

Design of Rules of Origin and Taming the RTAs – Indian Experience

**Workshop on Trade, Investment and Regional Integration:
Lessons for Policymakers**

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Topic of discussion

- **Rules of Origin - concepts**
- **Experiences of Asia Pacific Members & India**
- **Way Forward**

Rules of Origin

- **Rules of origin are criteria used to determine the “nationality” of a product.**
- **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.**
- **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.**
- **Use as “commercial policy instrument”?**

Conceptual basis for Rules of Origin

■ **Non-preferential Rules of Origin**

- To apply basic trade policy during imports
- WTO Harmonization Work Programme

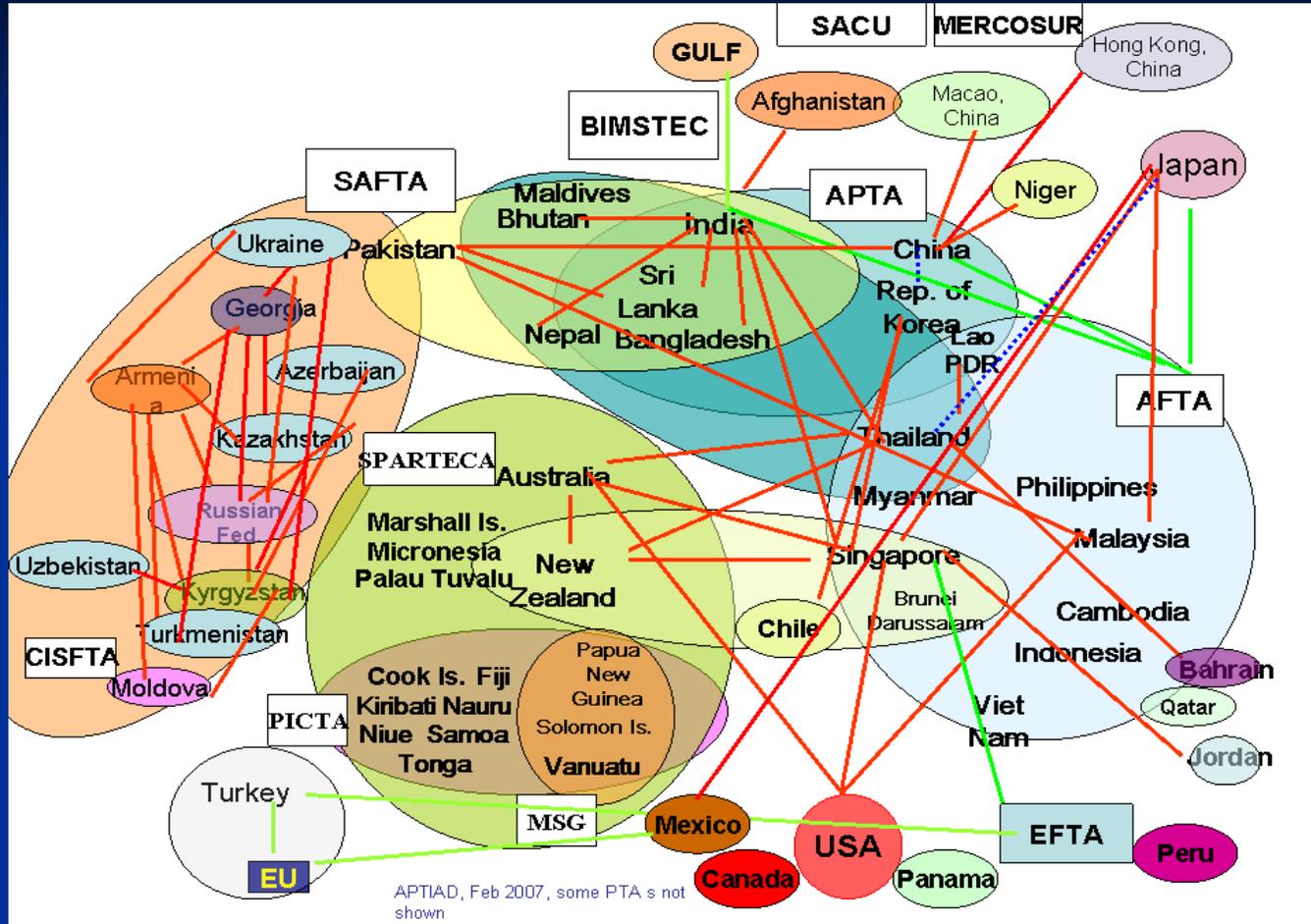
■ **Preferential Rules of Origin**

- Checking trade deflection of third country goods.
- Facilitate value addition in the exporting country.
- Augmenting intra-regional trade and investment flows.
- Facilitate trade between RTA partners only.

RoO: Barriers to trade or facilitator?

