

# Rules of Origin

## General aspects and key concepts

### WCO Knowledge Academy

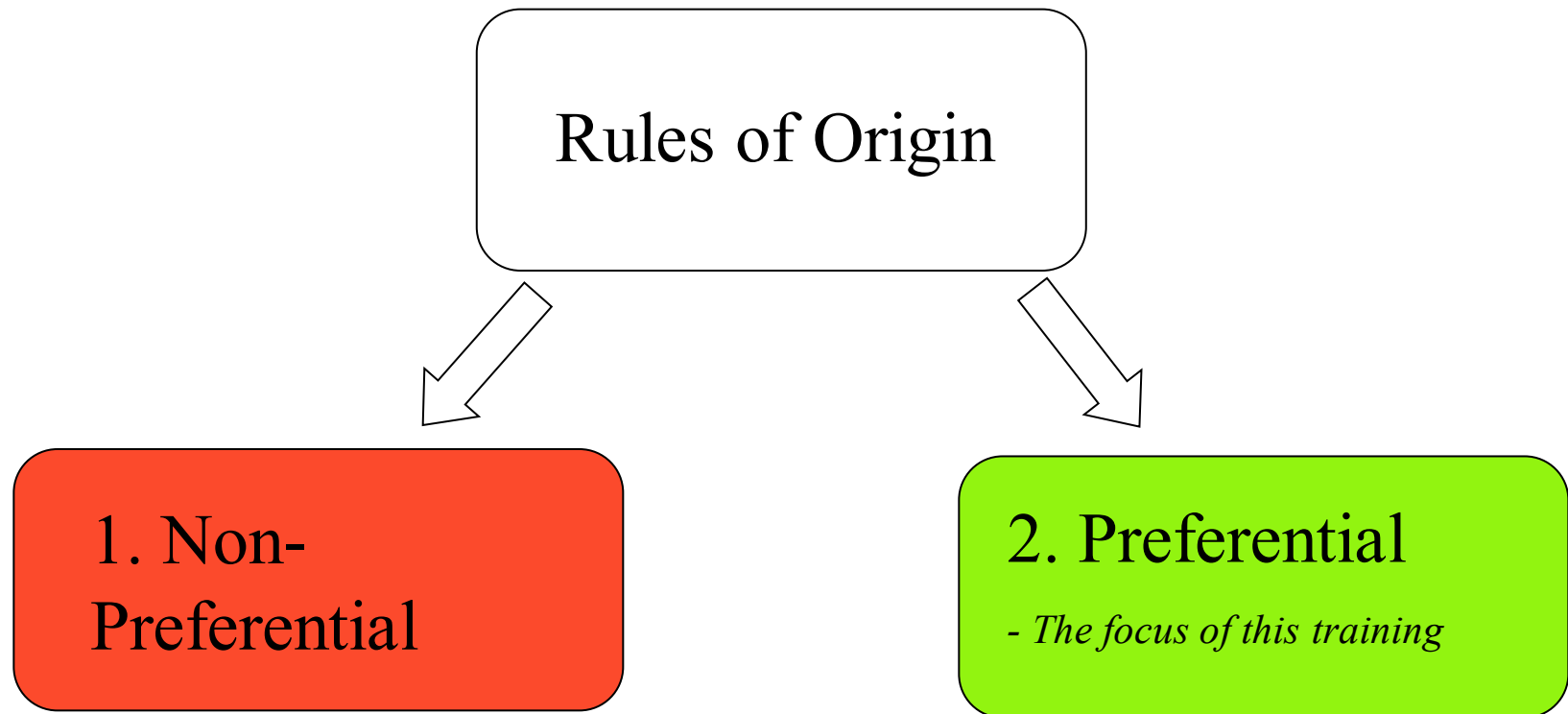
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# Definition of rules of origin

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



# Legal framework: MFN v.s Preferential trade

Multilateral Trade  
Liberalization

Bilateral Trade Liberalization

Multilateralism

versus

Regionalism

GATT /  
WTO

Main Rules  
of the  
GATT

Protection through tariffs only

GATT 1994, Art. XI

GATT 1994, Art. XII

Tariff Reduction and Tariff Binding

GATT 1994, Preamble, Art. XXVIII bis,  
GATT 1994, Art. II:1(b)

Most Favoured Nation Clause (MFN)

GATT 1994, Art. I

National treatment

GATT 1994, Art. III

## Preferential Trade Arrangements

Enabling Clause  
(GSP etc)

Decision of 1979  
Differential and more  
favourable treatment for  
developing countries

