

# Rules of Origin: Complexities in WTO & RTAs

***CENTRE FOR WTO STUDIES***  
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Rajan Sudesh Ratna  
Joint Director General of Foreign Trade  
Department of Commerce  
[rsratna@nic.in](mailto:rsratna@nic.in)

# Topics of discussion

**Non-preferential RoO in WTO**

**Preferential Rules of Origin in PTA/FTA**

## Definition

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.).

Exception: Such rules of origin would not apply to preferential trading agreements.

# 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, 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 FTA is normally granted only to products originating from members to that FTA, rules of origin are therefore an important part of any FTA.

## WTO provisions

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 reached during the Uruguay round negotiations.

The Agreement on Rules of Origin aims at Harmonisation of non-preferential RoO.

# Agreement on RoO

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

Such rules of origin are to be used for various non-preferential commercial policy instruments.

Illustrative examples are:

Extending MFN treatment under various GATT Articles.

Anti-dumping and countervailing duties.

Safeguard measures.

Origin marking requirements.

Application of QRs or TRQs.

Government Procurement.

Trade statistics.

# Product classification

- Wholly obtained
- Not wholly obtained or produced (NWOP).
- Minimal operations or processes that do not confer origin (examples: packaging, preservation operations).
- Substantial transformation clause for NWOP:
  - CC, CTH, CTSH, CTHS, CTSHS.
  - Valued added criteria.



## **Criteria for HWP (contd.)**

**CC-Change of Chapter**

**CTH- Change of Tariff Heading**

**CTSH- Change of Tariff Sub-heading**

**CTHS- Change of Tariff Heading Split**

**CTSHS- Change of Tariff Sub Heading Split**

# **PREFERENTIAL RULES OF ORIGIN**

## **Preferential Rules of Origin**

**Checking trade deflection of third country goods.**

**RoO is to facilitate trade between RTA partners only.**

**Facilitate value addition in the exporting country.**

**Augmenting intra-regional trade and investment.**

**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, as Origin not from RTA partner, products are allowed for imports on payment of applied MFN duty.**

# Preferential Rules of Origin

- **Three conditions must be fulfilled:**
  - originate in a beneficiary country
  - transported directly
  - valid proof of origin
- **Product categories**
  - Wholly obtained or produced
  - Not wholly obtained or produced
  - Products obtained through Regional Cumulation  
*(not workable under non-preferential RoO)*

# Rules of Origin

## Components:

- ✓ Local content / value addition
- ✓ Insufficient manufacturing processes
- ✓ Substantial transformation
- ✓ Cumulation

**CERTIFICATE OF ORIGIN**

**COST OF ISSUANCE**

**CIRCUMVENTION - ENFORCEMENT**

## India's approach - FTA

### Components:

- ✓ Local content / value addition (35 - 40%).
- ✓ Insufficient manufacturing processes like simple mixing, cutting, processing etc. disqualified for preferences.
- ✓ Substantial transformation (Change at 4/6 digit HS from non-originating inputs to export products).

## India's approach - PTA

### Components:

Local content / value addition (40 - 50%).

Insufficient manufacturing processes like simple mixing, cutting, processing etc. disqualified for references.

No strict CTC conditionality – for small list of product with moderate tariff concessions.

# CHANGE OF TARIFF HEADING

How does it work ?

- A product is considered to be **sufficiently worked 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

Ethylene (2901 21),  
Hydrogen (2845 90, 2804 10),  
Carbon Oxide (2811 29)

4 DIGIT

Propyl alcohol  
2905 12 10

Electrical capacitors (8532)  
Electrical resistors (8533)  
Printed circuits (8534)

