



Rules of Origin

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Overview

- ▶ **Purpose of Rules of Origin (ROO)**
- ▶ **Methodological Aspects**
- ▶ **Cotonou's ROO and key EPA Issues**
- ▶ **New ROO Developments / Proposals by EC**

Why talk about Rules of Origin ?

- ▶ Art. 37 (7) Title II of Cotonou Agreement provides for revision of Rules of Origin

“...**improving current market access for the ACP countries through inter alia, a review of the rules of origin...**”

to consider “...**the effects on the rules of origin of technological developments...**”

should “...**build on the *acquis*...**” of the current agreement

Rules of Origin

► Purpose of origin rules:

- Written rules that set conditions for **market access**
- Determine ***economic nationality*** vs simple geographic origin
- Reduce danger of **transshipment** / trade diversion
- Important tool for implementation of **trade policy**

Rules of Origin

► Types of origin rules:

- **non-preferential:**

simply determine origin for general policy purposes,
e.g. anti-dumping, public interest e.g. health, SPS measures

- **preferential:**

-found in preferential trade agreements

-confers special benefits on goods traded between specific countries

Rules of Origin

▶ **Why different origin rules?**

- ▶ different policy objectives of contracting parties
- ▶ political economy elements
- ▶ Lack of international harmonisation

▶ **ROO and trade tariffs**

- ▶ Cost of compliance with ROO related to margin of preference
- ▶ No tariffs and quotas = no need for preferential origin rules

Methodological Aspects

▶ Determination of Origin:

▶ “Wholly obtained”, or “sufficiently processed”

▶ 3 key tests to determine sufficient processing:

- value-added (VA)

- specific processing (SP)

- change in tariff heading (CTH)

▶ **Advantages** and **disadvantages**, no single “best” rule

ROO Elements of EU Agreements & Cotonou

- ▶ mix of SP / VA / CTH criteria

| Method: | WO | CTH | SP | VA | WO+CTH | WO+VA |
|---|---------------|--------------|------------------|------------------|---------------|--------------|
| Number of rules | 29 | 98 | 150 | 128 | 4 | 4 |
| % of total | 5,3% | 18% | 27,5% | 23,5% | 0,7% | 0,7% |
| Method: | CTH+VA | SP+VA | WO+CTH+VA | Sets + VA | NR | TOTAL |
| Number of rules | 94 | 28 | 2 | 2 | 6 | 545 |
| % of total | 17,2% | 5,1% | 0,4% | 0,4% | 1,1% | 100% |
| Key: WO=wholly obtained CTH=change in tariff heading SP=specific processing NR=no rule (manufacture from any heading) | | | | | | |