Waivers

GATT 1994  
Art. XXIV

Reciprocal Tariff dismantling  
on substantially  
all the trade

Exemption from MFN

Non reciprocal / asymmetric

# 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

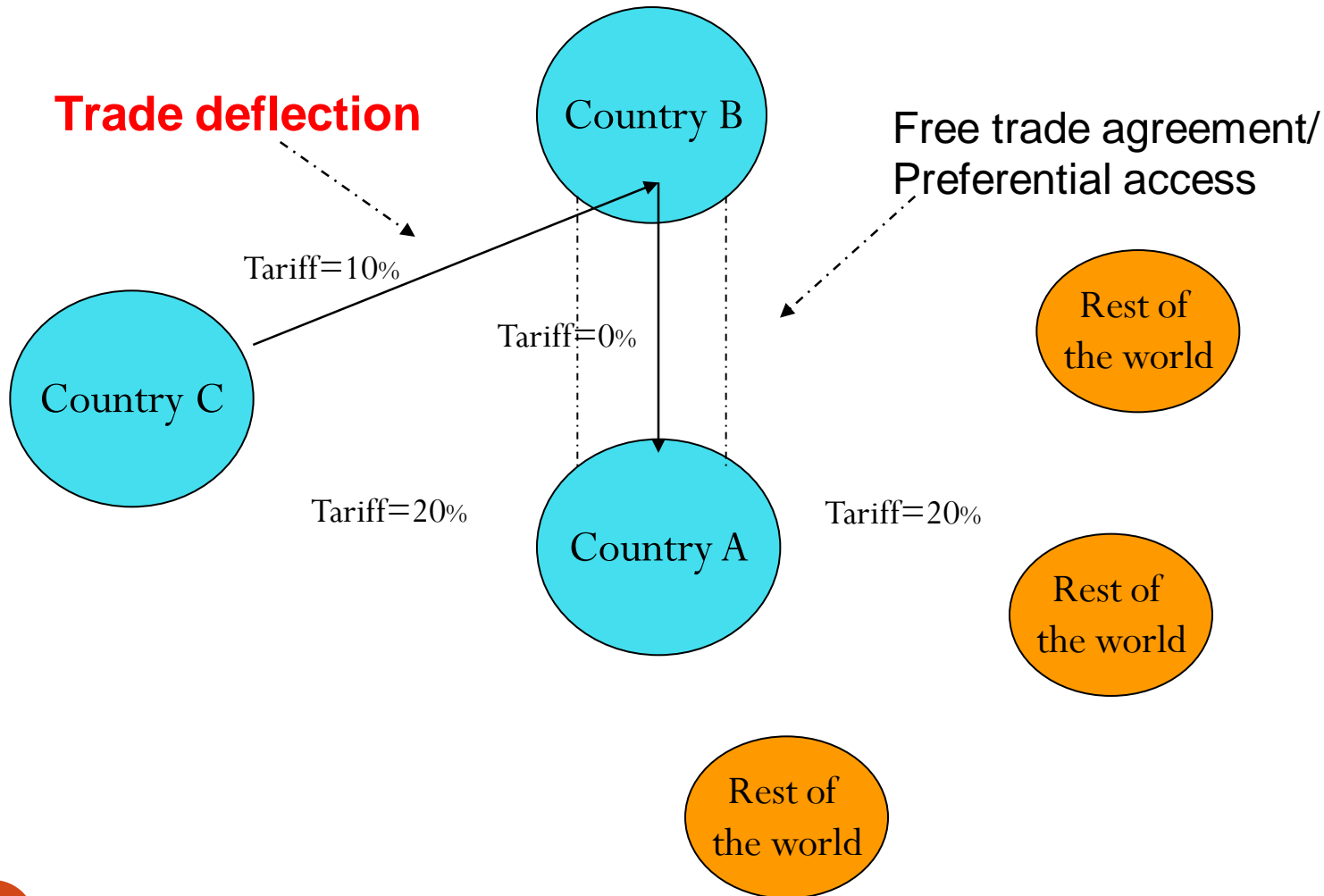
# Preferential rules of origin

- 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

