



DISCUSSION PAPER ON RULES OF ORIGIN (RoO)

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TABLE OF CONTENTS

Sl. No.	Particulars	Page No.
1.	Executive Summary	3
2.	Introduction	5
3.	WTO Definition of Rules of Origin (RoO)	7
4.	Types of RoO	9
5.	Rules of Origin for alcoholic beverages in major trade agreements across the globe	12
6.	Rules of Origin for alcoholic beverages in India's Trade Agreements	19
7.	Alcoholic Beverages in India	22
8.	Suggested Approach on RoO	24
9.	Abbreviations	29

EXECUTIVE SUMMARY

Rules of origin are used to determine the 'nationality' of goods traded in international commerce. Yet, no internationally agreed upon rules of origin exist. Each country or jurisdiction that administers a regional trade agreement has established its own rules of origin. This discussion paper analyses the rules of origin criteria across the globe with specific reference to alcoholic beverages.

Global Practice for RoO: Alcoholic beverages are different from other manufactured goods and measured based on the alcoholic strength. Globally, countries like Canada, USA, EU, UK, Australia, in their respective trade agreements, have used the net alcoholic content criteria for calculating the value of non-originating materials. Hence, in order to harmonize with the global practice, India may consider the rule followed by other countries of measuring value of non-originating materials based on the alcoholic content, both in imports in bottles and bulk through the preferential route.

RoO for Alcoholic Beverages in India: In its earlier trade agreements, India had kept alcoholic beverages out of the purview of any tariff preferences. However, since the signing of trade agreements with Australia and UAE in 2022, India has given tariff concessions for alcoholic beverages. Under these agreements, India has followed the general criteria of rules of origin for alcoholic beverages too i.e., change in tariff sub-heading with value addition of 35% to 45%.

Suggested Future Approach:

- Given the complexity in the manufacturing of alcoholic beverages, it is suggested that the Government of India may consider the preferential rules of origin for tariff preferences given under FTAs. Therefore, to harmonize with global practices the government may consider allowing addition of non-originating materials as a percentage of the alcoholic content in both - bottled and bulk containers. The global standard is allowing 8-10% of non-originating materials of the total alcoholic content.
- India should also consider allowing the suppliers or exporters to self-certify the value addition with a condition of verification by the designated authorities on a random basis. The customs authorities, at the point of entry, will not be in a position to bifurcate the originating and non-originating materials through random or lab testing. However, the same can be tested through proper documentation given by the suppliers/exporters. Hence, customs authorities may introduce random testing of alcoholic beverages through the help of the appropriate organisations / regulatory authorities (e.g., Excise) in the exporting countries.
- Also, Government of India should consider providing for break-bulk and re-labelling provisions through a third country while retaining the original Country of Origin. This is

particularly applicable in the case of the EU and UK where individual country shipments may be small.

- For products covered under Geographical Indications (GI), the govt may consider a different product specific RoO. Since for getting a GI tag the product has to be made in a specific location, it is suggested that the govt follow a wholly obtained criteria for imports from the country with who the FTA is signed.

INTRODUCTION

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Rules of origin (RoO) is a powerful trade policy tool deciding the market access of goods and guiding companies to take import, export, and investment decisions around the world. Due to changing global trade and investment patterns, RoO is gaining policy attention at the bilateral and multilateral level. Within any trade agreement (TA) origin rules exist in order to prevent third countries from taking advantage of any preferential concessions. The rules thus are there to preserve the existing external protection of countries within the TA. However, depending on their formulation, they can also increase that level of external protection, resulting in trade suppression and trade diversion.

This paper provides an examination of global scenarios of rules of origin specifications at the World Trade Organisation (WTO) and in various TAs with specific reference to alcoholic beverages sector.

In particular, this discussion paper covers the following aspects:

- 1) An overview of the objectives, types, and effects of rules of origin (RoO) used around the world;
- 2) Comparative analysis of the preferential RoO regimes in some of the main plurilateral, regional and bilateral trade agreements for alcoholic beverages;
- 3) Alcoholic beverages in India;
- 4) Suggested approach on RoO, that Government of India may adopt in its discussions under existing and future trade agreements.

WTO DEFINITION OF RULES OF ORIGIN (RoO)

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Rules of origin is the criteria needed to determine the national source of a product. Their importance is derived from the fact that duties and restrictions in several cases depend upon the source of imports.

