



Technical and statistical report

De Facto Convergence in Product Specific Rules of Origin and Proof of Origin

The Case for Sharing Experiences
at the Multilateral Level



**United
Nations**



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Geneva, 2025

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Abbreviations

ADB	Asian Development Bank
AfCFTA	African Continental Free Trade Area
ARO	Agreement on Rules of Origin
CAFTA	Central America-Dominican Republic Free Trade Agreement
CETA	Comprehensive Economic and Trade Agreement
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
CRO	Committee on Rules of Origin
CTH	Change of Tariff Heading
DCTS	Developing Countries Trading Scheme
DFQF	Duty-Free Quota-Free
EBA	Everything But Arms
FTA	Free Trade Agreement
HRO	Harmonized Rules of Origin
HWP	Harmonization Work Program
LDC	Least Developed Countries
MFN	Most-Favored-Nation
NAFTA	North American Free Trade Agreement
OECD	Organisation for Economic Co-operation and Development
PSROs	Product Specific Rules of Origin
PTA	Preferential Trade Agreement
QUAD	Quadrilateral Security Dialogue
RCEP	Regional Comprehensive Economic Partnership
RoO	Rules of Origin
RVC	Regional Value Content
TCRO	Technical Committee on Rules of Origin
UNCTAD	United Nations Conference on Trade and Development
USMCA	United States–Mexico–Canada Agreement
VNOM	Value of Non-Originating Materials
VOM	Value of Originating Materials
WCO	World Customs Organization
WTO	World Trade Organization



Table of contents

Acknowledgements	iii
Abbreviations	iv
Table of contents	v
Executive summary	vi
I. The Meaning of “de facto” Convergence	1
II. Understanding Convergence in form and substance	5
III. Convergence on Drafting Ad Valorem Percentage Criterion	7
IV. Identifying PSRO Convergence in Substance across major FTAs, HRO, and mega-regionals	9
The methodology to identify convergence	9
Full or partial convergence	10
Divergence	10
Comparison Results	10
V. Preliminary Observations and the Way Forward	21
References	22



Executive summary

This study argues that the international trading community should take stock of the positive developments occurring on rules of origin based on a “de facto” analysis carried out in this study. Using an innovative approach the analysis shows that major FTAs have convergent product specific rules of origin (PSRO) on the majority of PSRO at HS six-digit level as high as 60.3%, equivalent to 54% of dutiable intra-FTA trade.

This study advocates that the results of this analysis should be used to hold a series of informed sessions at intergovernmental level among WTO and WCO members to further discuss the areas of convergence and later share it with the wider community as a useful toolbox or compendium of PSROs and proof of origin to facilitate compliance and reduce costs. Further analysis is being undertaken on proof of origin, another fundamental part of rules of origin complementing the present publication.





The Meaning of “de facto” Convergence

This initial study is part of an ongoing research work program¹ aimed at stimulating a reflection to devise innovative ways to discuss rules of origin at multilateral level. Such deliberations should aim at reviving a dialogue to capture the gains emerging from “de facto” convergence on Product Specific Rules of Origin (PSROs) and proof of origin.

The stalemate in achieving consensus on the results of the Harmonization Work Program (HWP) under the WTO Agreement on Rules of Origin (ARO) led to a “paralysis” of initiatives to discuss RoO at multilateral level for decades. Following the recognition of such lack of consensus, discussions in the WTO Committee on Rules of Origin (CRO)

and the Technical Committee on Rules of Origin (TCRO) at WCO had a very limited agenda given the respective mandates under the ARO. In addition, Member States of these Committees lost confidence that any progress could be achieved in discussing RoO at multilateral level.

Discussions in the CRO about rules of origin resumed in 2014 when at the initiative of WTO chairperson of the CRO, WTO members accepted the idea to begin discussion on the implementation of the Hong Kong Decision on Duty Free Quota Free on providing LDC trade preferences with “simple and transparent rules of origin”².

¹ Preliminary results on converge were shown at an executive round table on rules of origin held at the European University institute in 2017 and in. *Towards Convergence on Rules of Origin Between Trade at the Regional and Multilateral Level*. RTA Exchange. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and the Inter-American Development Bank (IDB) Inama, Stefano. 2017. An earlier version of this study has been presented at the CRO meeting of 21-22 November 2024.

² For an in-depth analysis of the work carried out in the CRO on LDC rules of origin see: Getting to better rules of origin for LDCs using utilization rates, From the WTO Ministerial decision in Hong Kong (2005) To Bali (2013), Nairobi (2015) and beyond, UNCTAD, 2021.

Yet such debate in the CRO, albeit fruitful and leading to the Bali and Nairobi Decisions on preferential rules of origin, is limited to preferential rules of origin under unilateral preferences granted to LDCs. Similarly, the work of the TCRO has been even more restrained given the mandate provided by the ARO.

Meanwhile world trade changed drastically and, so far, there has not been a multilateral forum to discuss developments occurred on rules of origin given the above constraints.

The proliferation of FTAs has produced, as by-product, a parallel spaghetti bowl of Rules of Origin (RoO) and related proof of origin procedures, that have been amply discussed in literature. Compliance with such a bowl is a cost to firms' operations. Yet, a closer look reveals that administrations have also learned from practice, especially when driven by firms' inputs³.

In parallel, a proposal presented in the CRO⁴ implicitly recognized that discussions on non-preferential rules of origin could be approached with a fresh perspective, albeit with a limited scope. While this proposal was not ultimately adopted, there is widespread recognition among WTO members of the need to update the notification of non-preferential rules of origin, as many of these notifications date back to the early 1990s, when the Agreement on Rules of Origin (ARO) came into force.