# Prevention of trade deflection



# Problems of rules of origin?

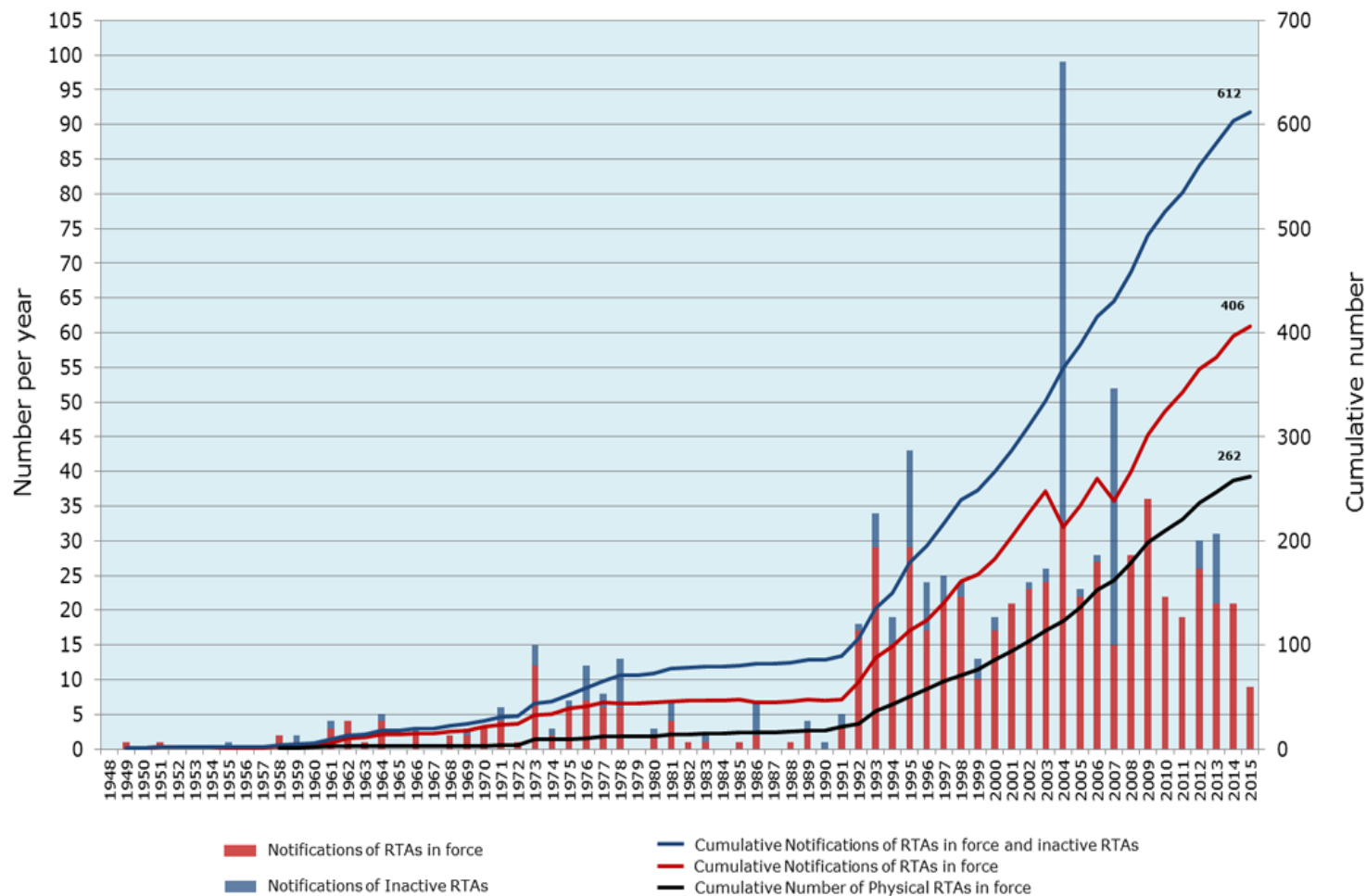
- Two apparent problems...
  - "The spaghetti bowl" of overlapping FTAs
  - Restrictive rules of origin distort trade



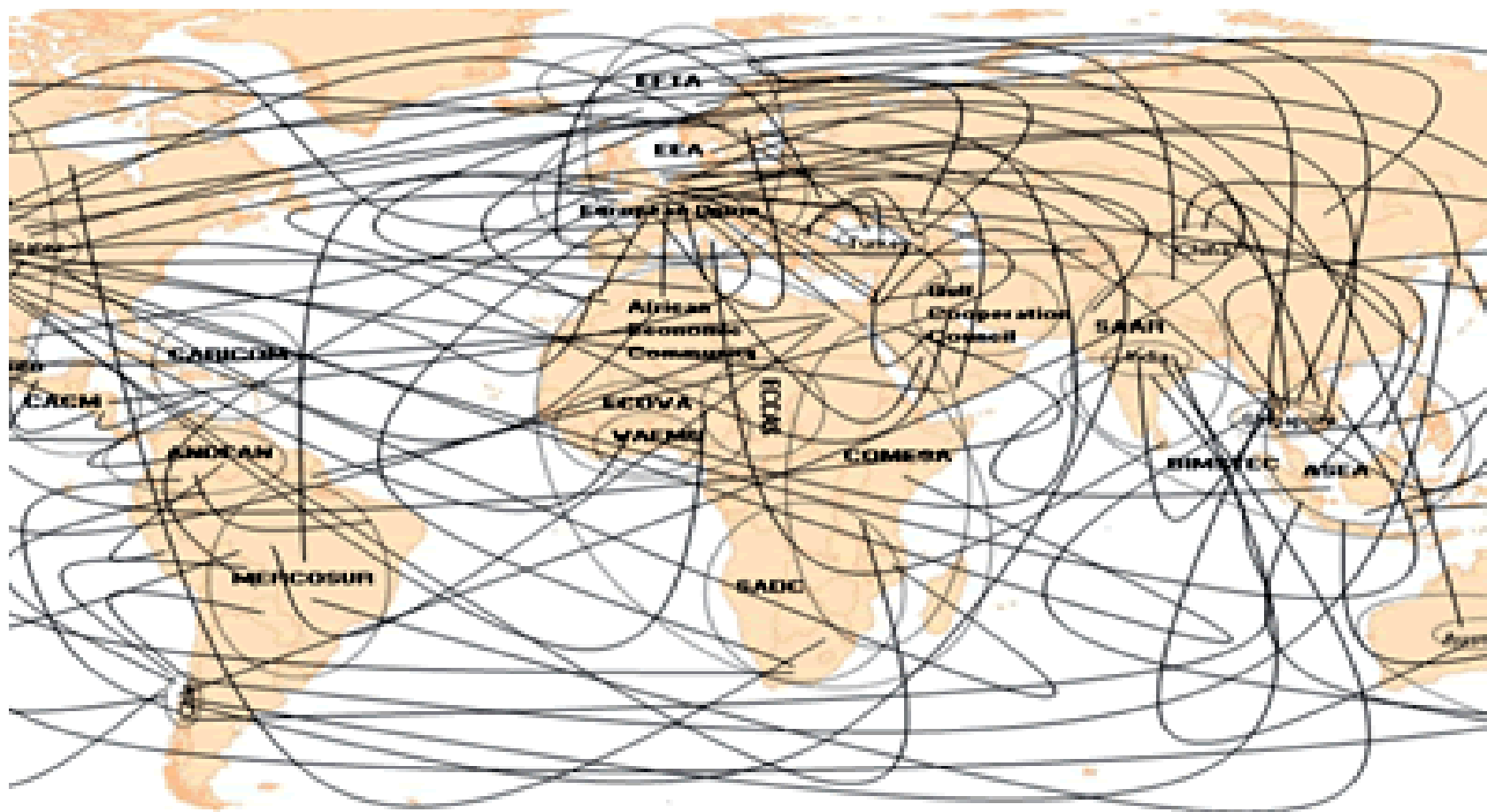
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# INCREASING NUMBER OF PREFERENTIAL AGREEMENTS