There is wide variation in the practice of governments with regard to the rules of origin. While the requirement of substantial transformation is universally recognized, some governments apply the criterion of change of tariff classification, others the *ad valorem* percentage criterion and yet others the criterion of manufacturing or processing operation. In a globalizing world it has become even more important that a degree of harmonization is achieved in these practices of Members in implementing such a requirement.

The General Agreement on Tariffs and Trade (GATT) has no specific rules governing the determination of the country of origin of goods in international commerce. Each contracting party was free to determine its own origin rules, and could even maintain several different rules of origin depending on the purpose of the particular regulation. The draftsmen of the General Agreement stated that the rules of origin should be left:

“...within the province of each importing country to determine, in accordance with the provisions of its law, for the purpose of applying the most-favoured-nation provisions (and for other GATT purposes), whether goods do in fact originate in a particular country”.

Article VIII:1(c) of the General Agreement, dealing with fees and formalities connected with importation and exportation, states that *“the contracting parties also recognize the need for minimizing the incidence and complexity of import and export formalities and for decreasing and simplifying import and export documentation requirements”* and the Interpretative Note 2 to this Article states that it would be consistent if, *“on the importation of products from the territory of a contracting party into the territory of another contracting party, the production of certificates of origin should only be required to the extent that is strictly indispensable”*.

TYPES OF RULES OF ORIGIN (RoO)

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The Kyoto Convention recognizes two basic criteria to determine origin: wholly obtained or produced, and substantial transformation. The wholly obtained or produced-category applies only to one TA member, and asks whether the commodities and related products have been entirely grown, harvested, or extracted from the soil in the territory of that member, or manufactured there from any of these products. The rule of origin is met through not using any second-country components or materials. Most countries apply this strict and precise definition. The substantial transformation-criterion is more complex, involving the below criteria/components that can be used as stand-alone or in combinations with each other.

The **first component** of the substantial transformation criterion is a **change in tariff classification (CTC)** between the manufactured good and the inputs from extra-PTA parties used in the productive process. Under this method, origin is granted if the exported product falls into a different part of the tariff classification to any imported inputs that are used in its production. This approach is used in the majority of current preferential trade agreements. Tariff Classification changes could be any of the following:

- **CC:** Change in Chapter (as per this, the change should take place at the chapter level, i.e., at the 2-digit HS level)
- **CTH:** Change in Tariff Heading (as per this, the change should take place at the heading level, i.e., at the 4-digit HS level)
- **CTSH:** Change in Tariff Sub-Heading (as per this criterion, the change should take place at the sub-heading level, i.e., at the 6-digit HS level)

The **second criterion** is **value content rule**. Under this method, a minimum percentage of total value addition should be achieved with the help of indigenous inputs. The value content can be expressed in three main ways: as the minimum percentage of value that must have been added in the exporting country (domestic or regional value content, RVC); as the difference between the value of the final good and the costs of the imported inputs (import content, MC); or as the value of parts (VP), whereby originating status is granted for products meeting a minimum percentage of originating parts out of the total value of parts, which is similar to the case for alcohol, where the value of non-originating alcohol content can be compared as a percentage of total alcohol content.

- *One*, through an 'import-content stipulation', which sets a maximum allowable limit of imports expressed in terms of percentage of imported parts and materials vis-à-vis total requirements of parts and materials.

- *Two*, through a 'domestic-content-requirement' whereby a minimum percentage of total value-added should be necessarily achieved with the help of domestically obtained inputs.
- *Three*, through a 'value-of-parts test' which examines whether the originating parts reach a certain percentage of the total value of parts.

Each of these forms stipulates that a certain percentage of value-add in the country of last manufacturing, obtained with the help of local inputs, is necessary for getting originating status to a product. It is quite obvious that either we calculate import content or the domestic content we arrive at the same result.

The **third RoO component is technical requirement (TECH)**, which requires the product to undergo certain manufacturing operations in the originating country. TECH requires or prohibits the use of certain input(s) and/or the realization of certain process(es) in the production of the good. It is a particularly prominent feature in RoO governing textile products.

The **fourth criterion** is related to **specific manufacturing processes**. This rule defines certain manufacturing or processing operations that a product must undergo in the exporting country to confer origin (positive test) or manufacturing or processing procedures that do not confer origin (negative test). The formulation of these rules can require the use of certain originating inputs or prohibit the use of certain non-originating inputs. Rules based upon specific manufacturing processes are widely used often in conjunction with other change of tariff classification and/or the value-added criterion.

