Drafting and implementing rules of origin for a better utilization rate in FTAs

Stefano Inama

United Nations Conference on Trade and Development [UNCTAD]

21 January 2014
Brussels, Belgium
Drafting RoO in FTAs: Do we have a golden model?

- Absence of Multilateral rules
- Very few analytical studies. Forthcoming study by UNCTAD [2014]
- Existence of models: NAFTA inspired rules, Pan-Euro RoO
- Absence of models in South-South FTAs
- Different practices in administering origin
Drafting RoO in FTAs: We just have some lessons learned

- The lessons may be drawn from:
- Low utilization of a FTA or other preferential PTAs
- Changes in practice in the way RoO are drafted since administrations found that some RoO are easier to administer than others.
- Need to adapt RoO to fragmentation of production Vs vertical industrial integration
- There are those that are learning more and those who are learning less …
Recording lessons learned using utilization rates

- Two ways of collecting data on utilization rates
- Customs based: the ratio among goods eligible for FTA treatment with those that have effectively received it
- Companies questionnaires
- One difficulty: Utilization rates by customs are not publically available for the majority of countries
First lesson learned: RoO should Match Industrial capacity [EU reform of GSP RoO]
Second lesson learned: RoO should match value chains
Third: RoO may be stringent, however utilization high, RoO well drafted, what would happen with RoO less strict?

US Imports from Mexico and NAFTA Utilization Rates

- Utilization Rate (Right axis)
- Utilization rate (%)
- Imports from MEX


Import value (USD billions)
Fourth: Is compliance with RoO worth the effort?
**Fifth: Those who seems Learning less: ASEAN Utilization rates [2010]**

<table>
<thead>
<tr>
<th></th>
<th>BRN (Jan-Jun)</th>
<th>KHM (Jan-Dec)</th>
<th>IDN (Jan-Dec)</th>
<th>LAO (Jan-Mar)</th>
<th>MYS (Jan-Dec)</th>
<th>MMR (Jan-Dec)</th>
<th>PHL (Jan-Dec)</th>
<th>THA (Jan-Sep)</th>
<th>VNM (Jan-Jun)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Form D (USD millions)</strong></td>
<td>20</td>
<td>792</td>
<td>7'385</td>
<td>14</td>
<td>4'976</td>
<td>10</td>
<td>6'694</td>
<td>5'126</td>
<td>1'019</td>
</tr>
<tr>
<td><strong>Intra-ASEAN (USD millions)</strong></td>
<td>585</td>
<td>1'682</td>
<td>38'912</td>
<td>404</td>
<td>44'907</td>
<td>1'993</td>
<td>16'270</td>
<td>22'681</td>
<td>7'587</td>
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<tr>
<td><strong>Utilization (%)</strong></td>
<td>3.34</td>
<td>47.1</td>
<td>18.98</td>
<td>3.44</td>
<td>11.08</td>
<td>0.49</td>
<td>41.15</td>
<td>22.6</td>
<td>13.44</td>
</tr>
</tbody>
</table>
Sixth: Those who seems Learning less-Reported averages of Utilization Rates in COMESA and SADC [2010]

Imports from TFTA and Average Utilization Rates
What we can learn

- RoO matching industrial capacity are trade creating and generate value chains [Cambodia]
- RoO may be stringent and predictable leading to high utilization rates in NAFTA. Counterfactual: what if RoO were less stringent?
- The less trade creating: RoO are not predictable and/or do not reflect industrial capacity [ASEAN, COMESA and SADC]
There are clear lessons in drafting and administering RoO

- Abandon use of value added/net cost calculations when using percentage criterion
- Use value of materials calculations
- Move from across the board to Product-Specific RoO [PSROs]. This does not necessarily mean to have PSROs for all products
- Distinguish the issue of ‘form’ from ‘substance’ when drafting PSROs
- Cumulation is not a substitute for liberal RoO
- Insert rules on value tolerance and intermediate materials
Lessons learned in Administering RoO

- The classical model of the certifying authorities and the certificate of origin
- Stamps only (GSP)
- Variations: approved exporters and registered exporters (EU reform)
- Importer declaration (US)
- Stamps and signatures: RTAs in Africa and Asia
- There is clear evidence from utilization rates that the latter is the less trade facilitating