RTAs notified to the GATT/WTO (1948-2015) by year of entry into force

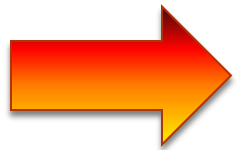


# THE SPAGHETTI BOWL OF COMPLEX AND OVERLAPPING RULES OF ORIGIN LEGISLATIONS

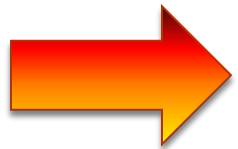


# How can RoO distort trade?

- 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)

# Issues discussed at a global level

- Trans-Pacific Partnership
- Transatlantic Trade and Investment Partnership
- Preferential market access for Least Developed Countries

# Preferential market access for Least Developed Countries

- WTO Ministerial Decision on Preferential Rules of Origin for LDCs adopted in Nairobi in December 2015.
- Decision encourages preference-granting WTO Members to
  - reform their rules of origin to make them simpler and more transparent, including
    - allowing for the use of up to 75 % of non-originating materials,
    - eliminating exceptions or restrictions to tariff classification rules,
    - adopting simple transformation rules when based on specific manufacturing requirements,
    - expanding cumulation possibilities,
    - simplifying origin-related documentary requirements such as avoiding non-manipulation certificates and introducing self-certification.