RULES OF ORIGIN (RoO) FOR ALCOHOLIC BEVERAGES IN MAJOR TRADE AGREEMENTS ACROSS THE GLOBE

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Under a trade agreement, duty concessions are required to be extended only to such imported goods which are ‘made in’ the exporting country. Each FTA contains a set of rules of origin, which prescribe the criteria that must be fulfilled for goods to attain ‘originating’ status in the exporting country. Such criteria are generally based on factors such as domestic value addition and substantial transformation in the course of manufacturing/processing.

This section analyses the rules of origin criteria in various plurilateral, regional and bilateral trade agreements across the globe, covering the US, Canada, EU, Australia, New Zealand, Japan, South Korea, India, South East Asian countries, African countries, etc. This will give a comparative picture of countries adopting rules of origin criteria for alcoholic beverages.

PLURILATERAL TRADE AGREEMENTS:

Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)- Rules of Origin for Alcoholic Beverages:

22.04	A change to a good of heading 22.04 from any other chapter.
22.05 – 22.06	A change to a good of heading 22.05 through 22.06 from any other heading.
22.07	A change to a good of heading 22.07 from any other chapter.
2208.20	A change to pisco of subheading 2208.20 from any other chapter; A change to brandy of subheading 2208.20 from any other heading, except from heading 22.07; or No change in tariff classification required for brandy of subheading 2208.20, provided there is a regional value content of not less than 40 per cent under the build-down method ; No change in tariff classification required for any other good of subheading 2208.20, provided that the total alcoholic volume of the non-originating materials does not exceed 10 per cent of the <u>volume</u> of the total alcoholic strength of the good.
2208.30	No change in tariff classification required for a good of subheading 2208.30, provided that the total alcoholic volume of the non-originating materials does not exceed 10 per cent of the <u>volume</u> of the total alcoholic strength of the good.
2208.40	A change to charanda of subheading 2208.40 from any other chapter; No change in tariff classification required for any other good of subheading 2208.40, provided that the total alcoholic volume of the non-originating materials does not exceed 10 per cent of the <u>volume</u> of the total alcoholic strength of the good.

2208.50 2208.60	-	No change in tariff classification required for a good of subheading 2208.50 through 2208.60, provided that the total alcoholic volume of the non-originating materials does not exceed 10 per cent of the <u>volume</u> of the total alcoholic strength of the good.
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Regional Comprehensive Economic Partnership (RCEP) Agreement- Rules of Origin for Alcoholic Beverages:

2204.10	- Sparkling wine	CTSH
2204.21 -	-- In containers holding 2 l or less	CTSH except from subheading 2204.29
2204.29	-- Other	CTSH except from subheading 2204.21
2204.30	- Other grape must	CC
22.05	Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances	CTH
22.06	Other fermented beverages (for example, cider, perry, mead); mixtures of fermented beverages and mixtures of fermented beverages and non-alcoholic beverages, not elsewhere specified or included	CTH
22.07	Undenatured ethyl alcohol of an alcoholic strength by volume of 80 % vol. or higher; ethyl alcohol and other spirits, denatured, of any strength	CC
22.08	Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 % vol.; spirits, liqueurs and other spirituous beverages	CTH or RVC40

Under RCEP, RVC has been calculated as per FOB value, which means, the value of the good free-on-board, inclusive of the cost of transport (regardless of the mode of transport) to the port or site of final shipment abroad. While calculating FOB value, profits have been added into the value.

REGIONAL TRADE AGREEMENTS:

Rules of Origin for Alcoholic Beverages in Some Major Regional Trade Agreements:

Some of the main regional trade agreements across the globe are the ASEAN Free Trade Area (AFTA), North America Free Trade Agreement (NAFTA), South Pacific Regional Trade and Economic Cooperation (SPARTECA) in Asia-Pacific; the Economic Community of West African

States (ECOWAS), Common Market for Eastern and Southern Africa (COMESA), and the Gulf Cooperation Council (GCC) in the Middle East.

These FTAs are based on an across-the-board value content (VC) rule that, when defined as RVC, ranges from 25 percent (in Namibia-Zimbabwe FTA) to 50 percent (ANZCERTA). Some of the agreements allow, or, indeed, require, the RoO to be based on import content; however, the percentage requirement in such instances is higher than in terms of the RVC. Most of these regimes also specify an alternative RoO based on the change in tariff classification criterion, most often change in heading or, in the case of ECOWAS, that also has a relatively low RVC requirement at 30 percent, change in subheading. The NAFTA model is widely viewed as the likeliest RoO blueprint of the FTAs of the US. The RoO regimes in these agreements cover a change of chapter, heading, sub-heading or item, depending on the product. In addition, many products combine the change of tariff classification with an exception, regional value content, or technical requirement.

