

Presentation on:

COMESA Rules of Origin

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COMESA RULES OF ORIGIN

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EXPORT PROCEDURES UNDER COMESA RULES OF ORIGIN

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|---|----|---|
| • | A. | Definition of rules of origin |
| • | B. | Architecture of COMESA rules of origin |
| • | C. | Flow chart and procedures for approval of COMESA certificates of origin |
| • | D. | COMESA material content, value added and change in tariff headings – calculations and details |
| • | E. | Registration for export under the COMESA rules of origin |
| • | F. | Products exported from Mauritius under the COMESA certificate of origin |

A. DEFINITION OF RULES OF ORIGIN

- Rules of Origin are the specific provisions developed from principles established by national legislation or international agreements (“origin criteria”) applied by a country to determine the origin of goods

PRINCIPLES OF RULES OF ORIGIN

- ✓ Trade Facilitative
- ✓ Flexibility-**Criteria options**
- ✓ Promote Industrialisation and Economic Growth -**regional sourcing, backward linkages?????**
- ✓ Easy and Simple to understand and implement - **c.f Product specific rules**
- ✓ Transparency-

TYPES OF RULES OF ORIGIN

- Preferential Rules of Origin
- Non-Preferential Rules of Origin

IMPORTANCE OF RULES OF ORIGIN

Why we need rules of origin-Rationale

- Origin rules are necessary as goods may be subject to discriminatory/preferential measures depending on their origin and rules of origin are used:
 1. To determine tariff treatment (MFN or preferential)/developmental issues
 2. Implement measures and instruments of commercial policy such as anti-dumping and safeguard measures
 3. Government procurement
 4. For compiling trade statistics

PREFERENCIAL RULES OF ORIGIN

- **Preferential Rules of Origin**
- **Bilateral Trade Agreements (2 countries)**
- **Regional Preferential Trade Regimes e.g. COMESA, SADC, EAC**
 - **Multilateral Preferential Trade Regimes e.g. ACP-EU Partnership Agreement, AGOA, GSP Schemes [Non-reciprocal trading arrangements between developed countries and developing countries**
 - **Where there is differentiated tariff treatment**

NON-PREFERENTIAL RULES OF ORIGIN

Non- Preferential Rules of Origin

- ✓ Rules where there is no differentiated treatment as far as tariffs are concerned.
- ✓ Normally between trading partners with no bilateral trade arrangement

COUNTRY OF ORIGIN

Recurring concept - country of origin

- The country in which the goods have been produced or manufactured according to criteria laid down for the purposes of the application of the Customs tariff, of quantitative restrictions or of any other measure related to trade.

Origin determination

- Where only one country is considered the criterion applied is that of goods wholly produced
- Where two or more countries take part in production the criterion applied **is substantial transformation**

SUBSTANTIAL TRANSFORMATION

What does substantial transformation mean?

- The criterion according to which origin is determined by regarding as the country of origin the country in which the last substantial manufacturing or processing deemed sufficient to give the commodity its essential character has been carried out.

SUBSTANTIAL TRANSFORMATION RULES

- **Rules that are applied to check if substantial transformation has taken place:**

[a] Ad valorem percentage criteria:

- Material content
- Value added

[b] Change in tariff classification

REQUIREMENT ON DIRECT CONSIGNMENT

- A number of preferential trade regimes require that products meeting the origin criteria be transported direct from a member State to a consignee in another member State if they are to qualify for preferential tariff treatment

CUMULATION

- In the context of a preferential trade agreement, the character of originating product may be conferred on products obtained following a number of manufacturing or processing operations carried out successively in the countries that are contracting parties to the preferential trade agreement

CUMULATION CONT'D

- Diagonal Cumulation
- Partial Cumulation
- Full Cumulation
Pause

B. ARCHITECTURE OF COMESA RULES OF ORIGIN

Legal basis

- Articles 48 and 4[1][e] of the COMESA Treaty.

