of originating inputs



*Example: Shirts (HS 6205) - If the rule requires “Manufacture from yarn”, originating fabrics can be imported from Country A and used in the production of shirts in Country B which then qualify for preferential access to Country A.*

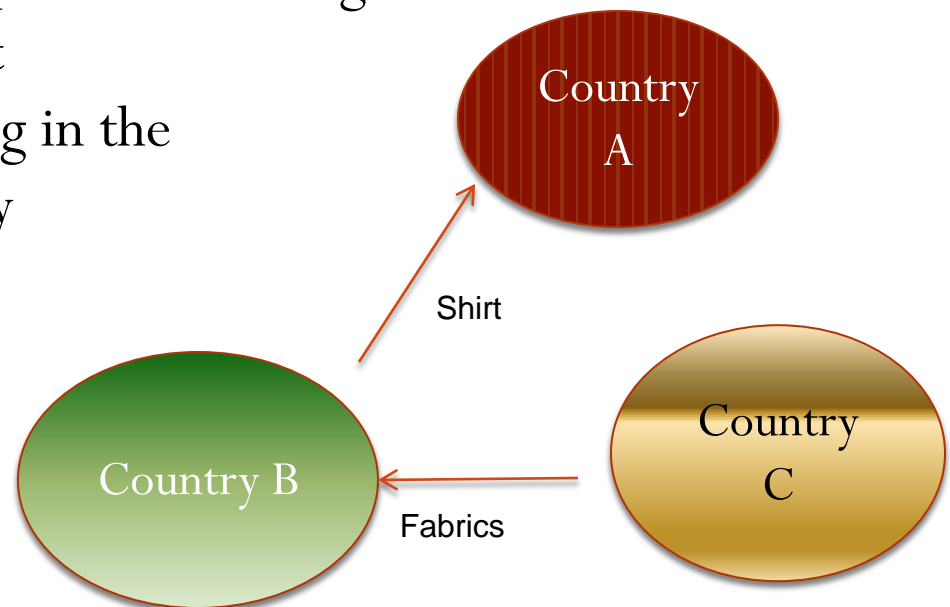
# Definition of “originating products”

## Diagonal/Regional cumulation

Sourcing possible from parties to a FTA or between countries with interlinked trading agreements

Countries tied by the same set of preferential origin rules can use products that originate in any part of the area as if they are originating in the Exporting/manufacturing country

Cumulation of originating inputs



# Definition of “originating product”

## Full cumulation

Sourcing possible from all countries which have the same rules of origin in their free trade agreement with the importing country

and/or

Cumulation of operations – possibility to incorporate inputs whether originating or not

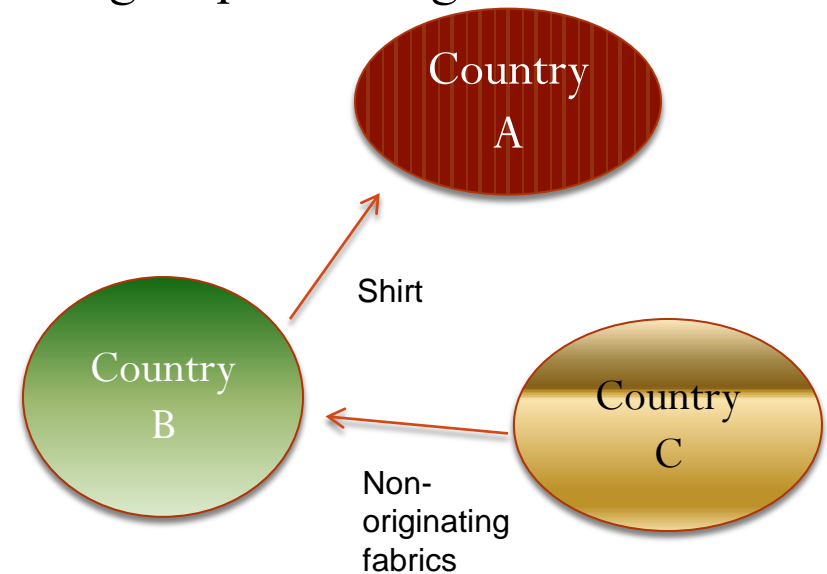
# Definition of “originating product”