This study points out that developments in preferential RoO in FTAs have led to simplification and streamlining of the RoO,

informed by lessons learned from over more than 20 years of operation of major FTAs. Progressively, the EU and the US, as well as counterpart OECD nations (e.g., Japan, South Korea, Australia, and New Zealand) and their partners in developing countries, have "de facto" converged while drafting product specific rules of origin (PSROs). This development is recognizable to the eye of the practitioner. Innovations have been introduced and convergence has been achieved, especially in some sectors.

There are, of course, differences in sensitive sectors, such as processed foodstuffs, textiles and garments.

Convergence can also be detected in the determination of ad valorem percentages based on a value of materials calculation. Differences in the arithmetical calculations and definitions of what goes into the numerator and denominator remain and, in the automotive sector, some WTO members opt to use a net cost approach.

Thus, developments regarding preferential RoO in the PTAs including the major trading countries as well as developing countries and LDCs are pointing towards simplification and streamlining. This has supported greater trade growth in FTAs as shown by the relatively high utilization rate of major PTAs, which range from 80 percent to 90 percent⁵ in the case of the EU. In the case of US FTAs, similar figures have been reported as high as 82% for USMCA, 90% for CAFTA and US -Korea FTA in 2023.

³ See for instance the joint document of the American Chemistry Council and CEFIC in the context of TTIP negotiation where the respective associations managed to come an understanding on PSROs on chapter 28 to 40 of the Harmonized System available at <https://cefic.org/app/uploads/2020/05/Rules-of-Origin-for-Chemical-Chapters-28-to-40-under-Transatlantic-Trade-and-Investment.pdf> and most recently during UK-EU negotiations see <https://cefic.org/app/uploads/2020/02/Rules-of-Origin-for-Chemical-Chapters-28-to-40-in-context-of-the-EU-UK-negotiations.pdf>.

⁴ The original proposal has been amended several times over the years to accommodate the concerns of WTO members see document G/RO/W/182/Rev.4 of 13 October 2021, which was later turned in a chairman document contained in JOB/RO/8/Rev.2 of 03 July 2024, "Committee on Rules of Origin - Enhancing transparency in non-preferential rules of origin - Draft Decision - Chairperson's proposal - Revision".

⁵ See "The Use of the EU's Free Trade Agreements Exporter and Importer Utilization of Preferential Tariffs (UNCTAD/EU/2017/1)" by Swedish Board of Trade and UNCTAD (2017), and "Using Utilization Rates to Identify Rules of Origin Reforms: The Case of EU Free Trade Area Agreements" by Pramila Crivelli, Stefano Inama and Jonas Kasteng, RSC 2021/21, Robert Schuman Centre for Advanced Studies Global Governance Programme-437.

In a nutshell, there has been progress on RoO that has had a pay-off. This is complemented by reforms to RoO that apply to unilateral tariff preferences offered to LDCs. Such reforms were implemented by Canada in 2003 and by the EU for its “Everything But Arms” (EBA) duty-free, quota-free access program for LDCs, with the EBA rules of origin redefined in 2011. Utilization rates of Duty-Free Quota-Free initiatives for LDCs, granted by QUAD countries, have risen significantly from a low of 46% in 2011 to as high as 88% in 2023. The volume of DFQF trade that has effectively received preferential rates has grown from an average of 17 billion USD in 2009-2011 to an average of 39 billion USD in 2020-2023.

Japan also took the initiative to liberalize the RoO for LDCs for knitted and crocheted garments of HS chapter

61. Most recently the UK substantially revised the RoO applicable under the Developing Countries Trading Scheme (DCTS), substantially liberalizing PSROs for LDCs and taking on board suggestions and requests made by LDCs contained in the Nairobi decision on preferential rules of origin for LDCs.⁶

These initiatives have contributed to the overall debate on RoO including adoption of trade facilitating practices in preferential RoO, brought new life to the discussions in the CRO and helped underpin two WTO Ministerial Decisions on preferential RoO for LDCs, illustrating that progress can be made at the multilateral level.

Recent studies⁷ have, for the first time, examined the different methods of proof of origin in the Asian and Pacific region, which is rapidly developing an impressive array of overlapping FTAs. The study identified, on one hand, an overall tendency to move towards the digitalization of proof of origin, while, on the other hand, major trading nations are leading the way towards self-certification, as recommended by the WCO⁸. Such developments should be further discussed at the multilateral level to share lessons learned and discuss trade-facilitating solutions for all WTO members.

The challenge now is to build on this overall progress, within and outside the CRO and the TCRO, acknowledging the results achieved and initiating discussions at the multilateral level on how convergence and related achievements can be further shared among WTO members and the wider trading community, with a special eye on trade facilitating practices for firms.

⁶ See Ministerial Decision of 19 December 2015 : WT/MIN(15)/47 — WT/L/917

⁷ See Source: Crivelli, Inama, and Pearson. *An Analysis of Operational Certification Procedures (OCPs) in selected Asian Free Trade Agreements – Implementing Trade Facilitation Reforms through best practices*. ADB. Forthcoming 2024.

⁸ See WCO guidelines on origin certification June 2014 and updated in July 2018.