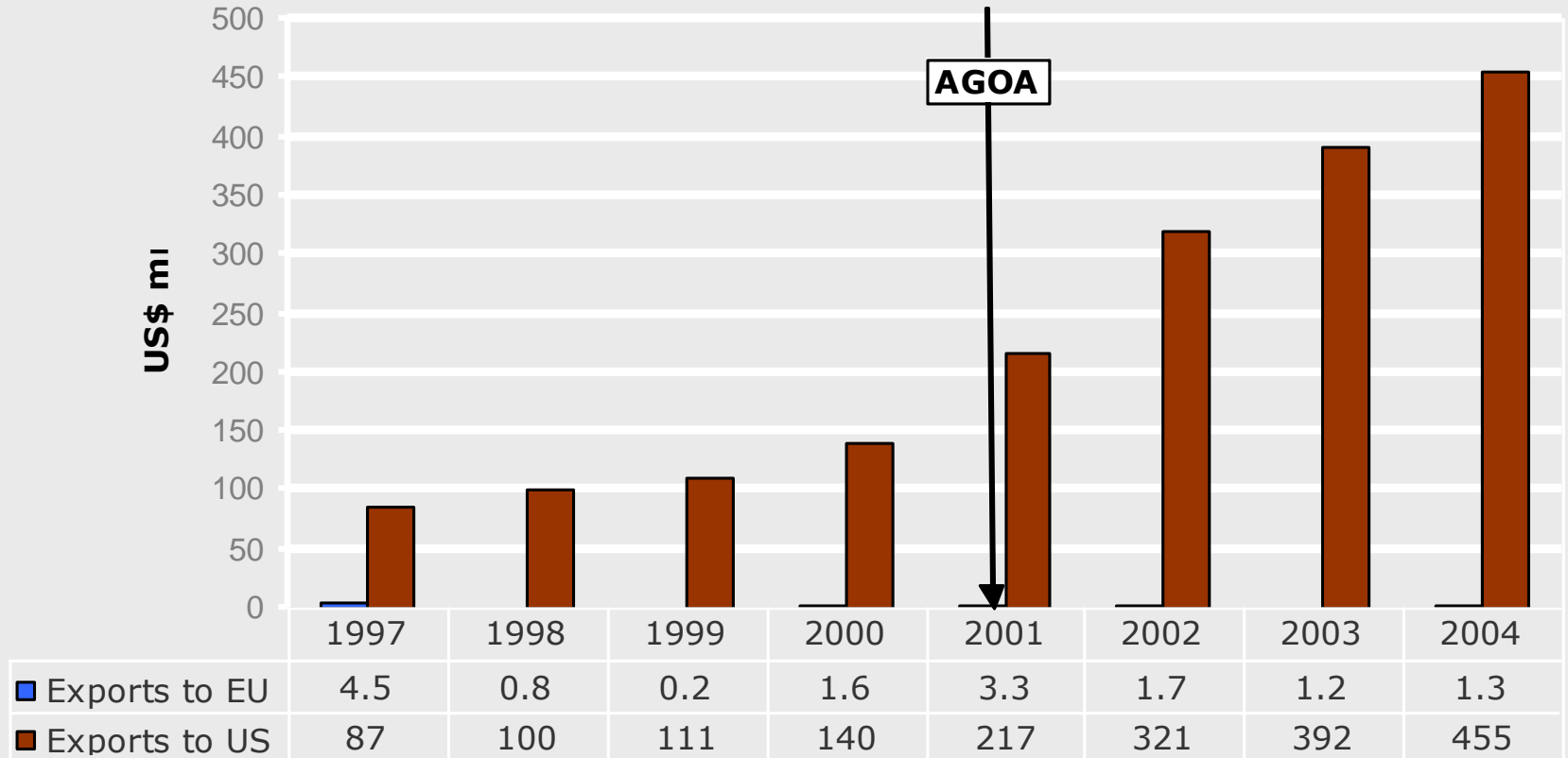
ROO Elements of EU Preference Programs

- ▶ cumulation – bilateral / diagonal / full
- ▶ value tolerance rules
- ▶ drawback prohibition in most agreements except Cotonou
- ▶ derogation procedures
- ▶ documentation

EPA ROO Negotiations: Setting Priorities

- ▶ Point of departure: not all Cotonou ROO are bad !
- ▶ Need to identify difficult ROO
 - ▶ Sectoral challenges e.g. fisheries, textiles, etc.
 - ▶ Correlation ROO and high import tariffs
- ▶ Current trade patterns do not always reflect ROO priorities
 - ▶ Actual vs. potential trade, if ROO were different
 - ▶ but still a reasonable indicator