## Full cumulation – cumulation of operations

All operations carried out in the participating countries are taken into account. Inputs do not need to be originating before being exported from one party to another for further working or processing

PSR “made from yarn”:

A shirt made in Country B from fabric made in Country C (which in turn was made from non-originating yarn from Country D) would qualify for preferential treatment



# Definition of “originating product”

## Extended cumulation

(At the request of the exporting country), materials originating in another (neighboring) country may be considered as originating when incorporated in a product obtained in the exporting country

# Definition of “originating product”

## Tolerance rule (*de minimis*)

- Permits manufacturers to use non-originating materials up to a specific percentage without fulfilling the PSR
- Relaxation of the rules of origin
- Different threshold in different agreements
- Possibility to exclude certain products from the tolerance rule – or to have different thresholds



# Definition of “originating product”

## Unit of qualification

- According to the Harmonized System

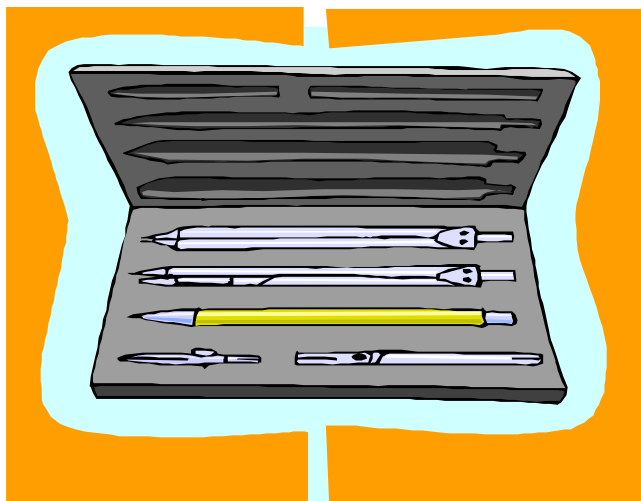
## Sets

- According to the Harmonized System

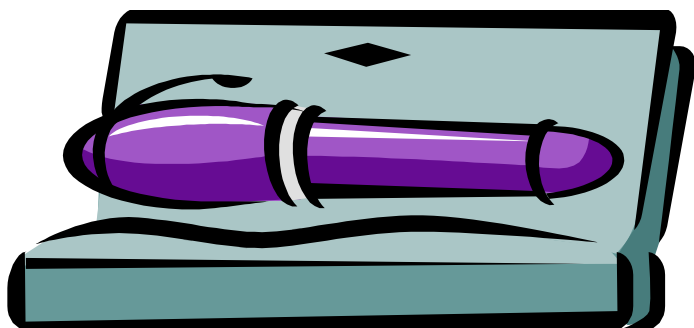
## Packing and packaging materials and containers

- The origin of packing and packaging materials and containers presented with the goods shall be disregarded, provided such packing and packaging materials and containers are classified with the goods

Containers classified with  
the goods



Disregarded !



## Containers - Separate goods



# Definition of “originating product”

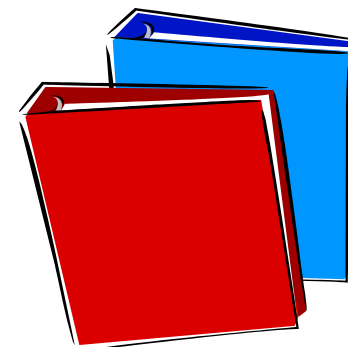
## Accessories, Spare Parts and Tools

- Accessories, spare parts, tools and instructional or other informational materials classified and presented with a good shall be disregarded, provided they are normally sold therewith and correspond, in kind and number, to the normal equipment thereof

Disregarded !