Understanding Convergence in form and substance

As it has been previously examined⁹, a distinction has to be made between the “form” and the “substance” of Product Specific Rules of Origin (PSROs). PSROs are contained in protocols or annexes to protocols laying down the specific criteria at the detailed sector level using HS nomenclature. Such PSRO protocols are lengthy and detailed at HS chapters headings and sometime subheading level extending often over 50 pages.

“Form” and “substance” may be defined as follows:

- **Form:** the drafting methodology of a given PSRO according to the different method of determining substantial transformation such as change of tariff classification, ad valorem percentage criterion, specific working or processing or a combination thereof, and,
- **Substance:** the manufacturing process to acquire originating status.

In simple words the “form” is the language on which the PSRO is drafted while the substance is the manufacturing requirement. Convergence goes beyond the “form” i.e. the language, to identify the commonalities and similarities on the substance.

In a nutshell, the complexities of PSRO also arise because negotiators and customs administration are just speaking different languages or have different accents but, after carrying out an analysis of what they are after, the convergence process finds that they often mean the same.

This distinction is crucial for moving beyond the various drafting techniques that have been developed since the early nineties. Once again, when the substance of a PSRO (i.e., the manufacturing process) is identified, it becomes easier to detect convergence, as the form typically concerns the methodology used in drafting the PSRO.

There are challenges in detecting convergence that may arise from the complexities to analyze the legal text to unveil the form in terms of manufacturing processes.

Section IV of this study provides specific examples to detect form and substance in a PSRO.

⁹ See Inama, Stefano. 2017. *Towards Convergence on Rules of Origin Between Trade at the Regional and Multilateral Level*. RTA Exchange. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and the Inter-American Development Bank (IDB). The word “convergence” has been previously used in the literature on RoO such as in “*Convergence in the rules of origin spaghetti bowl: a methodological proposal*” by Rafael Cornejo and Jeremy Harris (IDB) 2007, and “*Multilateralizing preferential rules of origin around the world*” by Estevadeordal 2007. However, the method and concept of convergence used in the above literature is totally different from the one discussed in this study.







Convergence on Drafting Ad Valorem Percentage Criterion

In addition to convergence on PSROs, convergence has also been identified at the horizontal level on the methodology used to calculate the ad valorem percentage¹⁰ i.e. one of the three main methods of drafting PSRO.

Ad valorem percentages are often used in drafting PSRO to meet a certain percentage calculated according to different arithmetical formula.

An analysis of such arithmetical formulas contained in various FTAs has permitted to detect convergence in this area.

Such value of material calculation could be used with different variations, as shown in table 1:

- EU FTAs as maximum value of non-originating materials.
- North America and Asian FTAs as build-up or build down or RVC.

Table 1.
Convergence on value of materials calculation

Method of calculation	Formula
Build-down Method: Based on the Value of Non-Originating Materials (VNOM)	$RVC = (AV - VNOM) / AV * 100$
Build-up Method: Based on the Value of Originating Materials (VOM)	$RVC = VOM / AV * 100$
Maximum allowance of non-originating materials	$VNOM = VNOM / EW * 100$

RVC = Regional Value Content

VNOM = customs value of the non-originating materials

VOM = customs value of the originating materials

EW = ex-works price

AV = adjusted value or transaction value adjusted to exclude any cost incurred in international shipping of the good

The comparison of the above formulas used in various FTAs across the world to calculate the ad valorem percentage shows that there is clear convergence on the calculation methodology based on a value of material calculation.

Yet, value added, and net cost are also used, as shown in table 2, by some countries for specific sectors such as automotive or under unilateral trade preferences.

¹⁰ See Stefano Inama, Pramila Crivelli, "Convergence on the Calculation Methodology for Drafting Rules of Origin in FTAs Using the Ad Valorem Criterion", (2019), 14, Global Trade and Customs Journal, Issue 4, pp. 146-153.



Table 2.
Divergence from value of materials calculation: Value Added and Net Cost Calculation

Method of calculation	Formula
Value added (or indirect method)	$VA = (Direct\ cost\ of\ processing^{10} + VOM) / (Ex - factory\ price) * 100$
Net cost	$RVC = (NC - VNM) / NC * 100$

RVC = regional value content

VOM = value of originating materials

VNM = value of non-originating materials

NC = net cost of the good

AV = adjusted value, which is the ex-works price minus the insurance and freights costs

Besides, additional area of divergence can be detected in defining the numerators and denominators of the calculation of the ad valorem percentage criterion:

1. Divergence on the definition of values of materials exists as some administrations are deducting the cost of insurance and freight from the value of non-originating materials.
2. Ex-works price or the ex-factory price denominator is used in the majority of preferential RoO. However, ex-factory cost or a similar definition aiming at excluding profit is being used in some African RECs and FOB is used in Japan and other Asian partners.¹²

Obviously, the difference in defining the numerator/denominator affects the results of the ad valorem percentage calculation and different practices in checking calculations exist in administration.

¹¹ Definition of direct processing and net cost is detailed in legal texts of the specific FTAs or relevant legislation.

¹² For a definition of the different incoterms used see in international Chamber of Commerce website: <https://iccwbo.org/business-solutions/incoterms-rules/incoterms-2020/>





IV.

Identifying PSRO Convergence in Substance across major FTAs, HRO, and mega-regionals

The methodology to identify convergence

The concept of convergence on PSROs examined through the lenses of form/substance were presented at MC11¹³ and discussed during round tables organized at the European University institute. The concept of convergence has been put into practice in a series of studies carried out with ADB in the Asian region¹⁴.