4 DIGIT

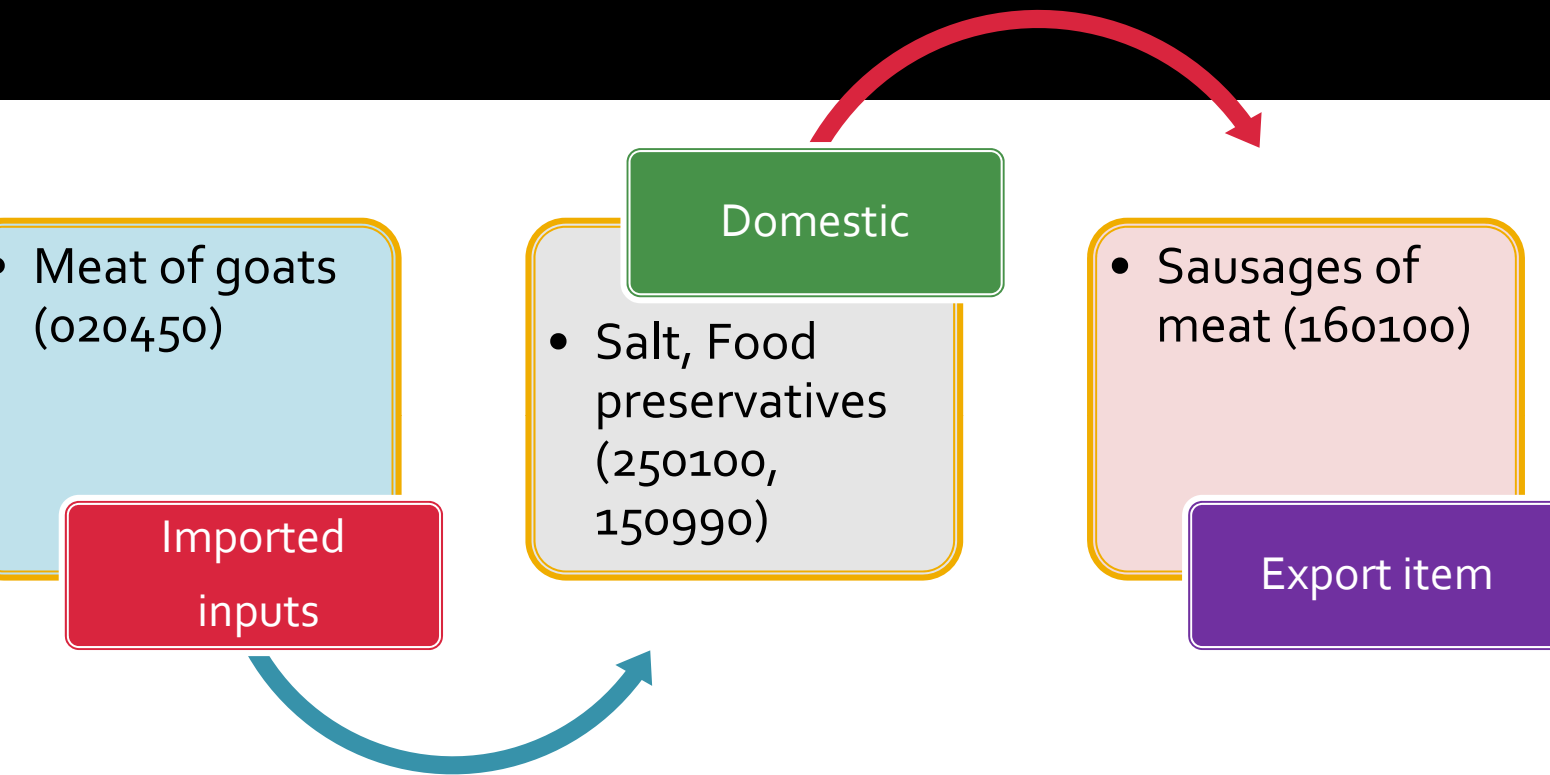
Microprocessors  
8473 30 10

Ethylene (2901 21)  
Benzene (2902 20)