Spare parts and  
tools



Instructional  
materials

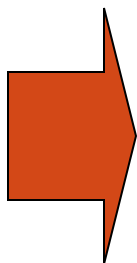
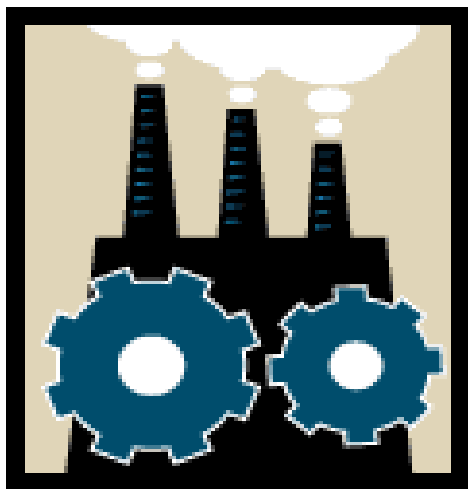
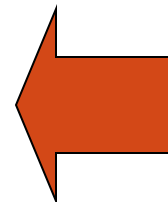
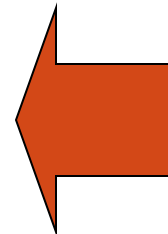
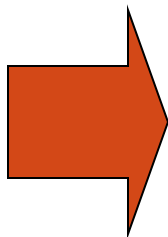
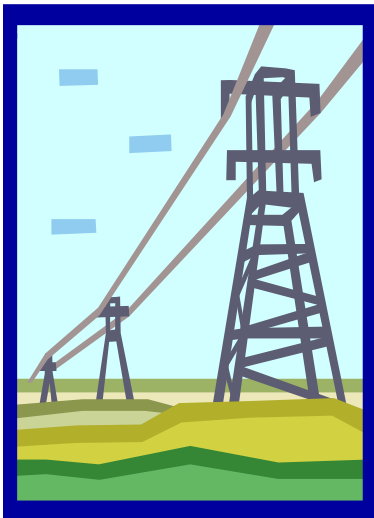


# Definition of “originating product”

## Neutral elements

- The origin of the power and fuel, plant and equipment, including safety equipment, or machines and tools used to obtain a good or the materials used in its manufacture which do not remain in the good or form part of the good shall not be taken into account

# Disregarded !



# Territorial requirements

- Principle of territoriality
  - Exported goods that are re-imported are considered as non originating, unless proof that
    - The goods are the same
    - They have not undergone any operation except for their preservation
- Direct transportation between exporting and importing country
  - Unless proof of non manipulation / non alteration / under customs control
- Exhibitions



# Proof of origin

- Preferential origin
  - Need for a proof to claim preferential treatment
  - Paper form, origin declaration, e-certificate, importer declaration....
  - Specific rules relating to proofs are included in the agreement
- Non preferential origin
  - No need for a proof in most cases
  - Proof needed if quotas or other restrictions apply

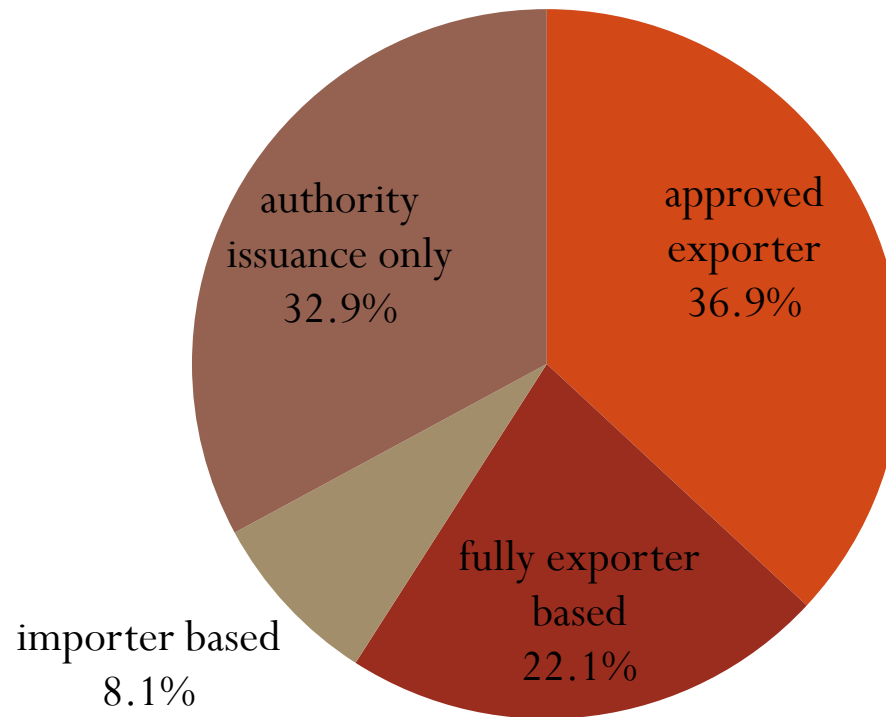
# Types of preferential origin certification systems