BILATERAL TRADE AGREEMENTS:

EU Canada FTA- Rules of Origin for Alcoholic Beverages:

As per the EU-Canada Comprehensive Economic and Trade Agreement (CETA), if a non-originating material undergoes sufficient production, the resulting product shall be considered as originating and no account shall be taken of the non-originating material contained therein when that product is used in the subsequent production of another product. And, the total value of those non-originating materials does not exceed 10 per cent of the ***transaction value*** or ***ex-works price*** of the product. For alcoholic beverages, both parties have agreed on change in tariff heading with exceptions from some subheadings.

Please find the product specific RoO for alcoholic beverages under EU-Canada FTA:

22.04	A change from any other heading, except from subheading 0806.10, 2009.61 or 2009.69, heading 22.07 or 22.08.
22.05 -22.06	A change from any other heading.
22.07 -22.09	A change from any other heading outside this group, except from heading 22.04.

CANADA-US Free Trade Agreement- Rules of Origin for Alcoholic Beverages:

In practical terms, under this agreement, goods other than those which originate wholly in either Canada and/or the United States, will have to incorporate some significant Canadian or U.S. content. For example, goods imported in bulk from offshore and repackaged and labelled in the

United States would not qualify for area treatment, while a product incorporating only some imported components in most instances would. A bicycle, for example, using Canadian steel for its frame and assembled in Canada using imported wheels and gears would qualify as a product of Canadian origin, if 50 percent of its manufacturing cost is accounted for in Canada and/or the United States.

US-Australia Free Trade Agreement- Rules of Origin for Alcoholic Beverages:

This agreement follows Net Cost Method, Build-down method, Build-up method for calculating the value of non-originating materials.

Net Cost Method: “net cost method” means the method of calculating the regional value content of a good. “Net cost” means total cost minus sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs and non-allowable interest costs that are included in the total cost.

$$RVC = \frac{NC - VNM}{NC} \times 100$$

Where, RVC is the regional value content, expressed as a percentage; NC is the net cost of the good; VNM is the value of non-originating materials acquired and used by the producer in the production of the good. **VNM *does not include* the value of a material that is self-produced.**

Build-down method: The use of foreign input materials in the manufacturing or processing operations carried out in a contracting party or a specified area is limited to a maximum amount. This method requires a comparison between the value of the foreign input or the materials with undetermined origin and the value of the final product.

Build-up method: The domestic content, e.g., the value of originating materials and the manufacturing or processing operations carried out in a contracting party or in a specified area, must be equal to or exceed a given percentage of the value of the final product. This method requires a comparison between the value added in a contracting party or in a specified area, and the value of the final product.

Please find the product specific RoO for alcoholic beverages under US-Australia FTA:

- 2203 – 2209 A change to heading 2203 through 2209 from any heading outside that group.

Canada-China Foreign Investment Promotion and Protection Agreement: Rules of Origin for alcoholic beverages:

- 22.03 – 22.07 A change from any other heading.
- 2208.20 A change from any other heading.

- 2208.30 A change from within this subheading or any other subheading, provided that the total alcoholic volume of the non-originating materials of heading 22.03 through 22.08 does not exceed 10 percent of the **volume** of the total alcoholic strength of the good.
- 2208.40 – 2208.90 A change from any other heading.

Regional Value Content: Where a rule is applicable to a good contains both a required change in tariff classification and a percentage for the maximum value of non-originating materials, and one or more of the non-originating materials used in the production of the good are classified in the same subheading or heading that is not further subdivided into subheadings, as the good itself, the definition of RVC will be used. For alcoholic beverages, both countries are using total alcoholic strength as the parameter for calculating value of non-originating materials.

Australia-Korea and Australia-Japan FTA: Rules of Origin for alcoholic beverages:

Under both these agreements, countries have agreed to allow change in tariff heading as the rules of origin requirements for alcoholic beverages.