# Key concepts of Rules of Origin

# Conditions for preferential treatment

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

# 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”

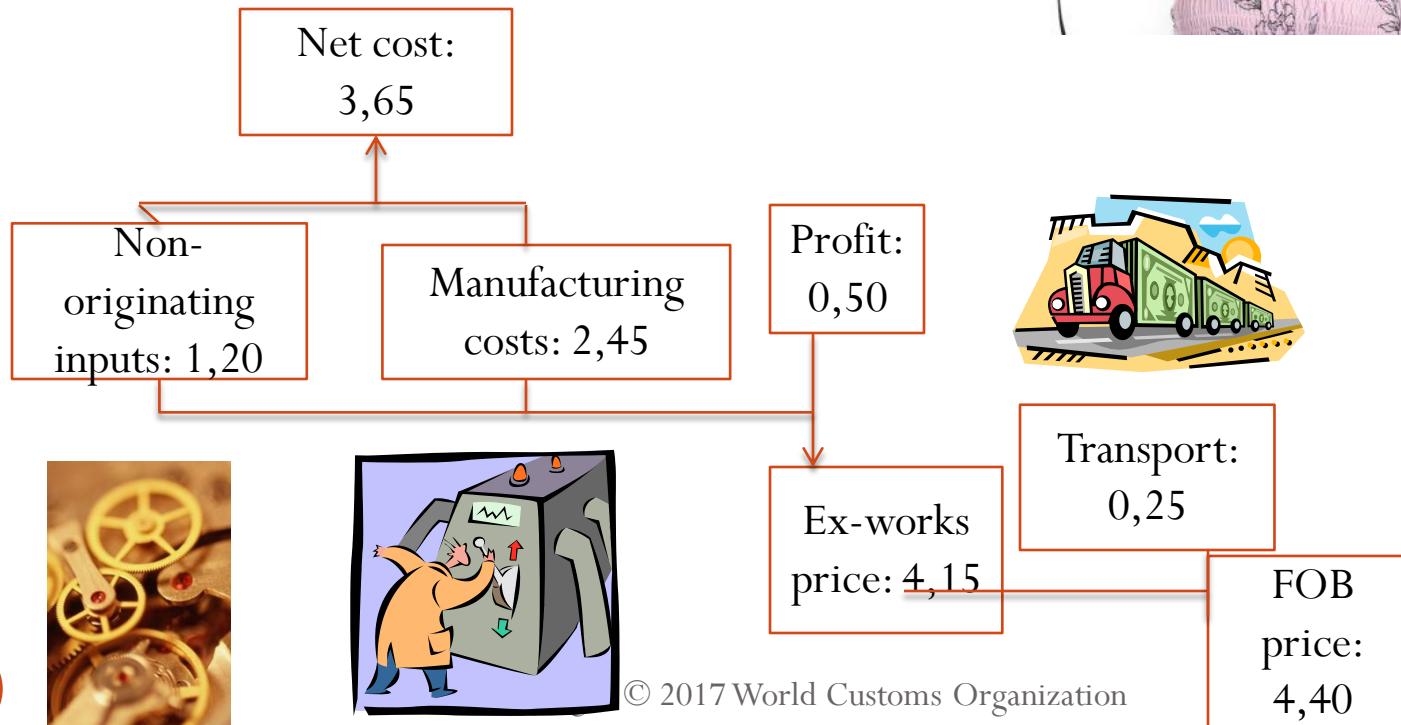


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HS Code No.		Description of Goods	Origin Criteria
03.04		Fish fillets and other fish meat (whether or not minced), fresh, chilled or frozen.	
ex03.04 (a)		- <u>Fish surimi</u>	
ex03.04 (b)		- <u>Fish fillets, fresh, chilled or frozen</u>	[The country 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)

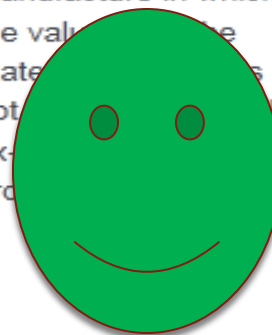
## (3) – Not originating!

Input materials cannot be from the same heading as the product

Manufacture  
- from any of the materials, except those which are wholly of the same heading as the product  
- in which the value of the materials does not exceed 40 % of the ex-works price of the product



Manufacture in which the value of the materials does not exceed 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”

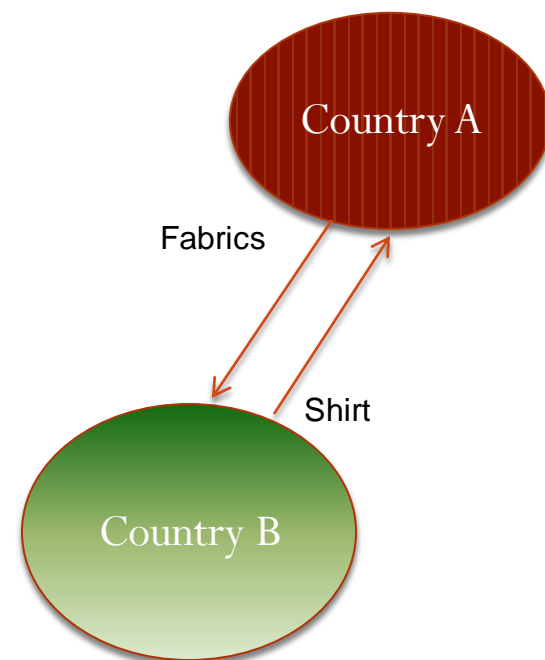


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## Bilateral cumulation

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.*

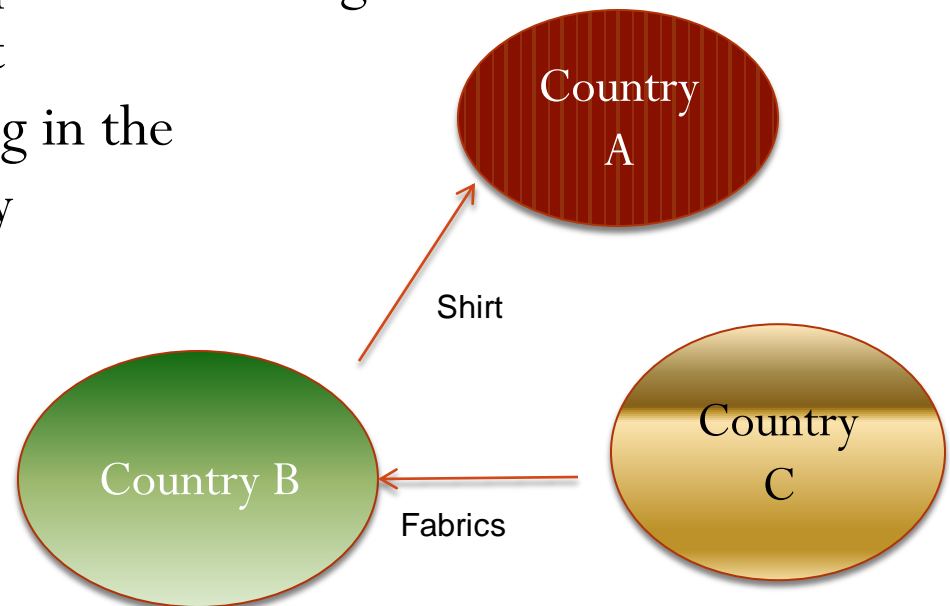
# Definition of “originating products”