The methodology for detecting convergence on substance across different FTAs

involves comparing the PSROs. A detailed sub-heading-by-sub-heading analysis of product specific rules of origin (PSROs) was conducted to identify convergence, partial convergence, and divergence at HS 2017 sub-heading level. Given that various PSROs are expressed at different levels of aggregation in the HRO and the FTAs examined, the PSROs have been compiled into a single excel file at HS subheading level to facilitate comparison. Examples of how the comparison has been carried out, sampling some specific subheadings are provided further below.

¹³ See WTO Ministerial Conference (MC11) in 2017 "At MC11, new research shows convergence on rules of origin is happening" available at <https://unctad.org/es/isar/news/mc11-new-research-shows-convergence-rules-origin-happening> and the study by Hoekman and Inama "Rules of Origin as Non-Tariff Measures: Towards Greater Regulatory Convergence".

¹⁴ See "An Analysis of the Product-Specific Rules of Origin of the Regional Comprehensive Economic Partnership" by Pramila Crivelli, Stefano Inama and Mark Pearson, April 2022, available at <http://dx.doi.org/10.22617/TCS220167-2> and "An Assessment of Rules of Origin in RCEP and ASEAN+1 Free Trade Agreements" by Pramila Crivelli, Stefano Inama and Mark Pearson October 2023, available at <http://dx.doi.org/10.22617/TCS230396-2>.

The results have been matched with the volume of dutiable intraregional trade to provide a fair assessment of the convergence phenomenon i.e., it would be easy to achieve convergence on tariff lines where MFN is free.

The result of this exercise is preliminary given the complexity of the task involving the comparison of more than 20,000 PSRO and must be read with caution. UNCTAD is currently reviewing it to improve its accuracy to ensure quality and reliability of the results. The comparison has been carried among the following sample FTAs and the HWP as follows:

1. The results of the WTO Harmonization Work Program (HWP) as last updated
2. NAFTA and USMCA as A North American model
3. CPTPP and US-Korea FTA
4. CETA - the first time the European model and the North American model came to a confrontation- and the EU-South Korea FTA.
5. EU-Japan FTA

Analysis of other FTAs may be added at a later stage such as RCEP and AfCFTA.

This analysis applies a comparative taxonomy to assess the convergence, partial convergence, and divergence of product-specific rules of origin (PSROs) across various Free Trade Agreements (FTAs) and the Harmonized System (HS). The comparison is based on two main parameters: stringency and drafting form. The following categories are used to categorize the degree of convergence and divergence between the FTAs and the HWP.

Full or partial convergence

- **CVG 1:** All PSROs (the 7 FTAs and the HWP) are identical or similar in terms of stringency and drafting form.
- **CVG 2:** The majority of the PRSO are identical or similar in terms of stringency and drafting form.

- **CVG 3:** PSROs are identical or similar in terms of stringency but have a different drafting form.

Divergence

- **DVG 1:** PSROs are different in terms of stringency and drafting form being more stringent compared with the HWP.
- **DVG 2:** PSROs are different in terms of stringency and drafting form being less stringent compared with the HWP.

Comparison Results

The following table 3 provide examples¹⁵ on how the comparison has been carried out:

The drafting style of the various PSROs for subheading 441919 contained in the table above shows, beyond the drafting style differences, a common requirement of change of tariff heading albeit expressed in different manners. The slight difference that may be detected is in the EU-Japan FTA introducing, as an alternative, an ad valorem percentage requirement that may be useful in recognizing as substantial transformation working or processing within the same heading such as sanding, laminating, seasoning, superficial charring, priming, stopping, coating, covering, impregnating, painting, staining or varnishing.

Headings 44.01 to 44.21 cover a variety of products and articles of wood obtained from raw wood by sawing, slicing painting, assembling of parts, shaping etc. etc. Most of these operations generate a change of tariff heading. Thus, the HRO and the PSRO of FTAs examined are showing convergence on form and substance on recognizing that such operations are origin conferring. Thus this subheading has been assigned full convergence (CVG1).

¹⁵ Further examples are available in ADB publications mentioned under footnote 13 above.

Table 3.
Full convergence - HS 441919; CVG 1

HRO	Rule							
Desc.	PR	NAFTA	USMCA	CETA	EU-KOR	CPTPP	US-KOR	EU-JPN
Wooden Tableware and kitchenware	CTH	A change to headings 4401 through 4421 from any other heading, including another heading within that group.	A change to heading 4401 through 4421 from any other heading, including another heading within that group.	A change from any other heading.	Manufacture from materials of any heading, except that of the product.	A change to a good of heading 44.01 through 44.21 from any other heading.	A change to heading 44.01 through 44.21 from any other heading.	CTH; MaxNOM 50 % (EXW); or RVC 55 % (FOB).

Table 4.
Partial Convergence – HS 270400; CVG 2

HRO	Rule							
Desc.	PR	NAFTA	USMCA	CETA	EU-KOR	CPTPP	US-KOR	EU-JPN
Coke and semi-coke; of coal, lignite or peat, whether or not agglomerated; retort carbon.	CTH	A change to heading 2704 from any other heading.	A change to heading 2704 from any other heading.	A change from within any one of these headings or any other heading.	Manufacture from materials of any heading.	A change to a good of heading 27.01 through 27.09 from any other heading.	A change to heading 27.01 through 27.06 from any other heading.	CTH; A chemical reaction or mixing and blending is undergone; MaxNOM 50 % (EXW); or RVC 55 % (FOB).

Subheading 270400 is mostly obtained by distilling, carbonizing or gasifying products classified in 2701, 2702 or 2703.