Architecture:

- Sets out the structure of the COMESA Rules of Origin and basic principles of application
- It allows for the consistent application of the COMESA Rules of Origin of Protocol

COMESA member states:
Djibouti, Egypt, Kenya, Madagascar,
Malawi, Mauritius, Sudan, Zambia,
Zimbabwe, Comoros, Eritrea, Uganda,
Congo DR, Burundi, Rwanda, Seychelles,
Swaziland, Libya and Ethiopia

ARCHITECTURE OF COMESA RULES OF ORIGIN 2

Outline of the Protocol on Rules of Origin

Protocol consists of 14 rules:

- Rule 1: Definitions
- Rule 2: Origin criteria
- Rule 3: Wholly produced goods
- Rule 4: Application of ad valorem % criterion
- Rule 5: Processes not conferring origin
- Rule 6: Unit of qualification
- Rule 7: Separation of materials
- Rule 8: Treatment of mixtures
- Rule 9: Treatment of packing
- Rule 10: Documentary evidence
- Rule 11: Infringement and Penalties
- Rule 12: Entry into force
- Rule 13: Regulations
- Rule 14: Cessation of force

CRITERIA OF COMESA RULES OF ORIGIN

1. Goods shall be accepted as originating in the Member State if they are **consigned directly** from a Member State to a consignee in another Member State and:
2. They have been **wholly produced** as provided for in Rule 3 of this protocol; or
3. They have been produced in the Member State wholly or partially from materials imported from outside the Member States or of undetermined origin by a process of production which effects a **substantial transformation** of those materials such that:

COMESA RULES OF ORIGIN

CONT'D

- The c.i.f value of those values does not exceed 60% of the local materials used in the production of the goods: or
- The value added as the result of the process of production accounts for at least 35% of the ex-factory cost of the goods: or
- The goods are classified or become classifiable under a tariff heading other than the tariff heading under which they were imported, or
- They attain 25% value added and appear in the list approved by Council of Goods of Particular Economic Importance to the COMESA region.

SUBSTANTIAL TRANSFORMATION CRITERIA 1

1. Material Content Criterion [Rule 2.1(b)(i)]

- Formula:

Material content := c.i.f value of imported
materials

total cost of materials used in production =
x%

[which should not be more than 60%]

Denoted by letter 'M'

SUBSTANTIAL TRANSFORMATION CRITERIA 1 CONT'D

2. Value Added Criterion [Rule 2.1(b)(ii)]

- Formula:

Value added: = Ex-factory cost - c.i.f.
value of imported materials

Ex-factory cost = y%

[which should be at least 35%.

- **Denoted by letter 'V'**

SUBSTANTIAL TRANSFORMATION CRITERIA 2

3. CTH Rule: [Rule 2.1 (b)(iii)]

- origin is conferred if the process of production results in a product which falls under a heading of the Harmonized System [HS] which is different from that under which the non-COMESA originating materials used in its production fall
- Such as Textile fabric into clothing(single transformation) Wheat???

Denoted by letter 'X'

SUBSTANTIAL TRANSFORMATION 2 CONT'D

3. CTH Rule: [Rule 2.1 (b)(iii)] Cont'd

39.23

- Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics.
- Agreed rule :Manufacture from materials classified in a heading other than that of the product..Simple CTH

SUBSTANTIAL TRANSFORMATION 2 CONT'D

3. CTH Rule: [Rule 2.1 (b)(iii)]

11.01 Wheat or meslin flour

Agreed rule: Manufacture in which the materials of this heading are wholly obtained except for durum wheat.

15.11 Palm oil and its fractions, whether or not refined, but not chemically modified.

- Manufacture from materials classified in a heading other than that of the product, except from materials from other headings of Chapter 15

SUBSTANTIAL TRANSFORMATION

4. Goods of Particular Importance To Economic Development: [Rule 2.1(c)]

1. Such Goods Should:
 - attain at least 25% value added; and
 - appear on a designated list
2. Designated list, Currently 53 Products on the list
 - **Denoted by letter 'Y'**

WHOLLY PRODUCED GOODS

5. Wholly Produced Goods: [Rule 2.1[a] read with Rule 3]

[a] Mineral products extracted from the soil or sea-bed of the member States

[b] vegetable products harvested within the member States

[c] live animals born and raised within the member States

[d] products obtained from live animals within the member States

[e] products obtained by hunting or fishing conducted within the member States

WHOLLY PRODUCED GOODS CONT'D

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COMESA RULES OF ORIGIN CONT'D

Rules of Origin under other Regional Trade Regimes

- SADC/EAC/EU-ACP

SUBSTANTIAL TRANSFORMATION CRITERIA 3

- **5. Calculation of ex- factory cost:**
- **Inclusions:**
 - - cost of imported materials
 - - cost of local materials
 - - cost of direct labour
 - - cost of direct expenses
 - - cost of factory overheads
- **Exclusions**
 - - administration expenses
 - - selling expenses
 - - distribution expenses
 - - charges not directly attributed to the manufacture of the goods