2204	Wine of fresh grapes, including fortified wines; grape must other than that of heading 20.09.	-
2204.10	Sparkling wine	CTH
2204.2	Other wine; grape must with fermentation prevented or arrested by the addition of alcohol:	-
2204.21	In containers holding 2 ltr or less	CTH
2204.29	Other	CTH
2204.30	Other grape must	CTH
2205	Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances.	-
2205.10	In containers holding 2 ltr or less	CTH
2205.90	Other	CTH
2206.00	Other fermented beverages (for example, cider, perry, mead); mixtures of fermented beverages and mixtures of fermented beverages and non-alcoholic beverages, not elsewhere specified or included.	CTH
2207	Undenatured ethyl alcohol of an alcoholic strength by volume of 80 % vol or higher; ethyl alcohol and other spirits, denatured, of any strength.	-
2207.10	Undenatured ethyl alcohol of an alcoholic strength by volume of 80 % vol or higher	CTH
2207.20	Ethyl alcohol and other spirits, denatured, of any strength	CTH

2208	Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 % vol; spirits, liqueurs and other spirituous, beverages.	-
2208.20	Spirits obtained by distilling grape wine or grape marc	CTH
2208.30	Whiskies	CTH
2208.40	Rum and other spirits obtained by distilling fermented sugarcane products	CTH
2208.50	Gin and Geneva	CTH
2208.60	Vodka	CTH
2208.70	Liqueurs and cordials	CTH
2208.90	Other	CTH

Other Bilateral Trade Agreements

On the Asian front, the Japan-Singapore Economic Partnership Agreement (JSEPA), Chile-Korea FTA, RoO are based on a simple change in heading criterion for alcoholic beverages. Similarly, in Oceania, the Australia-New Zealand Closer Economic Relations Trade Agreement (ANZCERTA) and the Singapore-Australia Free Trade Agreement (SAFTA), RoO are also based on the change in heading criterion for alcoholic beverages.

RULES OF ORIGIN (RoO) FOR ALCOHOLIC BEVERAGES IN INDIA'S TRADE AGREEMENTS

RULES OF ORIGIN (RoO) FOR ALCOHOLIC BEVERAGES IN INDIA'S TRADE AGREEMENTS

As on date, India has signed trade agreements with countries like South Korea, Japan, Sri Lanka, Afghanistan, Thailand, Singapore, Malaysia, Nepal, Bhutan, Chile, United Arab Emirates (UAE), Australia, etc and with regions like South Asian Association for Regional Cooperation (SAARC), Mercado Común del Sur (MERCOSUR) and Association of Southeast Asian Nations (ASEAN), etc. India normally follows the criteria of Change in tariff sub-head (CTSH) and value addition of minimum 35% in its major existing trade agreements. And the calculation of value additions is based on the freight of board (FOB) value of the product. Here FOB value includes, the value of the good free on board, inclusive of the cost of transport (regardless of the mode of transport) to the port or site of final shipment abroad.

Before 2022, Indian had kept alcoholic beverages in the restrictive categories and out of the purview of any tariff preferences. However, in 2022, when India signed the early harvest deal with Australia, India offered tariff preferences for wine products and has been discussing to offer similar preferences for other alcoholic beverages as well. Similarly, India has also given tariff preferences for alcoholic beverages to the UAE.

With UAE, India has followed “change in tariff sub-heading with value addition of 40%” as the rules of origin criteria for alcoholic beverages. Whereas, with Australia, India has followed value addition criteria of 35% to 45% of FOB value for alcoholic beverages (*India, as on date, only offered tariff preferences for wine to Australia*).

Please find below some examples of RoO for alcoholic beverages adopted in some of India's existing FTAs:

Name of the FTA	Rules of Origin
India-ASEAN FTA	<p><u>General Rules:</u></p> <p>Wholly obtained (WO)-for wholly originating goods.</p> <p>For non-originating goods- Change in tariff sub-head (CTSH) and Regional Value Addition (RVA) of minimum 35%.</p> <p><u>For Alcoholic Beverages:</u></p> <p>India has not offered any tariff relaxation for alcoholic beverages; hence, there are no specific rules of origin for alcoholic beverages.</p>
India-Korea FTA	<p><u>General Rules:</u></p> <p>Wholly obtained (WO)-for wholly originating goods.</p> <p>For non-originating goods- Change in tariff sub-head (CTSH) and Regional Value Addition (RVA) of minimum 35%.</p> <p><u>For Alcoholic Beverages:</u></p>