Type of system	Key features
1. Authority issued certification, incl. e-certificates	Government authorities or delegated bodies issue the certificate of origin in a prescribed form
2. Approved Exporter system	Exporters with prior approval may make origin declaration on commercial documents
3. Fully exporter-based certification	Any exporters can sign and issue a certificate of origin of a prescribed form
4. Importer-based certification	Importers certify the origin of goods

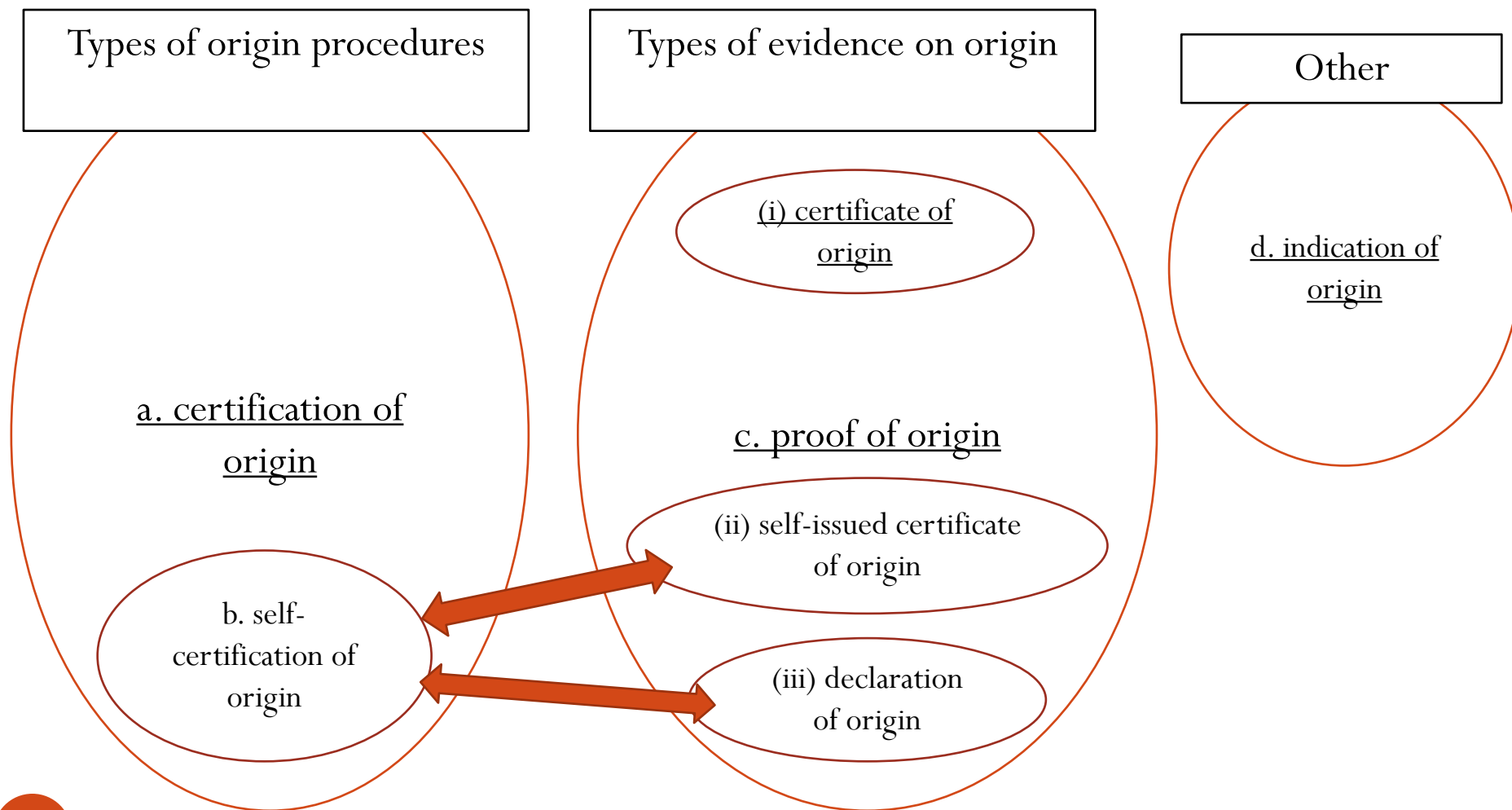
Self-certification = issuing authorities not involved in every single issuance of proof of origin

