

Specialized Rules of Origin Training for Cambodian Negotiators

An initial assessment of RoO in the
Cambodia-China FTA
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Background

- This preliminary assessment is based on the text on RoO received from MOC. It follows that it does not take into account other aspects of the FTA.
- The overall objective of the FTA with China was presumably to get better market access to China and exploit the trade and investment opportunities deriving from:
 1. Increased market access for actual Cambodian products
 2. Attract local and foreign investment in Cambodia to increase or develop new export capacity and product diversification

Background

- Given Cambodia's low availability of intermediate products to manufacture finished products, the level of stringency or leniency of rules of origin is a key determinant, among others, to take effective advantages from this FTA.
- China is likely not to be affected by RoO as it is widely equipped with a large majority of intermediate inputs.

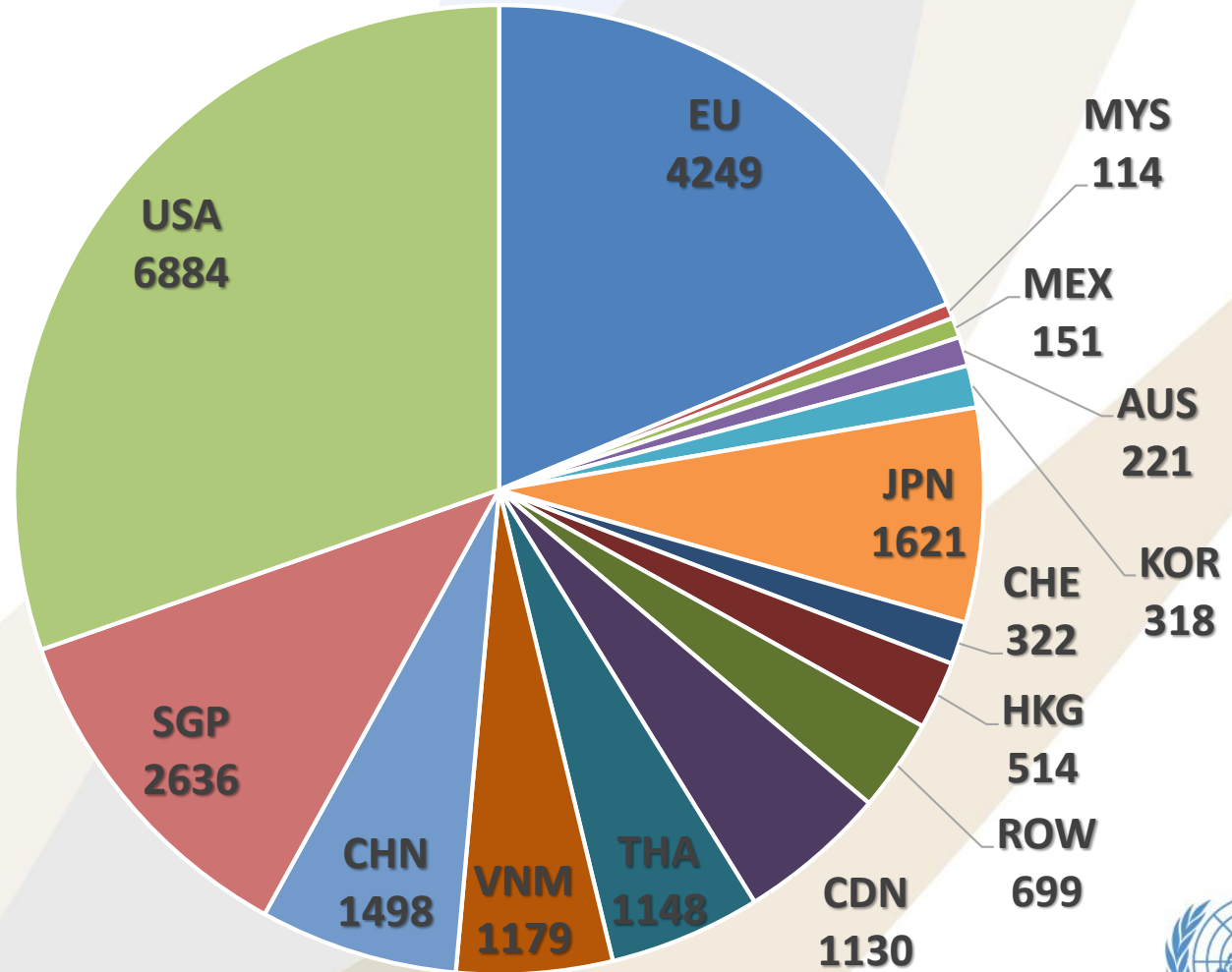
Some initial benchmark

- Prior to the Cambodia–China FTA there is also the ASEAN–China FTA and RCEP, in this perspective, what is the value added of the Cambodia–China FTA on rules of origin?
- Are the rules of origin contained in the Cambodia–China FTA better than those under RCEP and ASEAN–China FTA? And if so, in what sectors?
- What possible sector(s) could attract Chinese investors to Cambodia to manufacture goods for re-export to China using bilateral cumulation?