The comparison of the different PSROs shows convergence in drafting as the majority convergence on a simple CTH. Yet CETA, EU-Korean PSRO and EU-Japan differ in terms of substance and drafting. These FTAs are more liberal than a CTH as applied under other FTAs as, although in different forms, they recognize change within the heading in the case of CETA and EU-Korea by allowing processes such

as pulverizing or agglomerating being recognized as conferring originating status. In the case of EU-JPN, the addition of ad valorem percentage and specific working of processing as alternate PSRO seems to provide a similar opportunity recognizing origin conferring operations to chemical reaction, mixing or blending or an ad valorem percentage rule. In order to capture these differences in terms of drafting and substance, this subheading has been assigned partial convergence 2. (CVG2)



Table 5.
Partial Convergence in Stringency – HS 282300; CVG 3

HRO	Rule							
Desc.	PR	NAFTA	USMCA	CETA	EU-KOR	CPTPP	US-KOR	EU-JPN
Titanium oxides	CTH	A change to headings 2822 through 2823 from any other heading, including another heading within that group.	A change to subheading 280110 through 285300 from any other subheading, including another heading within that group.	A change from any other subheading; or; A change from within any one of these subheadings, whether or not there is also a change from any other subheading, provided that the value of non-originating materials classified in the same subheading as the final product does not exceed 20 per cent of the transaction value or ex-works price of the product.	Manufacture from materials of any heading, except that of the product. However, materials of the same heading as the product may be used, provided that their total value does not exceed 20% of the ex-works price of the product or Manufacture in which the value of all the materials used does not exceed 50% of the ex-works price of the product.	A change to a good of heading 28.22 through 28.23 from any other heading.	A change to heading 28.10 through 28.53 from any other heading.	CTSH; A chemical reaction, purification, production of standard materials, or isomer separation is undergone; MaxNOM 50 % (EXW); or RVC 55 % (FOB).

Heading 282300 titanium oxide is mostly obtained by mixing with sulfuric acid material of heading 2614.00 – ilmenite. Titanium oxides are mostly used in the manufacture of paints and personal care products. The comparison table below shows a different level of disaggregation in dealing with this subheading, as USMCA and NAFTA lump this subheading with other headings. It should be noted the evolution of drafting between NAFTA and USMCA, with the latter being more liberal, allowing CTSH. The remaining FTAs, such as CETA and US-Korea, provide for CTSH, and in the case of CETA, alternative PSROs. More recent FTAs, such as CETA and EU-Japan,

show convergence with USMCA by allowing CTSH towards more liberal PSROs. EU-Japan shows the most lenient PSRO with CTSH and alternative criteria. The overall comparison of the drafting form shows differences and evolutions, especially towards lenient PSROs in more recent FTAs. Beyond all these different drafting forms, the making of titanium oxides by mixing with sulfuric acid of subheading 2614 is recognized as substantial transformation by all PSROs and HROs, showing, once again, convergence, even if partial and assigned a partial convergence in stringency (CVG3).





Table 6.
Divergence with More Stringency - HS 170211; DVG 1

HRO	Rule							
Desc.	PR	NAFTA	USMCA	CETA	EU-KOR	CPTPP	US-KOR	EU-JPN
Sugars; lactose and lactose syrup, containing by weight 99% or more lactose, expressed as anhydrous lactose, calculated on the dry matter	CC	A change to headings 1701 through 1703 from any other chapter.	A change to headings 1701 through 1703 from any other chapter.	A change from any other heading, except from subheading 1701.91 or 1701.99, provided that the net weight of non-originating material of heading 11.01 through 11.08, subheading 1701.11 or 1701.12 or heading 17.03 used in production does not exceed 20 per cent of the net weight of the product.	Manufacture from materials of any heading, except that of the product.	A change to a good of subheading 1702.11 through 1702.20 from any other chapter.	A change to heading 17.01 through 17.03 from any other chapter.	CTH, provided that:-the weight of non-originating materials of heading 04.04 used does not exceed 10% of the weight of the product;-the total weight of non-originating materials of headings 11.01 to 11.08 used does not exceed 10% of the weight of the product; and-the total weight of non-originating materials of headings 17.01 and 17.03 used does not exceed 20% of the weight of the product.

Heading 170211 lactose is commonly obtained from subheading 170219 by refining or milk of heading 04.04. The comparison shows divergence in terms of drafting form and substance. The HRO, NAFTA, USMCA, and CPTPP show a CC, although expressed in different forms allowing the use of milk of chapter 4. EU-Japan shows the most stringent PSRO by placing several limitations on the use of materials of chapter 4 and heading 11.01 to 11.08 (cereals), even more stringent

than the one used in the HRO. EU CETA is limiting the use of materials classified in chapter 11, diverging from other FTAs and from the HRO. To sum up, this is an area of divergence where these two FTAs are showing PSROs that are more stringent than the HRO and other FTAs. Hence this specific subheading has been assigned divergence since the PSROs contained in some FTAs being more stringent than those contained in the HRO (DVG1)



Table 7.
Divergent with Less Stringency – HS 200210; DVG 2

HRO	Rule							
Desc.	PR	NAFTA	USMCA	CETA	EU-KOR	CPTPP	US-KOR	EU-JPN
Tomatoes, whole or in pieces	CTH	A change to headings 2001 through 2007 from any other chapter.	A change to heading 2001 through 2007 from any other chapter.	A change from any other heading, in which all the material of Chapter 7 used is wholly obtained.	Manufacture in which: all the fruit, nuts or vegetables of Chapter 7, 8 and 12 used are wholly obtained, and- the value of all the materials of Chapter 17 used does not exceed 30% of the ex-works price of the product.	A change to a good of heading 20.02 from any other chapter.	A change to heading 20.01 through 20.07 from any other chapter, except as provided for in the Note to Chapter 20 and except from heading 07.01.	Production in which all the materials of Chapter 7 used are wholly obtained.