# Proportion of certification systems around the world

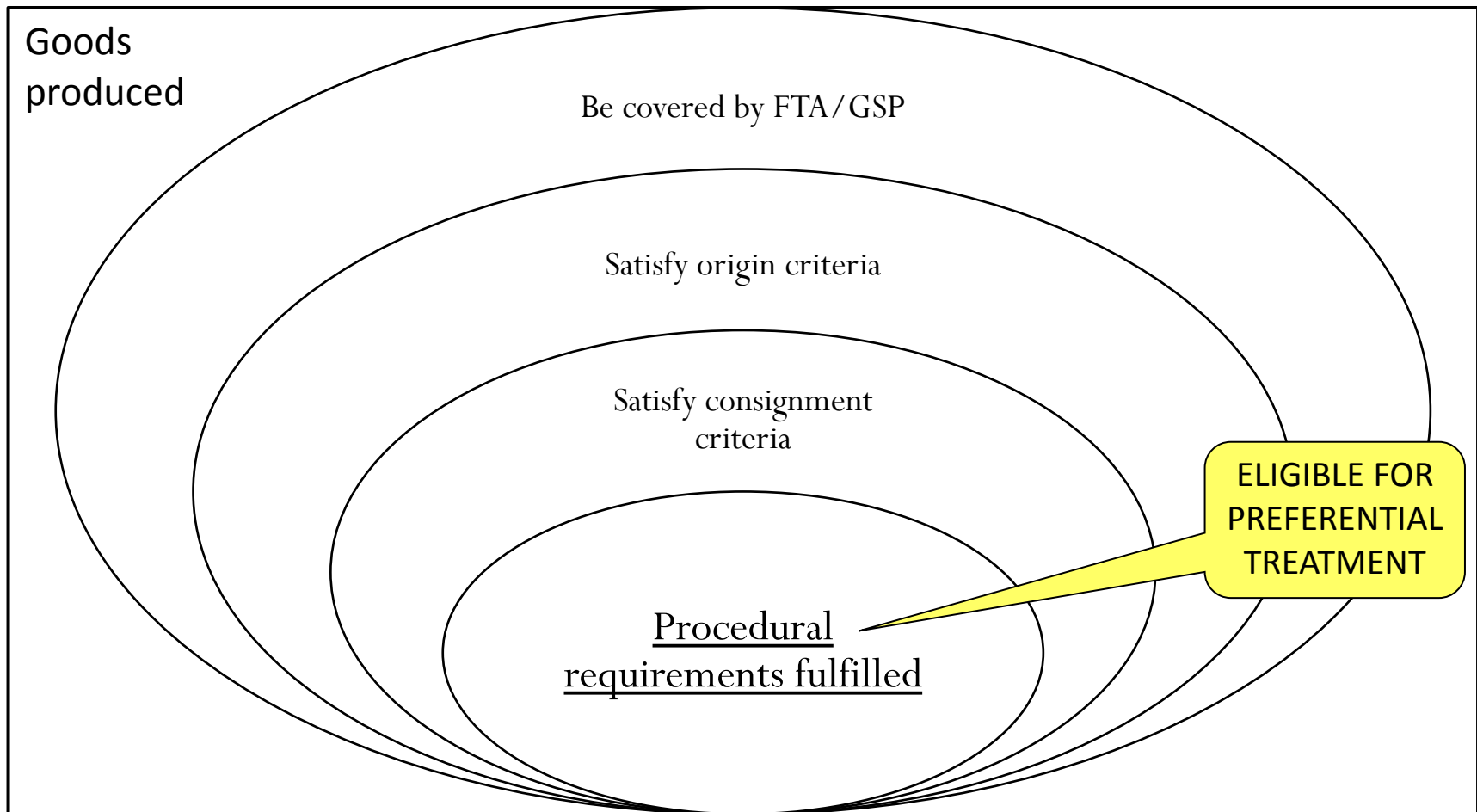
**PROPORTION OF CERTIFICATION SYSTEMS**



# Definitions : concepts at a glance



# When is a proof of origin needed for preferential purpose?



# Where to find the rules of origin

- WTO Agreement on Rules of Origin
- Revised Kyoto Convention (RKC), Specific Annex K
- Domestic legislation
- Free trade agreements

# Role of WCO in origin matters

- Organize the Technical Committee on Rules of Origin (TCRO)