Lesotho's Garment exports to the US / EU

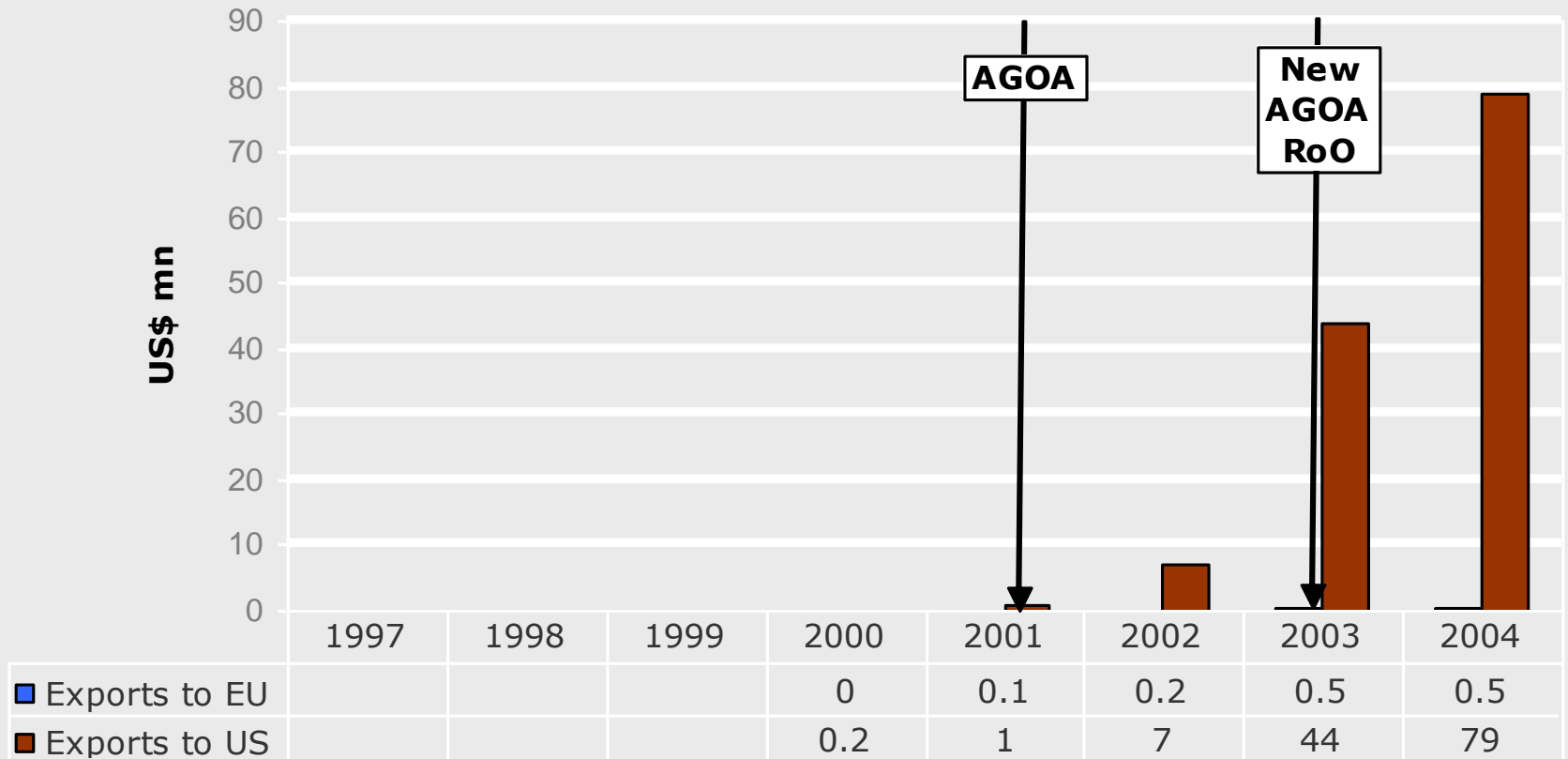


Source: UN Comtrade database & www.AGOA.info

■ Exports to EU ■ Exports to US

Exports under different ROO

Namibia's Garment exports to the US / EU



Source: UN Comtrade database & www.AGOA.info

■ Exports to EU ■ Exports to US

EPA ROO Negotiations: Setting Priorities

- ▶ The issue of reciprocity

- ▶ Asymmetrical reciprocity :

- product coverage

- pace of liberalisation

- asymmetrical origin rules

EPA ROO Negotiations: Sectoral Issues (Clothing)

- ▶ “manufacture from yarn”
- ▶ i.e. 2 **distinct stages** of transformation must take place locally
- ▶ ACP unable to use low-cost foreign fabric, which severely affects final product’s competitiveness
- ▶ outdated classification / interpretation of processing
- ▶ Solutions? “Manufacture from fabric” / VA ?

EPA ROO Negotiations: Sectoral Issues (Fisheries)

- ▶ Sensitive sector for EU, protectionist elements
- ▶ Fish a key export in every EPA configuration
- ▶ Fresh fish and processed fish must be *wholly obtained*:
 - ▶ i.e. “caught within territorial waters (12 miles)”
 - ▶ if caught beyond, must be caught by “their” vessels
 - ▶ defined as EU or ACP vessel
 - ▶ Be registered and sail under flag of ACP State or EU
 - ▶ At least half-owned by ACP or EU Nationals (board of directors, equity)
 - ▶ Crew must be at least half ACP or EU (other agreements: 75%)
 - ▶ Precludes leasing !

Fisheries ctd.

- ▶ Discrimination against processed fish: must be from “wholly obtained” fish
 - ▶ i.e. procesing per se does not confer origin !
- ▶ Cumulation provisions don't apply to tuna
- ▶ Solutions?
 - Extend “wholly obtained” to 200mile EEZ ?
 - Impose landing and processing requirement to outside fish?

- ▶ December 2003: EU Green Paper on Rules of Origin

- ▶ Follow-up results August 2004:
 - ▶ “present rules do not fit economic reality”

 - ▶ “present rules too complex”

 - ▶ “new rules should be rationalised and simplified”

Recent ROO Developments

▶ March 2005: EC Communication

“RoO in Preferential Trade Regimes: Orientations for the Future”

- ▶ Proposals for new **methodological** approach: **VA** test
- ▶ Proposals for new **cost basis**: net production cost (NPC)
 - ▶ numerous exclusions e.g. administrative costs
- ▶ Sectoral issues glossed over?
 - ▶ fisheries: one condition less (regarding nationality of crew)
 - ▶ agriculture / fisheries / textiles “any policy change to be properly evaluated”

Recent ROO Developments

- ▶ March 2005 Communication. ctd.
 - ▶ Emphasis: tightening of **administrative controls** and procedures
 - ▶ e.g. exchange of information based on “clear obligations”
 - ▶ Safeguard measures if controls not implemented,
 - ▶ Financial responsibility of exporter and customs authority
 - ▶ EU-sanctioned exporter registration system

Recent ROO Developments

- ▶ April 2005: Policy Paper

"Justification of the choice of value added method for the determination of the origin of processed products"

- ▶ Defence of VA approach... (dismissal of CTH / SP as overall basis)
- ▶ Shaky arguments?
 - ▶ e.g. *"Value-added method would be an incentive to source originating materials (even if more expensive than the non originating ones)..."*
 - ▶ Fluctuating input values over time: uses average cost for year (?)

- ▶ ROO negotiations about to get underway
- ▶ ROO will be negotiated at all-ACP level (?)
- ▶ Are the ACP prepared / sufficiently informed?
- ▶ Offensive / defensive positions?