## 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

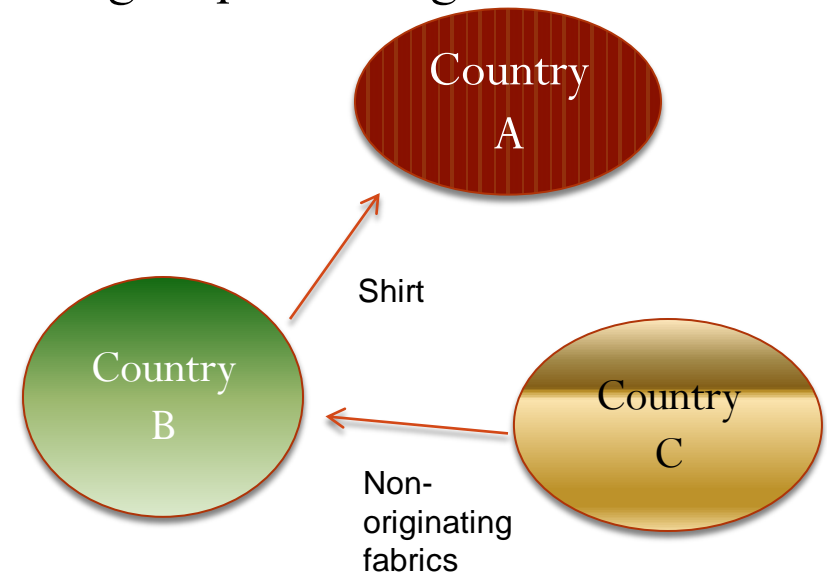
# Definition of “originating product”

## 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

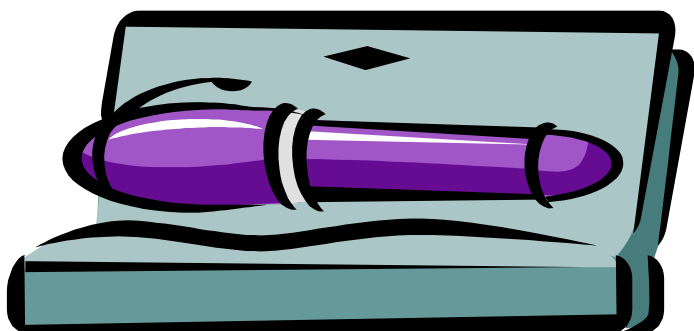
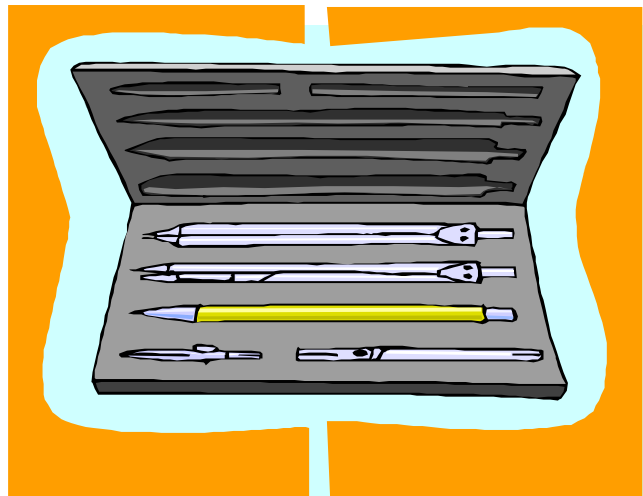
- According to the Harmonized System

## 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”

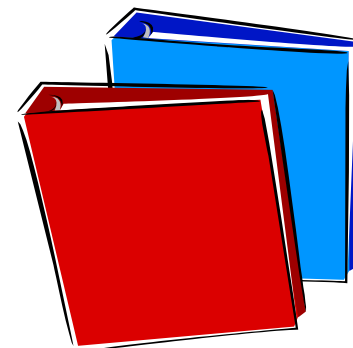
## Accessories, Spare Parts and Tools

- 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

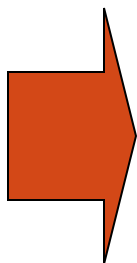
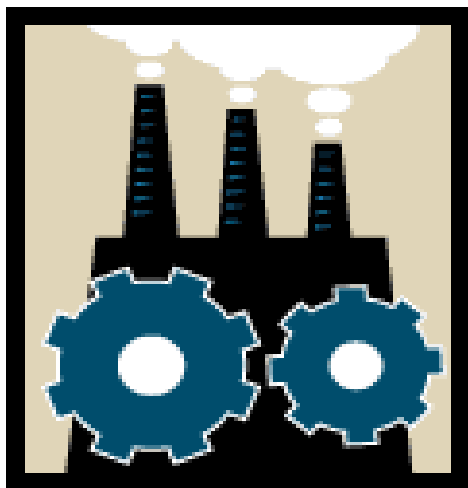
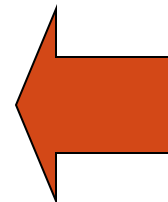
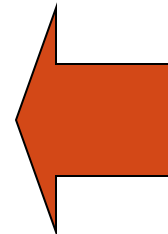
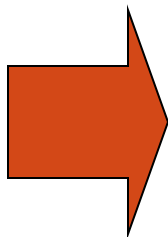
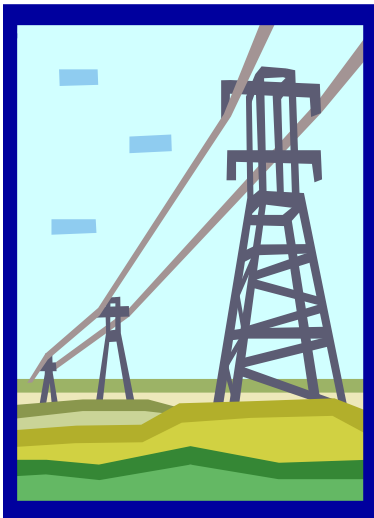