- Support the work of the WTO Committee on Rules of Origin (CRO)
- Support Members for the correct understanding, management and application of rules of origin
- Provide technical assistance – seminars to Members and private sector

# WCO initiatives on preferential rules of origin

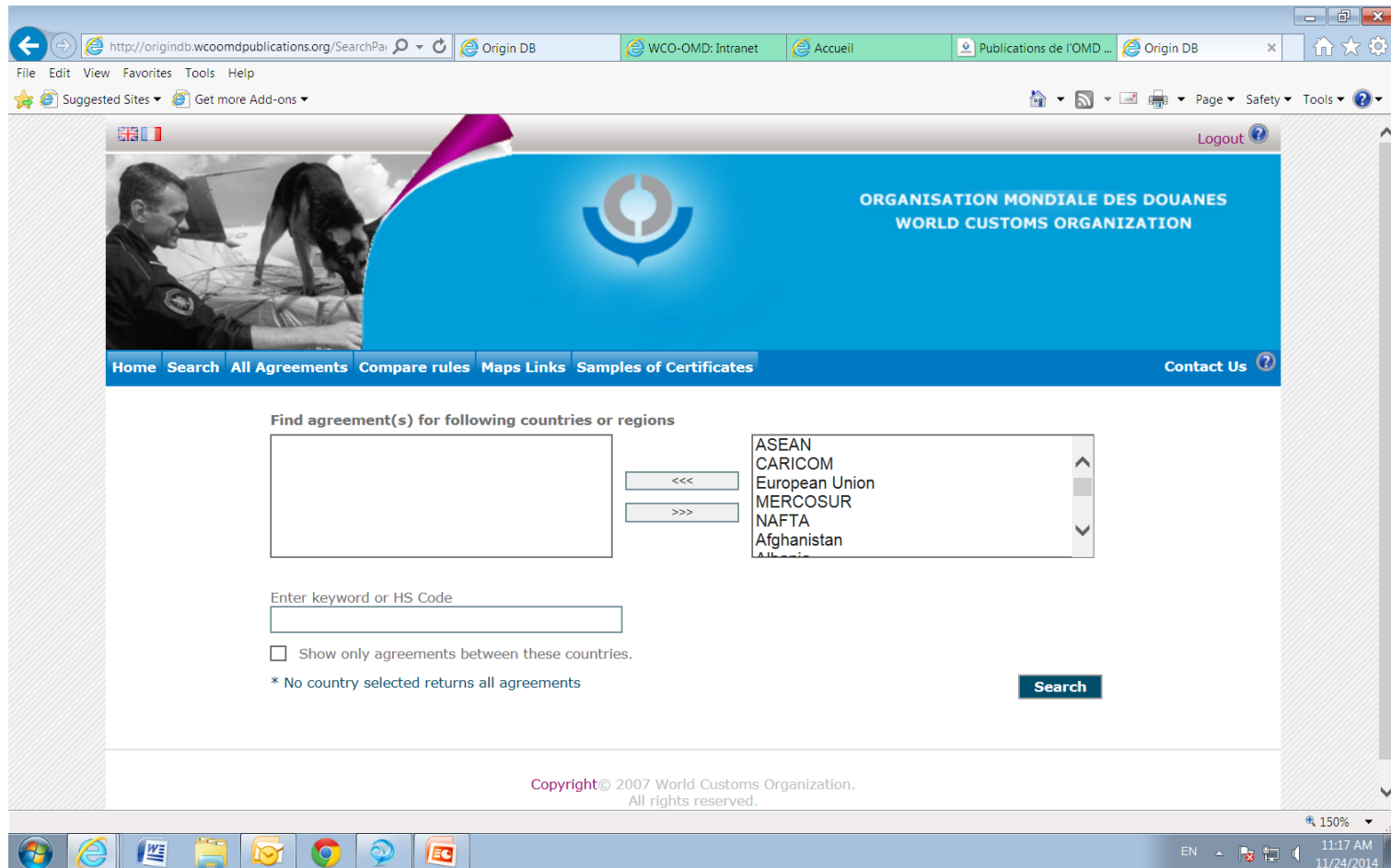
- Action Plan to improve the understanding and application of preferential rules of origin (2007)
- Revenue Package Action Plan (2010)