Heading 200210 refers to preserved or canned tomatoes obtained by preparing or preserving (otherwise than by vinegar or acetic acid), including preservation by sterilizing fresh tomatoes of heading 0702.00, 0712.90, and 2006.00. There is a clear divergence of substance between NAFTA, USMCA, CPTPP, and, with some qualification, US-Korea, CETA, EU-Korea, and EU-Japan. The first group of FTAs allows the use of non-originating

tomatoes to make tomato preparations of subheading 200210. The other group of FTAs clearly excludes such possibilities. This subheading shows divergence in drafting form and substance, with the majority of FTAs aligned with the HRO showing less stringent PSROs with respect to other FTAs such as CETA, EU-Korea, and EU-Japan.

This subheading has been therefore assigned a divergence with HRO being less stringent(DVG2)

Table 8.
Comparison Results

Convergency	Nb HS6	Share	Sum of dutiable intra-FTA trade (USD Billion)	Share
Totally Convergent (CVG 1)	132	2.43%	8.572	0.73%
Partially Convergent (CVG 2)	1,324	24.39%	387.942	33.13%
Partially Convergent in Stringency (CVG 3)	1,817	33.47%	236.481	20.19%
Subtotal Convergent	3,273	60.30%	632.995	54.05%
Divergent - More Stringent (DVG 1)	607	11.18%	98.435	8.41%
Divergent - Less Stringent (DVG 2)	1,548	28.52%	439.663	37.54%
Total	5,428	100%	1,171.053	100%

Table 8 above shows the preliminary results of the detailed comparison matching the results of the comparison with the value of dutiable intra FTA trade of the FTA that have been examined. It is important to note that the subtotal of convergent PSROs are the majority of subheading at HS at 60.3%,

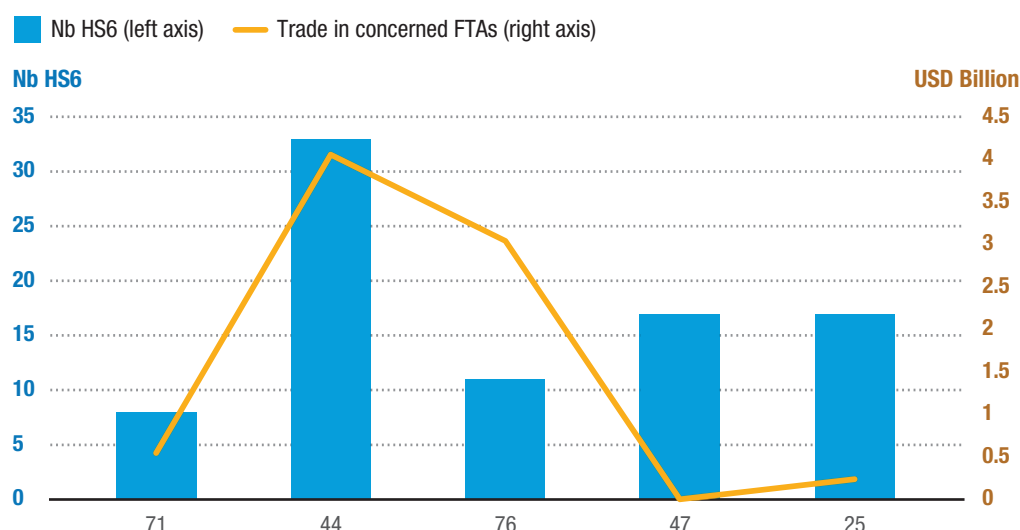
equivalent to 54% of dutiable intra-FTA trade. In addition, a substantial number of subheadings are divergent among FTAs but less stringent than the HRO showing a tendency towards more lenient PSROs.

Figure 1 to 5 illustrate the HS chapters and the amount of intra-FTA according for each of the convergence or divergence categories that have been used as contained under section A. These figures allow to detect

what are the HS chapters and therefore the products showing convergence or divergence, the number of subheadings and the corresponding amount of interregional trade of the FTA examined.



Figure 1.
Comparison Results: PSRO Totally Convergent (CVG 1)



HS 71: Natural or cultured pearls, precious or semi-precious stones, precious metals, metals clad with precious metal and articles thereof; imitation jewelry; coin.

HS 44: Wood and articles of wood; wood charcoal.

HS 76: Aluminum and articles thereof.

HS 47: Pulp of wood or of other fibrous cellulosic material; recovered (waste and scrap) paper or paperboard.