Some initial benchmark

- What sectors can be used by local or foreign investors to invest in Cambodia to manufacture goods in Cambodia using intermediates originating in third countries?
- Japanese and South Korean investors come to Cambodia to manufacture machinery and electronics for exports to China or Australia and New Zealand to invest in processed agricultural products. Are the rules of origin in the Cambodia-China FTA favoring possible investments in the above mentioned sectors?

Cambodia Export Values and Partners in 2020 (million USD)



First observations

At first reading of the text of the FTA shows that some of the best practices that could be advantageous to Cambodia are not present in the FTA text, such as:

1. Deduction of the cost of freight and insurance for the value of non-originating materials in calculating RVC
2. Application of principle of non alteration in direct consignment provisions
3. Self-declaration or use of a similar system as REX to facilitate compliance
4. Third country invoicing

Issue 1: Article 3.5 Calculation of Regional Value Content

Regional Value Content (RVC) shall be calculated as follows:

$$RVC = \frac{FOB - VNM}{FOB} \times 100\%$$

- RVC is the regional value content, expressed as a percentage;*
- VNM is the value of the non-originating materials.*

VNM shall be determined according to the following circumstances:

- a) In case of the imported non-originating materials, VNM shall be the CIF value of the materials at the time of importation;*

Issue 2: Article 3.8 Direct consignment

1. *Preferential tariff treatment shall be applied to goods satisfying the requirements of this Chapter and which are consigned directly between the exporting Party and the importing Party.*
2. *The following shall be considered as consigned directly from the exporting Party to the importing Party:*
 - a) *goods transported directly from an exporting Party to the importing Party; or*
 - b) *goods transported through one or more non-parties, provided that:*
 - i. *the transit entry is justified for geographical reason or by consideration related exclusively to transport requirements;*
 - ii. *the goods have not entered into trade or consumption there; and*
 - iii. *the goods have not undergone any operation there other than unloading and reloading or any other operation to preserve them in good condition.*

Issue 2: Rule 19 of Annex B

For the purpose of implementing Article 3.8 (Direct Consignment) of the Rules of Origin for the CCFTA, where transportation is effected through the territory of one or more non-Parties, the following shall be submitted to the Customs Authority of the importing Party:

- a) A through Bill of Lading issued in the exporting Party;*
- b) A Certificate of Origin issued by the relevant Issuing Authorities of the exporting Party;*
- c) A copy of the original commercial invoice in respect of the product;
and*
- d) Supporting documents evidencing that the requirements of Article 8.2(b) sub-paragraphs (i), (ii) and (iii) of the Rules of Origin for the CCFTA are being complied with.*

Issue 2: Rule 19 of Annex B cont.

(B) goods transported through one or more non-parties, provided that:

(i) the transit entry is justified for geographical reason or by consideration related exclusively to transport requirements;

(ii) the goods have not entered into trade or consumption there; and

(iii) the goods have not undergone any operation there other than unloading and reloading or any other operation to preserve them in good condition.

Issue 3: Article 3.14 Certificate of Origin

Unless otherwise provided, a claim that goods are eligible for preferential tariff treatment shall be supported by a Certificate of Origin issued by an Issuing Authority notified to the other Parties as set out in Annex 3 (Certificate of Origin).

ANNEX 3
CERTIFICATE OF ORIGIN

1. Products consigned from (Exporter's business name, address, country)		Reference No. CHINA-CAMBODIA FREE TRADE AGREEMENT CERTIFICATE OF ORIGIN (Combined Declaration and Certificate)			
2. Products consigned to (Consignee's name, address, country)					
3. Means of transport and route (as far as known) Departure date Vessel's name/Aircraft etc. Port of Discharge		4. For Official Use <input type="checkbox"/> Preferential Treatment Given <input type="checkbox"/> Preferential Treatment Not Given (Please state reason/s) Signature of Authorised Signatory of the Importing Party			
5. Item Number	6. Marks and numbers on packages	7. Number and type of packages, description of products (including quantity where appropriate and HS number in six digit code)	8. Origin criteria (see Overleaf Notes)	9. Gross weight or net weight or other quantity, and value (FOB) only when RVC criterion is applied	10. Number, date of Invoices
11. Declaration by the exporter The undersigned hereby declares that the above details and statement are correct, that all the products were produced in (Country) and that they comply with the origin requirements specified for these products in the Rules of Origin for the CCFTA for the products exported to (Importing Country) Place and date, signature of authorised signatory		12. Certification It is hereby certified, on the basis of control carried out, that the declaration by the exporter is correct. Place and date, signature and stamp of certifying authority			
13 <input type="checkbox"/> Issued Retroactively <input type="checkbox"/> Exhibition <input type="checkbox"/> Third Party Invoicing					