# WCO ACTION PLAN ON PREFERENTIAL RULES OF ORIGIN

- WCO Action Plan to Improve the Understanding and Application of Preferential Rules of Origin approved by WCO Council in June 2007 (doc. SP0237Ela).
- 5 key initiatives: establishment of a **preferential origin database**, **comparative study** of existing agreements, training and seminars, etc.
- 17 practical measures outlined aiming at improving the management and application of preferential rules of origin, which includes:
  - Improved international cooperation
  - Improved cooperation with the business community
  - Identification and publication of standards
  - Greater use of risk analysis and increased enforcement

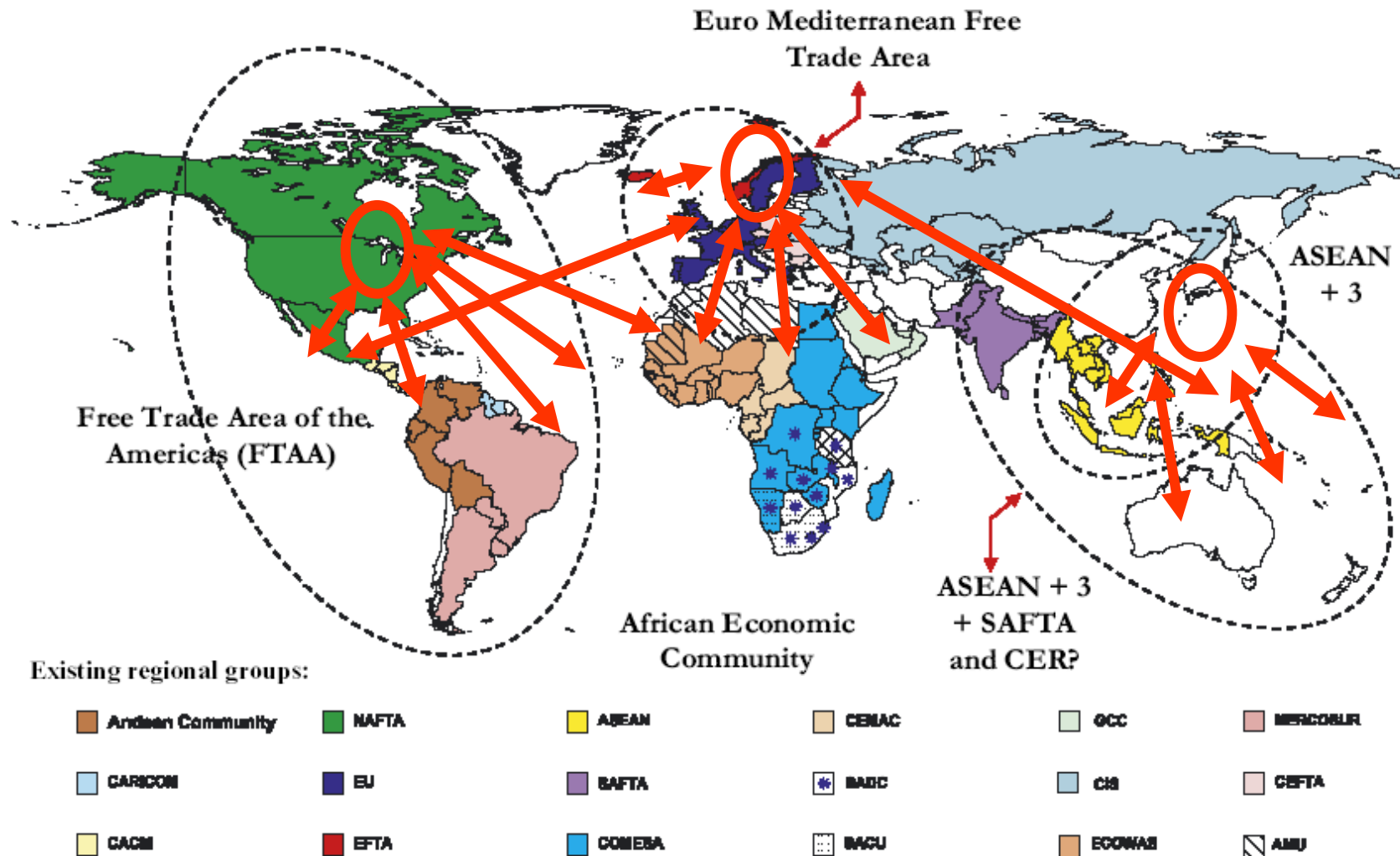
# ORIGIN DATABASE



The screenshot shows a web browser window displaying the Origin Database website. The browser's address bar shows the URL <http://origindb.wcoomdpublishations.org/SearchPa>. The website header features the WCO logo and the text "ORGANISATION MONDIALE DES DOUANES" and "WORLD CUSTOMS ORGANIZATION". Below the header is a navigation menu with links: Home, Search, All Agreements, Compare rules, Maps Links, Samples of Certificates, and Contact Us. The main content area is titled "Find agreement(s) for following countries or regions" and includes a search form with a text input field, a list of regions (ASEAN, CARICOM, European Union, MERCOSUR, NAFTA, Afghanistan, etc.), and a "Search" button. A checkbox labeled "Show only agreements between these countries." is also present, with a