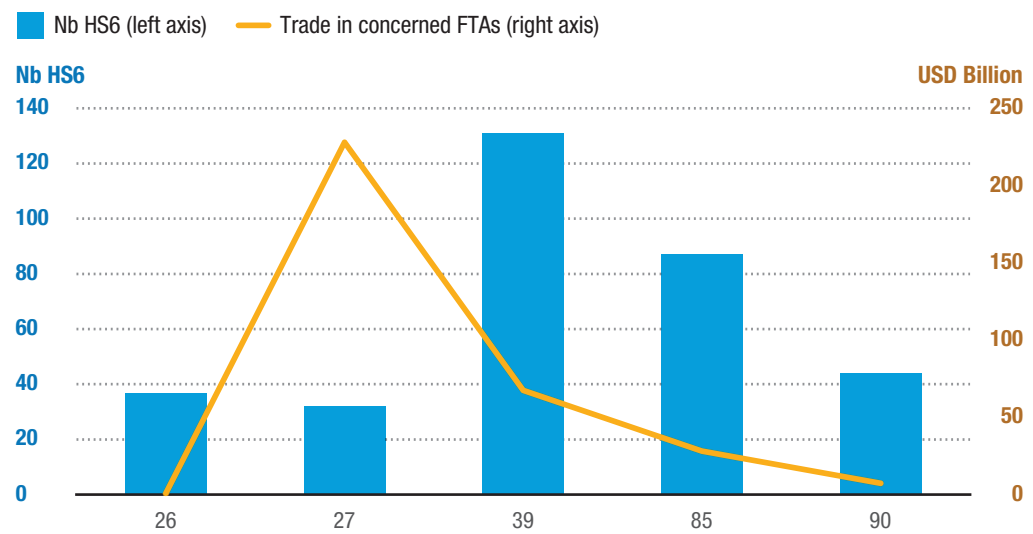
HS 25: Salt; sulphur; earths and stone; plastering materials, lime and cement.

Figure 1 shows the chapters with total convergence that corresponds to sectors that are not particularly sensitive as stones of HS 25 or HS 71 pearls and precious stones.





Figure 2.
Comparison Results: PSRO Partially Convergent (CVG 2)



HS 26: Ores, slag and ash.

HS 27: Mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes.

HS 39: Plastics and articles thereof.

HS 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.

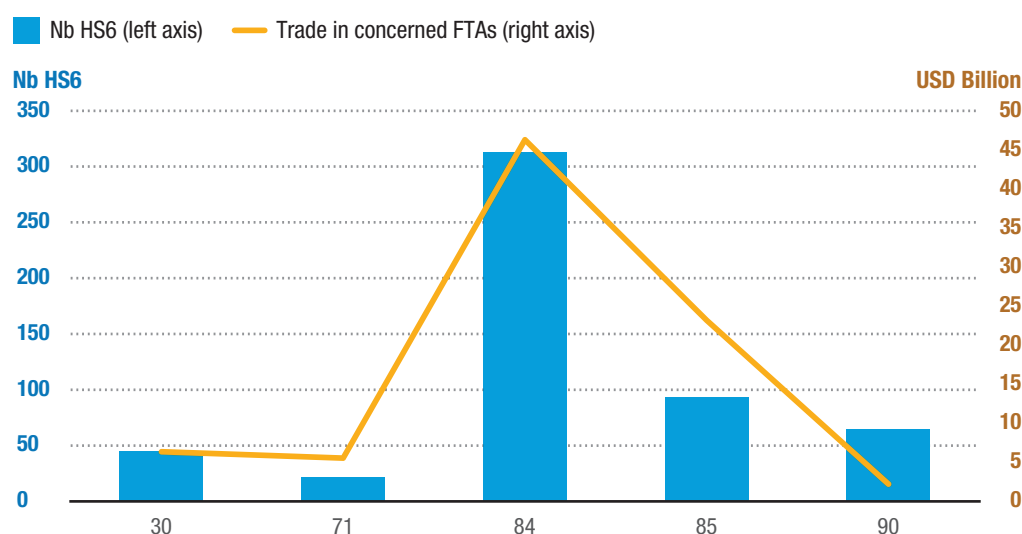
HS 90: Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; parts and accessories thereof.

In Figure 2, HS Chapter 39 stands out as the HS chapter where a substantial amount of trade is concentrated, exceeding 200 billion USD, followed by portions of Chapters 85 and 90. Perhaps convergence is also influenced by the relatively low MFN tariffs that are often applied in these latter HS chapters.





Figure 3.
Comparison Result: PRSO Partially Convergence in Stringency (CVG 3)



HS 30: Pharmaceutical products.

HS 71: Natural or cultured pearls, precious or semi-precious stones, precious metals, metals clad with precious metal and articles thereof; imitation jewelry; coin.

HS 84: Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.

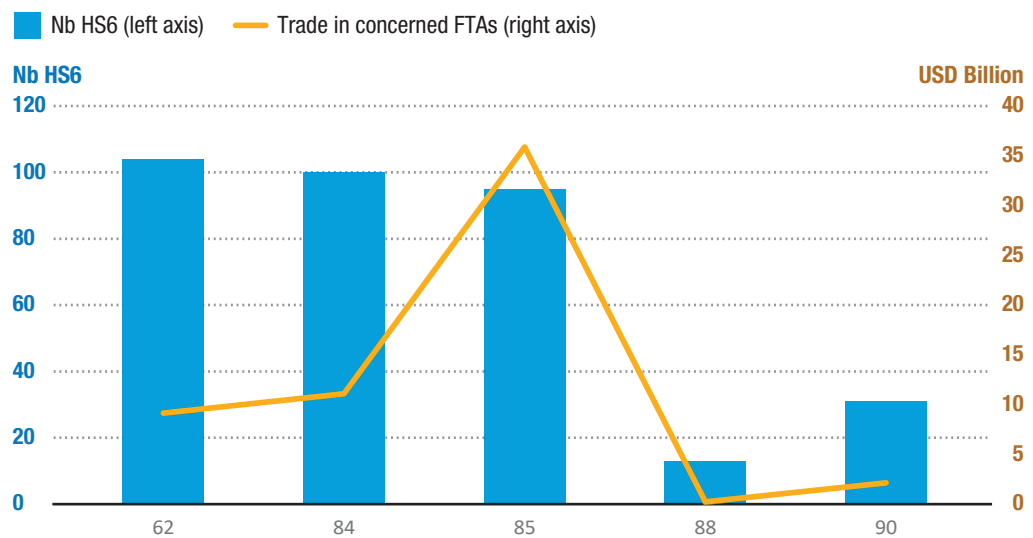
HS 85: Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.