- **Rush to RTAs has become a global phenomena. Almost all members of WTO are participating in one or more RTAs. ESCAP members not untouched.**
- **There are several agreements that have been signed in the ESCAP region and negotiations are going on to conclude several other agreements.**
- **The rise in these agreements have given rise to ‘overlapping’ arrangements – “spaghetti-bowl” phenomena.**
- **Burdensome procedures.**
- **Business community & customs authorities are finding difficult to operate.**

The “spaghetti-bowl”



BTA	<hr style="border: 1px solid red;"/>	RTA	Country – bloc	<hr style="border: 1px solid green;"/>
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(Source: Mikic, Mia (2007): Mapping preferential trade in Asia and Pacific)

RoO - Qualifying Criteria

■ Product categories

- ✓ Wholly obtained or produced
- ✓ Not wholly obtained or produced
- ✓ Products obtained through regional cumulation

Not wholly obtained or produced

- **No standard framework**
- **Broadly three main methods used:**
 - ✓ **Change of Tariff Classification**
 - ✓ **Local content / value addition**
 - ✓ **Specific manufacturing processes**
- **Product Specific Rules**
- **Cumulation**
- **Minimal/insufficient or non-qualifying operations**

Rules of Origin in Asia - Pacific RTAs

Agreements	Type	Criteria	Cumulation
AFTA, China – ASEAN, SAPTA	Regional	40% VA	Full
APTA	Regional	45% VA	Full
SAFTA	Regional	CTH + 40%	Diagonal
India – Sri Lanka FTA	Bilateral	CTH + 35%	Bilateral
Singapore - Australia	Bilateral	50% VA	Bilateral
Singapore - USA	Bilateral	CTC, VA, PSRs - mixed	Bilateral
Singapore - India	Bilateral	CTH + 40% VA	Bilateral
Australia - USA	Bilateral	CTC, PSRs, VA - mixed	Bilateral

INDIA'S RoO

PTA

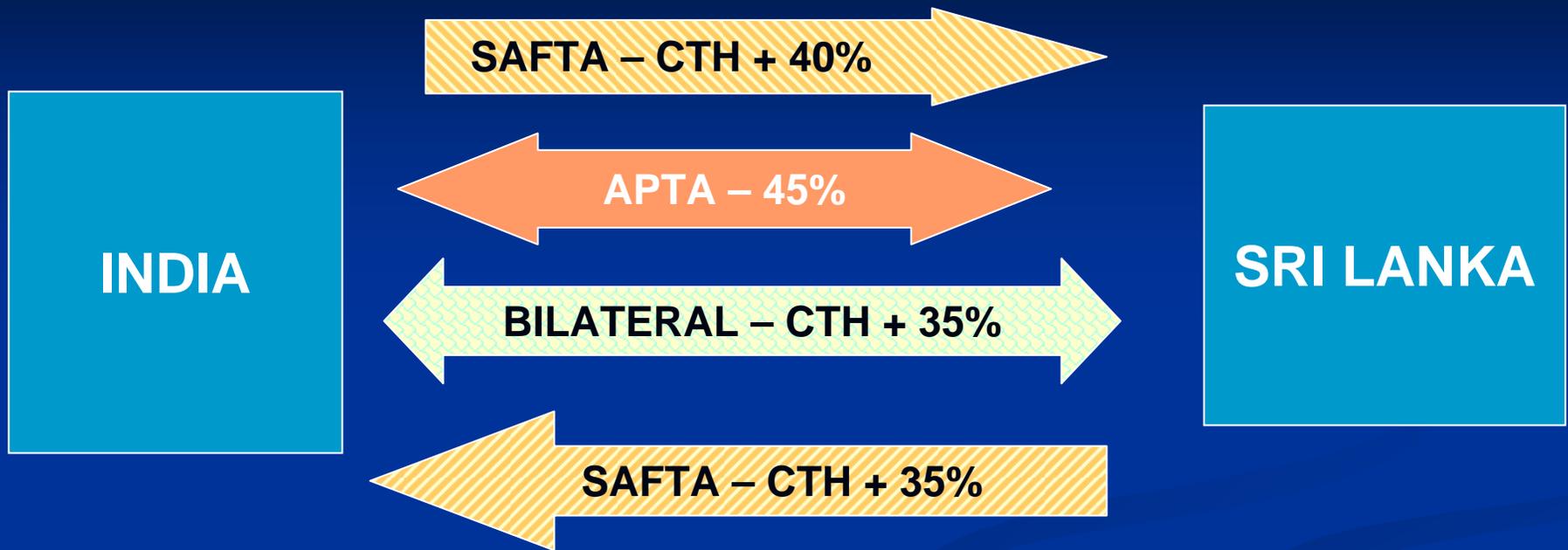
■ APTA	-	45%
■ GSTP	-	50%
■ SAPTA	-	40%
■ MERCOSUR	-	60%
■ INDIA – CHILE	-	40% + CTH