# Definition of “originating product”

## 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

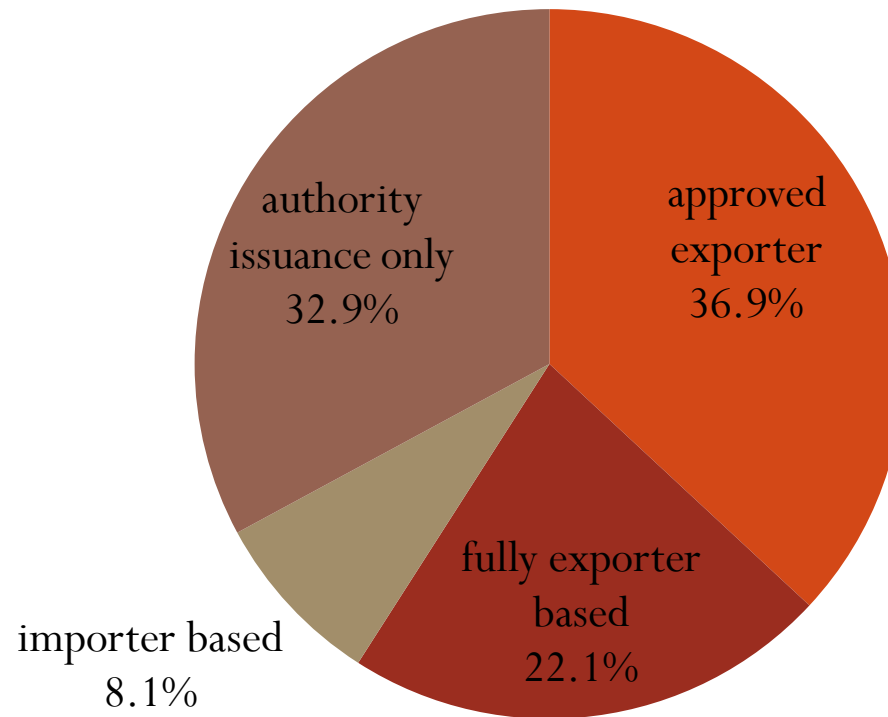
# Types of preferential origin certification systems

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

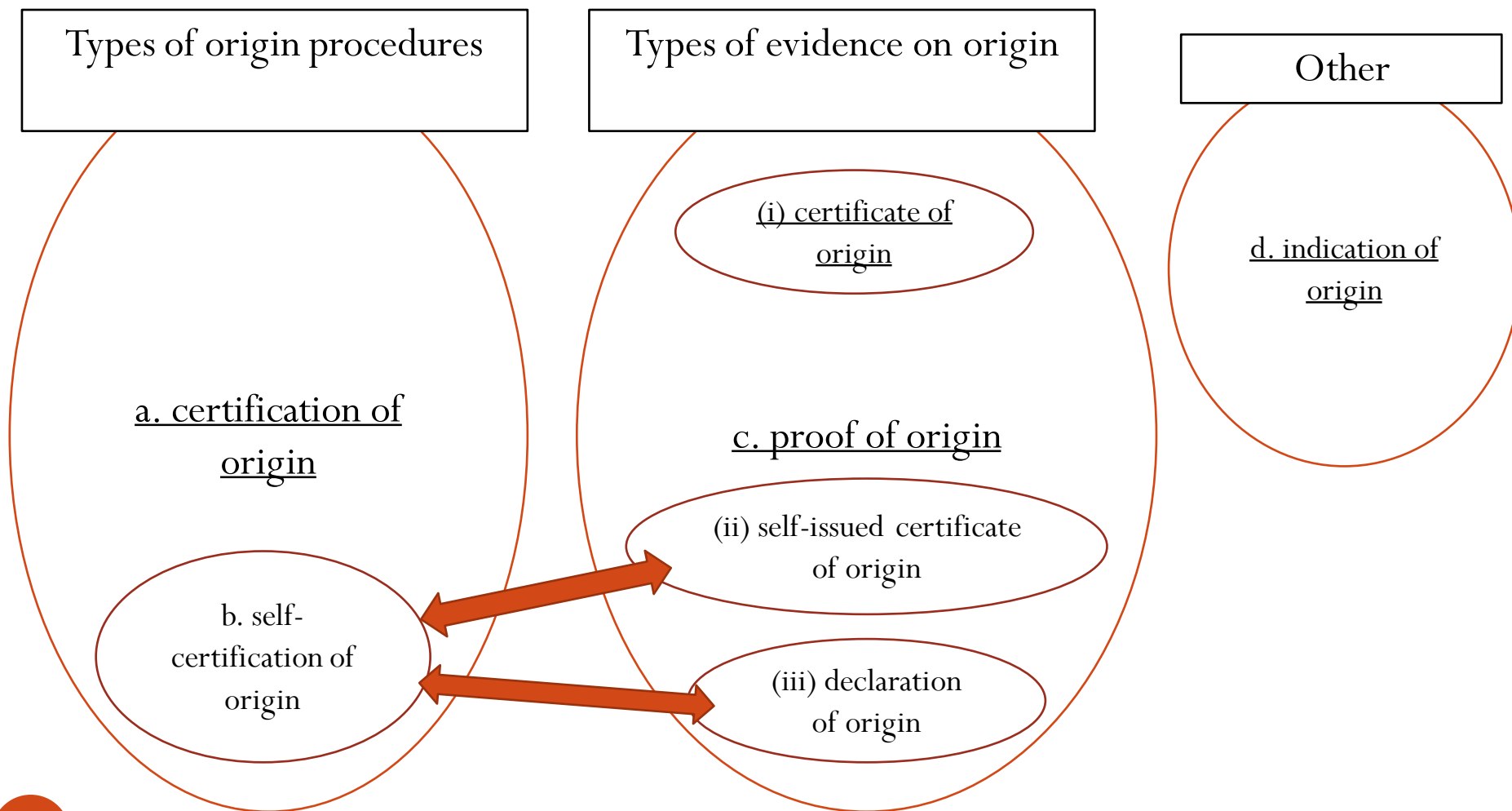
Self-certification = issuing authorities not involved in every single issuance of proof of origin