SUBSTANTIAL TRANSFORMATION CRITERIA 4

6. Material content rule is for encouraging the use of regionally available raw materials;

7. Advantages and disadvantages of value added criteria:

Advantage:

- VA Criteria allows COMESA members to use materials from third countries to produce certain tradable goods. Such materials may not be available within COMESA
- Criteria also allows for technology transfer to COMESA members

Disadvantages:

- Lack of predictability and consistency
- Percentage required for origin conferring affected by currency fluctuations
- Verification of origin requires a complex review of corporate books which is time consuming

SUBSTANTIAL TRANSFORMATION CRITERIA 7

Processes not conferring origin [Rule 5]:

- [d] changes of packing and breaking up of or assembly of consignments
- [e] marking, labelling or affixing other like distinguishing marks on products or their packages
- [f] simple processes consisting of removal of dust, sifting,....including the making up of sets, etc
- [g] a combination of operations in [a] to [f] above
- [h] slaughter of animals

SUBSTANTIAL TRANSFORMATION CRITERIA 8

Other technical issues:[Rules 6 – 9]

1. Unit of qualification [Rule 6]

- [i] In principle, each product in a consignment shall be considered separately for origin purposes and be charged corresponding import duties
- [ii] Split consignments

2. Separation of materials [Rule 7]

- This rule deals with the treatment of materials that are physically inseparable and are of different origins

3. Treatment of mixtures [Rule 8]

4. Treatment of packing [Rule 9]

PROOF OF ORIGIN

1. Documentary evidence [Rule 10]

- A COMESA Certificate of Origin is used as evidence of the originating status of goods that are entitled to preferential tariff treatment

2. How the Certificate is obtained:

- Exporter applies to designated authority
- Exporter must produce documentary evidence to support the originating status of the goods
- If exporter is not the producer of the goods he must obtain a declaration of origin from the p

PROOF OF ORIGIN 2

3. Completion of the Certificate:

- form may be prepared by any process and must be legible
- any alterations must be initialed by the person completing the form and endorsed by the designated certifying authority
- unused space must be crossed out
- declaration in Box 11 must be signed by an authorized employee of the exporter

4. Completion of Box 8 of the Certificate

Origin criterion must be entered as follows:

- “P”-wholly produced goods
- “M”- where material content criterion applies
- “V”-where the value added criterion applies
- “X”- where the CTH rule applies
- “Y”- for goods of particular economic importance to the member States

PROOF OF ORIGIN 3

5. Authentication of the Certificate

- the certificate must be stamped and signed by the designated authority in Box 12

6. Retrospective issue of the Certificate of Origin:

Certificate may be issued retrospectively:

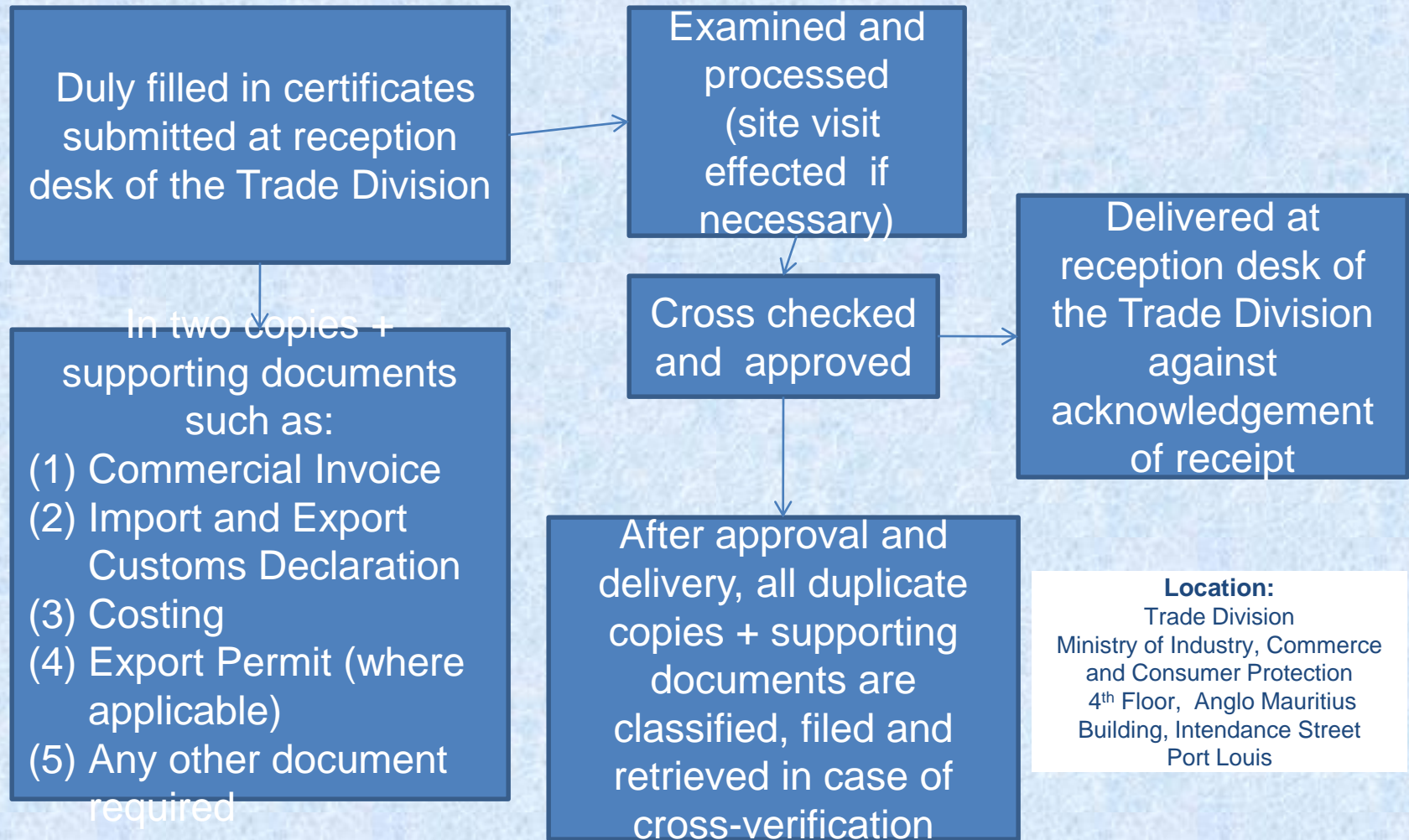
- where no certificate was issued at the time of export
- where the certificate contained involuntary clerical/typing errors/omissions as a result of any unforeseen circumstances as accepted by the designated authority
- within three months from date of exportation of goods

7. Replacement Certificate of Origin

Replacement Certificate may be issued in the event of :

- theft;
- loss; or
- destruction of original certificate

C. Flow chart and procedures for approval of COMESA Certificates of Origin



Location:
Trade Division
Ministry of Industry, Commerce and Consumer Protection
4th Floor, Anglo Mauritius Building, Intendance Street
Port Louis



COMESA CERTIFICATE OF ORIGIN



MU

| | | |
|--|---|--|
| 1. Exporter (name & office address) Exportateur (nom et adresse commerciale) Exportador (nome e endereço comercial) | Ref. No. No. de ref. No. de ref. | |
| 2. Consignee (name & office address) Destinataire (nom et adresse commerciale) Destinário (nome e endereço comercial) | COMMON MARKET FOR EASTERN AND SOUTHERN AFRICA | |
| 3. Country, Group of countries in which the products are originating from Pays ou groupe de pays dont les produits sont originaires País ou Grupo de países originário do produto | MARCHE COMMUN DE L'AFRIQUE DE L'EST ET DE L'AFRIQUE AUSTRALE | |
| 4. Particulars of Transport Renseignements concernant le transport Informações relativos ao transporte | MERCADO COMUM DA AFRICA ORIENTAL E AUSTRAL | |
| 6. Marks and numbers; number and kind of package; description of goods; marques et numero, et types d'emballages; designation des marchandises; Marcas e números; quantidades e natureza das embalagens; designação das mercadorias | 7. Customs Tariff No. / Tarif douanier No. / Dito: aduaneiro No. | 8. Origin criterion (See Overleaf); Critère d'origine; (voir au verso); Critério de Origem; (ver no verso) |
| 9. Gross weight or other quantity; Poids brut ou autre quantité; Peso bruto ou outra medida. | | 10. Invoice No. / No. De Facture; Factura No. |

II. DECLARATION BY EXPORTER/PRODUCER/SUPPLIER*
DECLARATION DE L'EXPORTATEUR/
PRODUCTEUR/FOURNISSEUR
DECLARACAO DO EXPORTADOR/
PRODUCTOR/FORNECEDOR*

I, the undersigned, hereby declare that the above details and statements are correct, that all goods are produced in

Je soussigné, déclare que les éléments et déclarations ci-dessous sont corrects, et que les marchandises sont produites en