INDIA'S RoO

FTA

- INDIA – NEPAL - 30% + CTH
- INDIA – BHUTAN - NONE
- INDIA – SRI LANKA - 35% + CTH
- INDIA – SINGAPORE - 40%+CTH+PSR
- INDIA – THAILAND EHP - 40%+CTH+PSR
- SAFTA - 40%+CTH+PSR
- INDIA – ASEAN - 35% + CTSH
- INDIA – S. KOREA - 35% + CTSH + PSR

Case study – overlapping RoO



- 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.**

The Indo–Lanka free trade agreement and FDI (Signed in December 1998, the Indo–Lanka)

Free Trade Agreement gives duty-free market access to India and Sri Lanka on a preferential basis. Covering 4,000 products, it foresaw a gradual reduction of import tariffs over three years for India and eight years for Sri Lanka.

To qualify for duty concessions in either country, the Rules of Origin criteria spelled out value added at a minimum of 35% for eligible imports. For raw materials sourced from either country, the value-added component would be 25%.

The effect? Sri Lankan exports to India increased from \$71 million in 2001 to \$168 million in 2002. And India's exports to Sri Lanka increased from \$604 million in 2001 to \$831 million in 2002. Although the agreement does not address investment, it has stimulated new FDI for rubber-based products, ceramics, electrical and electronic items, wood-based products, agricultural commodities and consumer durables. Because of the agreement, 37 projects are now in operation, with a total investment of \$145 million.

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.**

Harmonization of PRoO

- **Is harmonization desirable?**
- **Is it possible?**
- **What should be the objectives and principles?**
- **What should be the basis?**
- **Is it an easy task?**
- **Way forward.....**

Is it desirable?

- **The expansion of multiple membership RTAs.**
- **ASEAN + 6 is exploring the possibility of a comprehensive FTA.**
- **Inter-regional & block-to-block RTAs under negotiation (EU-ASEAN, EU- India).**
- **Most of the bilateral agreements would become meaningless due to such expansion/arrangements.**
- **The producers and exporters would try to take use of the most liberal Rules of Origin.**

Is it possible?

COMMONALITY – EASY TO HARMONIZE

- **General Definitions;**
- **List of wholly obtained or produced goods;**
- **Insufficient or minimal operations or processes that do not confer origin;**
- **Neutral elements;**
- **Consignment criteria;**
- **Certificate of Origin;**
- **Denial of Preferential tariff treatment;**
- **Claim for preferential tariff treatment;**
- **Administrative arrangements relating to issuance and verification of Certificate of Origin; etc.**

NOT SO EASY ISSUES

- **Qualifying criteria for not-wholly obtained or produced goods;**
- **Cumulation; and**
- **Product Specific Rules.**

What should be the objectives?

- **Trade Deflection/circumvention**
- **Simple, transparent and predictable**
- **Cost of procuring CoO – less**
- **Cumulation – promote intra regional trade**
- **Trade facilitation**
- **Sensitivity not to be addressed by RoO**
- **Product Specific Rules to be avoided**
- **S&D provisions to be built for LDCs**

What should be the basis?

Following developments are worth taking note of:

ASEAN

- ASEAN apart from having its own AFTA now has bilateral FTAs with China and Korea and is negotiating bilateral FTAs with India, Australia and New Zealand. A Working Group is examining possibility of having comprehensive agreement for ASEAN + 6 FTA.

APTA

- Asia Pacific Trade Agreement (APTA) has Bangladesh, China, India, Korea, Sri Lanka and Lao PDR as its member.
- One of the largest RTA in terms of market size in this region.
- Attempts are on to enlarge its membership, especially towards Central Asia.
- The ESCAP Secretariat facilitated the discussions in the Standing Committee and prepared the draft template of common Rules of Origin.
- Harmonized RoO successfully in Third Round negotiations.

Is it easy?

What are the challenges?

- **Harmonisation work programme in WTO for non-preferential RoO – learn lessons.**
- **Keep RoO simple, transparent and easily enforceable.**
- **Not to lose sight of developmental objectives.**
- **How successfully it can address mis-declaration, circumvention etc?**
- **Cost of certification for exporter.**

Way forward...

- **India alone can not determine the RoO formulation in this region.**
- **Future negotiations in FTAs – the most liberal RoO becomes the starting point of negotiation.**
- **PSRs are becoming order of the day.**
- **ASEAN – China, Japan, Korea – 40% or CTH.**
- **India's tariffs are going down – autonomously & may be under DR. Hence the apprehension/threat of circumvention is becoming less real.**
- **Its time to look for options that are in harmony with other RoO in the region.**



Thank You