6 DIGIT

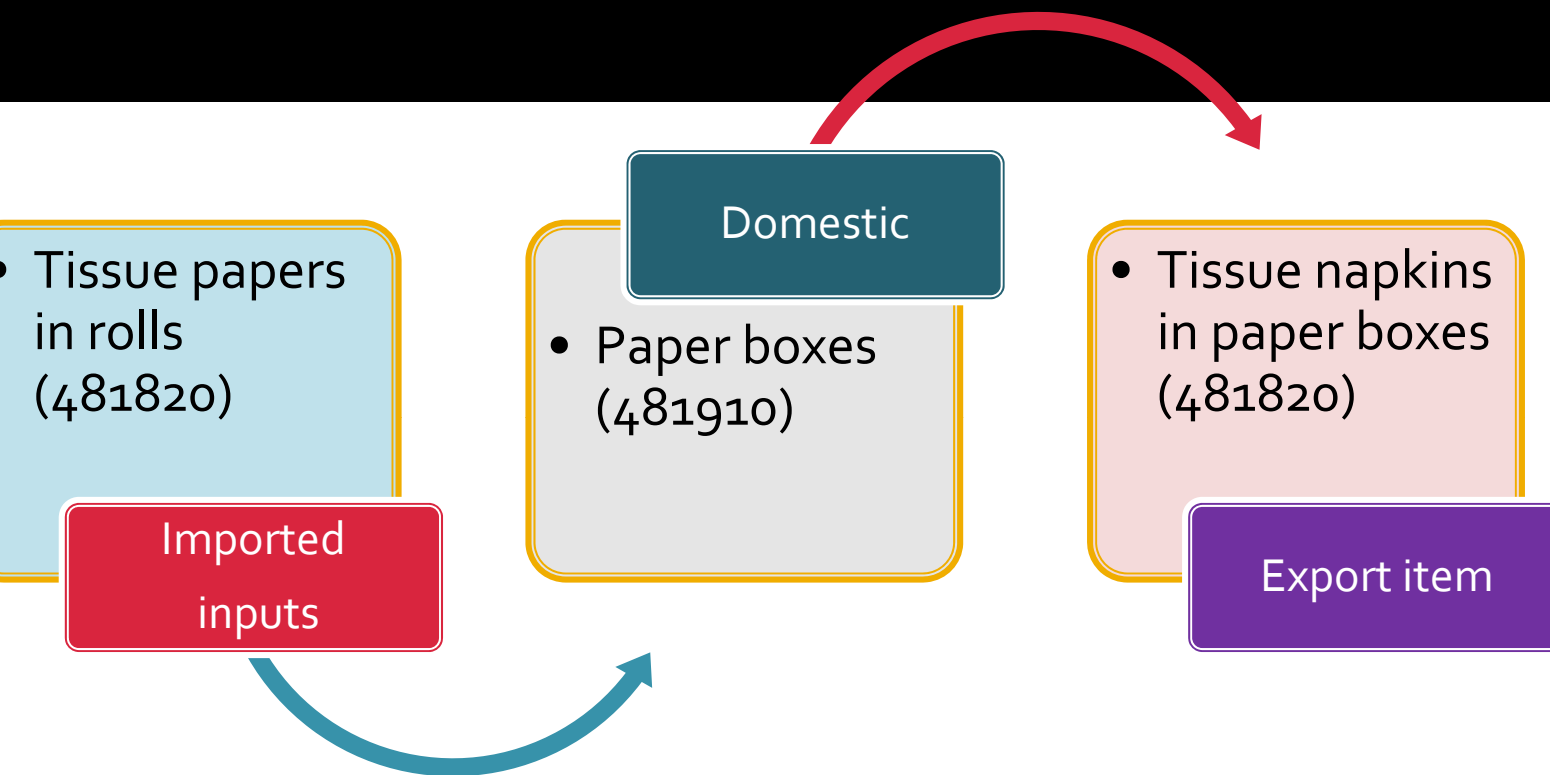
Ethyl benzene  
HS 2902 60

# EXERCISE :CTC



**IS IT CC, CTH OR CTSH?**

# EXERCISE 2:CTC



**IS IT CC, CTH OR CTSH?**

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

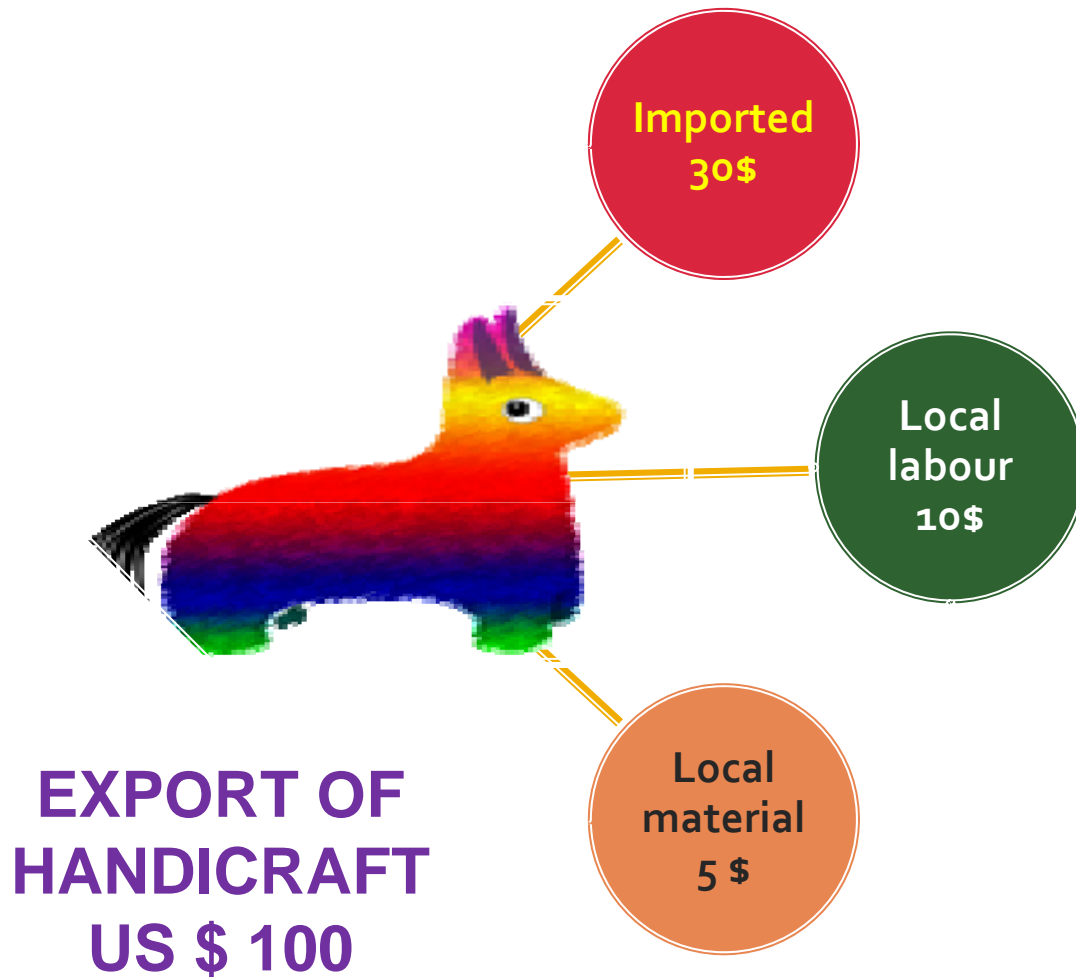
$$\frac{\text{Value of imported imports} + \text{Value of Undetermined Origin inputs (non-originating inputs)}}{\text{FOB Price}} \times 100 \% = X\%$$

**Value added = 100 – X%.**

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

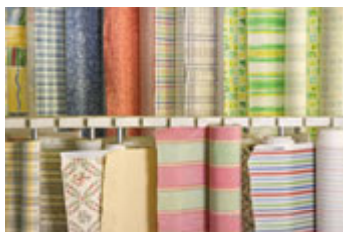
**Local profits, transportation, handling charges etc. are included in the value addition.**

# Exercise 1



# EXERCISE 2

rn –  
ported 50\$



Fabric 60\$



Shirts exported  
100\$

# **SAFEGUARD FOR CIRCUMVENTION OF RoO**

## **OPERATIONAL CERTIFICATION PROCEDURES**

**Agencies ( Exporting & Importing Country)**

**Pre-export verification**

**Issuance of CoO**

**Information**

**Verification at the time of imports**

**Legal remedies and actions**

## Role of Agency

### **re-verification**

To be done by the Issuing Agency (Governmental Agency).

Exporter to make application giving full working detail

Issue CoO after confirming that the conditions of RoO are fulfilled.

No verification required in cases of such products where the origin can be easily verified by their nature.

Original to be given to exporter, for submission to the Customs authority of importing country.



## **Role of Customs authorities**

**Check that the imported goods are as declared in the CoO.**

**Import is within validity of CoO.**

**Random check and verification of CoO and DVA etc. to be done by Customs.**

**Can suspend preferences where verification is being done.**

**In case of suspicion/detection of fraud – deny preferences.**

**Communication: Through focal point(s) designated by Governments.**

**Confidentiality to be maintained.**

## **Verification at the time of imports**

**If doubt on authenticity of documents submitted.  
Raise specific and detail reason/doubt:  
Inform importer, return CoO  
Inform Issuing Agency – details to be given  
Decide if preferential treatment to be given or not  
– clearance under bond or bank guarantee.  
Fixed timeframes to IA to respond.  
Reply from Issuing Agency, if acceptable – restore preferences.  
If do not agree – request for inspection.**

# **Legal remedies and actions**

**Ensure random checks/verification.**

**Maintain proper records and data.**

**Be careful as actions are subject to Dispute Settlement Agreement, may need to grant compensation.**

**THANK YOU**