Eu, abaixo assinado, declaro que as informações e declarações acima prestadas são correctas e que todos os produtos são produzidos em

Place, date, signature of declarant
 Lieu, date et signature du déclarant
 Local, data e assinatura do declarante

12. CERTIFICATE OF ORIGIN
CERTIFICAT D'ORIGINE
CERTIFICADO DE ORIGEM

It is hereby certified that the above-mentioned goods are of origin
 Nous certifions que les marchandises sus-mentionnées sont d'origine

Certifica-se que os produtos acima referidos são originários de

.....
 Certificate of Customs or other Designated authority
 Certificat des douanes ou autres autorités désignées
 Certificado da alfândega ou de outra autoridade designada

STAMP - SCEAU - CARIMB

D. The MC, VA and CTH rules in COMESA in details

Calculations and other details

Material Content Criterion

This criterion says that goods are considered as originating in a MS if they have been produced wholly or partially from imported materials (or from materials of unknown origin) and the CIF value of the imported materials does not exceed 60% of the total cost of materials used in the production

NB: for this criterion:

- only the cost of materials (domestic and imported) used in the production is considered in determining origin;
- Materials of unknown origin are considered as imported and their value shall be the earliest ascertainable price paid for them in the MS where they are used for production; and
- The value of the imported materials is the CIF value accepted by Customs at the time of clearance for home use or temporary admission **less the cost of transit transport in the COMESA region.**

Formula for Calculation

Import material content =

CIF value of imported materials

Cost of local materials + CIF value of imported materials

The same formula in terms of local material content is as follows:

Local material content =

Cost of local materials

Cost of local materials + CIF value of imported materials

Value Addition Criterion

- This criterion says that goods are considered as originating from a MS if they have been produced wholly or partially from imported materials (or materials of unknown origin) and the value added resulting from the process of production accounts for at least 35% of the **ex-factory cost** of the finished product
- **Ex-factory** cost is the value of total inputs required to produce a given product
- **Value added** is the difference btm the ex-factory cost of the finished product and the CIF value of imported materials used in the production.

Calculation of Ex-Factory cost

The following costs, charges and expenses should be included:

- The cost of imported materials represented by their CIF value less the amount of transport costs incurred in transit through other COMESA Member States;**
- The cost of local materials represented by their delivery price at the factory;**
- The cost of direct labour represented by the wages paid to the operatives responsible for the manufacture of the goods;**

Calculation of Ex-factory cost Cnd

- **The cost of direct factory expenses as represented by:**
 - the operating cost of the machine being used to manufacture the goods;
 - the expenses incurred in the cleaning, drying, polishing, pressing or any other process necessary for the finishing of the goods;
 - The cost of putting up the goods in their retail packages and the cost of such packages but excluding any extra cost of packing the goods for transportation or export and the cost of any extra packages;
 - The cost of special designs, drawings or layout; and the hire of tools or equipment for the production of the goods.

Calculation of ex-factory cost Cnd

- **The cost of factory overheads as represented by:**
 - Rent, rates and insurance charges directly attributed to the factory;
 - Indirect labour charges, including salaries paid to factory managers, wages paid to foremen, examiners and testers of goods;
 - Power, light, water and other service charges directly attributed to the cost of manufacture of the goods;
 - Consumable stores, including minor tools, grease, oil and other incidental items and materials used in the manufacture of goods;
 - Depreciation and maintenance of factory buildings, plant and machinery, tools and other items used in the manufacture of goods.

Excluded Costs in calculating Ex-factory cost

- **The following costs, charges and expenses should be excluded in the calculation of ex-factory cost:**
 - **Office expenses, and salaries paid to accountants, clerks, managers and other executive personnel;**
 - **Directors' fees, other than salaries paid to directors who act in the capacity of factory managers;**
 - **Statistical and costing expenses in respect of the manufacture of goods; and**
 - **Investigation and experimental expenses.**

Exclusion to ex-factory costs Cnd

- **Selling expenses, as represented by:**
 - **The cost of soliciting and securing orders, including such expenses as advertising charges and agents' or salesmen's commission or salaries; and**
 - **Expenses incurred in the making of designs, estimates and tenders**

Exclusions in calculating Ex-factory cost Contd...

- **Distribution expenses, represented by all the expenditure incurred after goods have left the factory, including:**
 - **The cost of any materials and payments of wages incurred in the packaging of the goods for export;**
 - **Warehousing expenses incurred in the storage of the finished products; and**
 - **The cost of transporting goods to their destination.**

Exclusions in the calculation of ex-factory cost Contd...