# Proportion of certification systems around the world

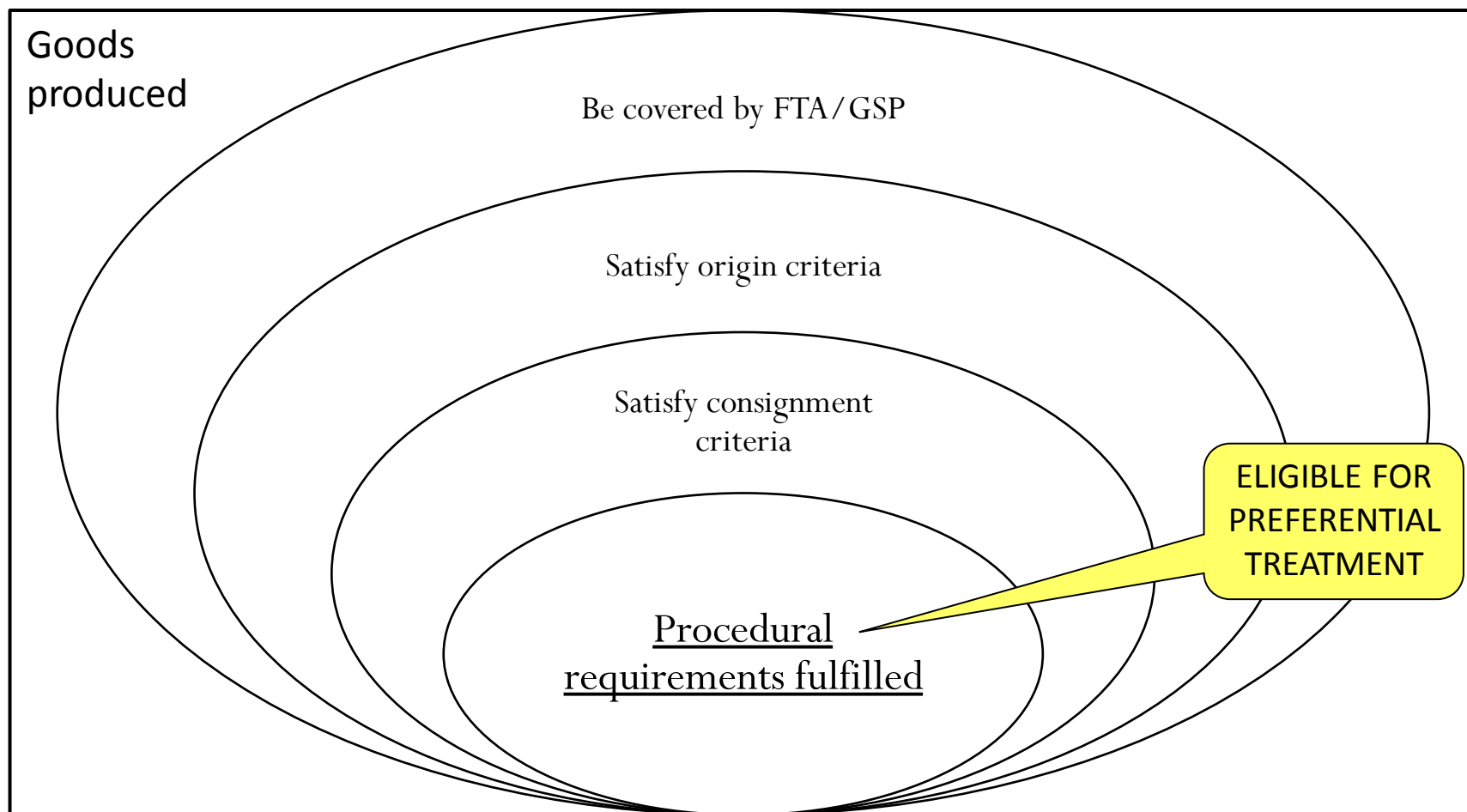
PROPORTION OF CERTIFICATION SYSTEMS



# 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