Issue 3: Rule 3A

Each Party shall inform the other Party of the names and addresses of its respective Issuing Authorities and shall provide specimen signatures and specimen of official seals, and correction stamps, if any, used by its Issuing Authorities.*

**The requirement to circulate specimen signatures is not necessary when the issuing authority has established the website containing relevant information of Certificate of Origin that the importing party can access.*

Issue 4: Third Country Invoicing (Rule 21)

The Customs Authority of the importing Party shall accept a Certificate of Origin in cases where the sales invoice is issued either by a company located in a third country or by an CCFTA exporter for the account of the said company, provided that the product meets the requirements of the Rules of Origin for the CCFTA.

The original invoice number or the third party invoice number shall be indicated in Box 10 of the Certificate of Origin, the exporter and consignee must be located in the Parties and the third party invoice shall be attached to the Certificate of Origin when presenting the said Certificate of Origin to the Customs Authority of the importing Party if it is required to be submitted to the Customs Authority of the importing Party.

Article 3.6 Accumulation

Unless otherwise provided in this Chapter, goods originating in a Party, which are used in another Party as materials for finished goods eligible for preferential tariff treatment, shall be treated as originating in the latter Party where working or processing of the finished goods has taken place.

A quick look at the PSROs

- The main text to determine origin Article 3.4 has an extremely convoluted drafting:
- Paragraph 1 (a) and (b) of Article 3.4 provides for alternative general rules: **RVC 40**
- Chapters 25-26, 28-29, 31, 39, 42-49, 57-59, 61-62, 64, 66-71, 73-83, 86, 88, 91-97: **An alternative CTH criteria**
- Remaining products Paragraph 2 of Article 3.4 provides for a RVC 40, unless there is a different PSRO provided in Annex 2.
- It appears that the RVC 40 applies in many cases

A quick look at the PSROs in Annex 2

- According to Paragraph 2 of Article 4.3 the PSRO apply in an exclusive manner, no alternatives:
- A quick look at the PSROs raises the following issues:
 - Entire HS agricultural chapters are either wholly obtained or CC that means wholly obtained
 1. A CC in Chapter 4 means wholly obtained, a CC in chapter means that making cheese and dairy products from non originating milk is not origin conferring
 2. A CC in Chapter 15 oils and fats except from Chapter 12 where the seeds are classified as a WO. This means that crushing non originating seeds and refining oil is not origin conferring
- It is only from Chapter 16 of food preparations and 19 pasta products that CC allows use of non originating materials.

A quick look at the PSROs in Annex 2

- While in general the PSROs for textile and clothing and shoes are not stringent the PSROs are getting stringent or not transparent when Chapter 84 machinery and 85 electronics come into play:
 - The Chapter rules for 84 and 85 provide that: *a good shall not be considered as originating, if it has only undergone one or more of the following operations or processes: simple assembly of parts of articles to constitute a complete article or disassembly of products into parts.*
- These chapter rules have no precedent in other FTAs and basically may put into question all assembly operations i.e., assembly an engine of a car is a substantial transformation or subassemblies of electronics devices.
- This lack of transparency may disincentivize invest in Cambodia in these industries to access the Chinese market



Conclusion and Recommendations

- A preliminary text analysis of the rules of origin contained in Cambodia-China FTA shows that there is considerable room for improvement in different areas
 - On PSROs by carrying out an in-depth review of the suitability of such rules to Cambodia
 - On the main text of the rules of origin by introducing trade facilitation provision and best practices
- There is a need to activate as soon as possible the Committee of Rules of Origin and the Joint Commission to discuss ways and means to improve the text.
- UNCTAD is carrying out a deeper analysis on this topic



Thank you for your attention!

"Mazzarello - geometrie del dare, nuovo futuro" is the work of Maurizio Cancelli.

Its architectural perspective emphasizes the interactions of governments, societies and economies from around the globe under the United Nations Framework. This collaboration highlights the earth, its resources and potentials, and fosters a recognition of local communities and their right to exist in their places of origin, with their own distinction and diversity. Maurizio Cancelli started his artistic research on the right to live in one's place of birth more than thirty years ago. His work is inspired by the mountainous terrain surrounding the village of Cancelli in the heart of Umbria, Italy.



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