- **Charges not directly attributed to the manufacture of the goods, including:**
 - Any customs duty on raw materials and other charges of equivalent effect paid on imported raw materials;
 - Any excise duty paid on raw materials produced in the country where the finished goods are manufactured;
 - Any indirect taxes paid on the manufactured products;
 - Any royalties paid in respect of patents, special machinery or designs; and
 - Finance charges related to working capital.

Looking at an example

- **A producer in Djibouti makes wooden tables for sale in COMESA Member States. The producer uses local timber and timber imported from Yemen and Sudan respectively and incurs the following costs:**

Looking at an example Contd.

| Materials: | Cost (Francs) |
|-----------------------------|----------------------|
| Local timber | 200 |
| Timber from Sudan (MS) | 100 |
| Timber from Yemen | 900 |
| Other Costs: | |
| Glue imported from Iran | 5 |
| Varnish imported from Japan | 8 |
| Factory overheads : | |
| Rent and rates | 100 |
| Depreciation of machinery | 80 |
| Direct labour | 300 |
| Ex-factory cost | 1693 |

Looking at an Example Contd...

Calculations:

$$\text{a) (i) Import material content} = \frac{900+5+8}{200+100+900+5+8} = \frac{913}{1213} = 75\%$$

OR

$$\text{(ii) Local material content} = \frac{200+100}{200+100+900+5+8} = \frac{300}{1213} = 25\%$$

$$\text{b) Valued Added} = \frac{1693-913}{1693} = \frac{780}{1693} = 46\%$$

Looking at an example contd....

- The material content and value addition should be calculated to the nearest whole number e.g.
 $74.9\% = 75\%$; $74.3\% = 74\%$
- What can we infer from the calculation?
 - The table made in Djibouti does not meet the material content criterion since the imported materials are more than 60% or local material is less than 40%.
 - However the table meets the value addition criterion
 - This is a simple example where the figures to work with are provided for us remember how to get the CIF less transit cost through other MS!

The Change in Tariff Heading Criterion - Details

- The CTH Rules says that goods can be considered as originating in a Member State if they have been produced wholly or partially from imported materials and are classified or become classifiable under a tariff heading other than the tariff heading of the imported materials

Agreed workings and processings that confer Origin

- Under this rule, MS have agreed on the workings and processings and have therefore created chapter rules that confer origin;
- One has to look at each chapter or heading to see the chapter or heading rule as mere change of tariff heading may not confer origin if the workings and processings are the simple ones that do not confer origin.

Examples of CTH

| HS Code | Description of goods | Workings and processings on non-originating materials that confer originating status |
|------------------|---------------------------------------|---|
| Chapter 1 | Live animals | All the animals of Chapter 1 must be wholly produced |
| 21.05 | Ice cream and other edible ice | Manufacture from materials classified in a heading other than that of the product |
| | | |
| | | |

Goods of economic importance

- The rule says that the goods can be considered as originating in a Member State if they have been designated by Council as “goods of economic importance to the development of the Member States” and should contain not less than 25% value added notwithstanding the 35% value addition rule.
- The calculation and all the other details for this criterion are the same as those of value addition. The only difference is the threshold.

E. Registration for export under the COMESA rules of origin

- Companies willing to export under the certificates of origin issued by the Ministry has to get registered as producers/exporters. The following information is required for registration for export under the COMESA rules of origin by the Ministry:
 - (1) Name and address of exporter
 - (2) Status of exporter/producer
 - (3) Contact person, telephone, fax, e-mail

Registration for export under the COMESA rules of origin (cont'd)

- (4) Description of product
 - (5) Present workforce of exporter/producer
 - (6) Number and type of machines
 - (7) Production capacity
 - (8) Declaration that the information and particulars provided are true and correct
 - (9) Signature of the person giving the information and capacity in which the person is acting
 - (10) Date of application for registration
- **Some 86 companies are presently registered under COMESA**
 - **Some 50 companies active**

F. Products exported from Mauritius under the COMESA Certificate of Origin

- Products exported from Mauritius under COMESA certificate of origin are baby diapers, day old chick, plastic chairs, animal feed, metallic tubes, soft drinks, noodle and confectionary, fabrics, sugar, woven labels, detergents, printed sleeves, beer, liquor, carton boxes, garments, tobacco leaves, shampoo, shower gel and toilet paper.

Thank you