HS 90: Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; parts and accessories thereof.

In figure 3, HS Chapter 84, 85 and 90 are again showing partial convergence in stringency. A more detailed analysis of the results of the comparison may be necessary to detect the specific subheadings that are generating such partial convergence.



Figure 4.
Comparison Result: PSRO Divergent - More Stringent (DVG1)



HS 62: Articles of apparel and clothing accessories not knitted or crocheted.

HS 84: Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.

HS 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.

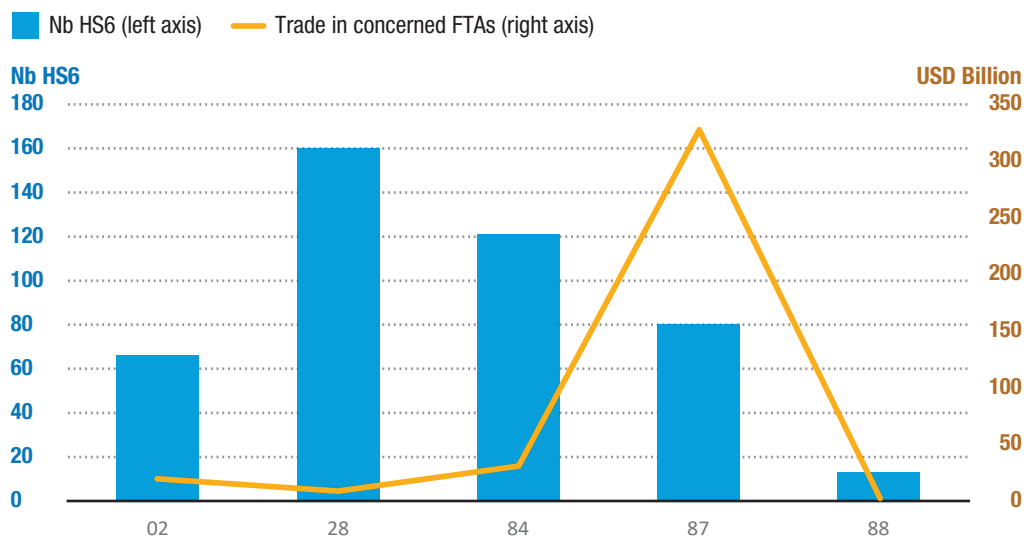
HS 88: Aircraft, spacecraft, and parts thereof.

HS 90: Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; parts and accessories thereof.

Figure 4 shows the chapters that have registered divergence and are more stringent than the HRO. Not surprisingly, Chapter 62, garments not knitted or crocheted, is present as one of the most sensitive sector.



Figure 5.
Comparison Result: PSRO Divergent - Less Stringent (DVG 2)



HS 02: Meat and edible meat offal.

HS 28: Inorganic chemicals; organic or inorganic compounds of precious metals, of rare-earth metals, of radioactive elements or of isotopes.

HS 84: Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.

HS 87: Vehicles other than railway or tramway rolling stock, and parts and accessories thereof.

HS 88: Aircraft, spacecraft, and parts thereof.

Figure 5 shows rather impressive results, as a substantial amount of intra-FTA trade is carried out on PSRO that may be diverging among FTAs but are more liberal than under HRO. Notably, Chapter 28 is part of the HS chemical chapters where firms have been able to act together.





V. Preliminary Observations and the Way Forward

Although the preliminary results need to be further checked and refined, there is a “*prima facie*” evidence of significant convergence in some sectors that could be summarized as follows:

1. The differences relate more on the “form”, i.e., the way in which the RoO are drafted than on substance i.e., the leniency/ stringency of the RoO.
2. On some sensitive sectors for instance clothing, processed foodstuff, fishery, there is a substantial divergence.
3. The divergence on some HS chapters shows that even if they are diverging among FTAs, many PSROs are more liberal than the HRO.

This study argues that the results of this comparison may be used to hold a series

of informed session among WTO and/ or WCO members to further discuss the respective areas of convergence and later share it with the wider community as a useful toolbox or compendium of PSROs to facilitate compliance.

UNCTAD, together with ADB, is also carrying out an analysis of convergence/ divergence in RoO administration in the Asian region, as there is an increasing tendency by some administrations to use, on one hand, self-certification, while, on the other hand, various forms of E-COs and electronic data exchange are quickly developing. The Technical Committee on Rules of Origin at WCO¹⁶ is discussing a series of initiatives in this regard. This latter area, which is an integral part of RoO, could also form part of such deliberations.

¹⁶ See “*Feasibility study on interconnectivity framework for certificates of origin based on the globally networked customs (GNC) methodologies*” Available at <https://www.wcoomd.org/-/media/wco/public/global/pdf/topics/origin/instruments-and-tools/origin-certification/study-on-the-digitalization-of-the-certificate-of-origin-en.pdf?db=web>. February 2024.

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