note: "\* No country selected returns all agreements". The footer of the website states "Copyright © 2007 World Customs Organization. All rights reserved." The browser's taskbar at the bottom shows various application icons and the system clock indicating 11:17 AM on 11/24/2014.

<http://origindb.wcoomdpublishations.org/Login.aspx>

# Comparative study on RoO



3 major origin models: European, ASEAN and NAFTA models

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# Additional modules

- Under the umbrella of the Comparative Study, the following studies are currently available :
  - Comparative Study on Certification of Origin
  - Origin Irregularity Typology Study
  - World Trends in Preferential Origin Certification and Verification
  - Categorization and analysis on Preferential Rules of Origin
  - Study on the use of “Change in Tariff Classification”-based rules in Preferential Rules of Origin

# New tools developed under the Revenue Package Phases I and II

- Origin verification
  - Study on trends in preferential origin verification
  - Guidelines on origin verification
- Origin certification
  - Study on trends in origin certification
  - Guidelines on origin certification
- Origin irregularities
  - Origin irregularity typology study
  - Guide to counter origin irregularities (June 2015)
- Guidelines on advance rulings for classification, origin and valuation (June 2015)
- Diagnostic tool for control of classification, valuation and origin (June 2015)
  - Common infrastructure
  - Diagnostic tables