Name of the FTA	Rules of Origin
	India has not offered any tariff relaxation for alcoholic beverages; hence, there are no specific rules of origin for alcoholic beverages.
India-Japan FTA	<p><u>General Rules:</u></p> <p>Wholly obtained (WO)-for wholly originating goods.</p> <p>For non-originating goods- Change in tariff sub-head (CTSH) and Regional Value Addition (RVA) of minimum 35%</p> <p><u>For Alcoholic Beverages:</u></p> <p>India has not offered any tariff relaxation for alcoholic beverages; hence, there are no specific rules of origin for alcoholic beverages.</p>
India-UAE CEPA	<p><u>For Alcoholic Beverages:</u></p> <p>For non-originating goods- Change in tariff sub-head (CTSH) and Value Addition (RVA) of minimum 40%.</p>
India-Australia ECTA	<p><u>For Alcoholic Beverages:</u></p> <p>For non-originating goods- Change in tariff sub-head (CTSH) and Value Addition (RVA) of minimum 35% to 45%.</p>

Source: Ministry of Commerce

Such stand taken by Government of India during its recent trade agreements with UAE and Australia are not in line with the globally accepted principle of measuring rules of origin based on alcoholic content.

India has been discussing trade agreements with Canada, EU and other countries and tariff preferences for alcoholic beverages are one of the main asks from its trade partners under these FTAs. Hence, it is important to understand the need for the industry and to align with the globally accepted principle of rules of origin to get adequate market access.

ALCOHOLIC BEVERAGES IN INDIA

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Alcohol comes into India in two forms, in bulk and in bottles. Alcohol packed and comes in bottles into India is called bottled in origin (BIO) where it is sold to consumers directly. These products mostly are GI tagged products such as Single Malts, Cognac, Wines, Tequila, Champagne, Scotch Whisky, etc, or specific country of origin products. These products are originating from a specific country, or a region or a locality in that country, where a given quality, reputation, or other characteristic is essentially attributable to its geographical origin. These GI-tagged spirits and wines cannot be manufactured locally in India using the best technology and quality ingredients available. Since such products come as a final product into India; hence, no third-party/country content or materials can be added while making these products for exports into India.

However, there are other bulk alcoholic beverages that come in bulk containers and undergo substantial value addition in India. These bulk alcoholic beverages come into India for two purposes, blending with other alcohols and mixing with water. Indian-made foreign liquor (IMFL) is the official term used by Government of India and businesses in India to refer to all types of liquor manufactured in the country other than indigenous alcoholic beverages such as feni, toddy, arrack and others.

When locally manufactured, the various types of IMFLs are supposed to be produced using their traditional methods, such as fermenting grain mash to produce whiskey. However, a common characteristic of many IMFLs, distinct from spirits elsewhere in the world, is that irrespective of the final product the starting ingredient is a neutral spirit distilled from molasses, a by-product of the sugar industry or grain. This neutral spirit at 96% alcohol by volume is first reduced to around 40-43% using demineralised water, whereupon flavours and other spirits are added. Colouring substance could be added at this stage to impart colour to the spirit if required (in cases of whisky, brandy, rum). Most commonly, grain or malt-based whisky, which may include imported Irish or Scotch whisky is blended with the spirit.

SUGGESTED APPROACH ON RoO

SUGGESTED APPROACH ON RoO

Government of India may adopt this approach in its discussions under existing and future trade agreements

Market Access: In India's earlier trade agreements, alcoholic products were kept out of the purview of any tariff preferences. However, since the Government of India has decided to open up this sector in its recent trade agreements, it provides the industry in India the opportunity to integrate with global markets. Therefore, a strong product specific rules of origin, that is in harmony with global practices will help in ensuring free and fair trade in this sector across FTA partners.

Method Of Calculating Value Content: Alcoholic products are different from other manufactured products where the main deciding factor of an alcoholic product is the net alcohol content. How much of originating and non-originating materials are used for making the alcohol in a bottle and bulk should be the main deciding factor under the rules of origin.

Globally, countries like Canada, USA, EU, UK, Australia, in their respective trade agreements, have used the net alcoholic content criteria for calculating the value of non-originating materials. Hence, in order to be harmonize with the global practice in other major markets, industry is keen to be in line with the practice of measuring alcoholic content, both in bottles and bulk, for calculating the rules of origin for alcoholic products. Hence, we suggest, under the rules of origin, while calculating the value of non-originating materials, Government of India may consider the product specific rules i.e., allow addition of non-originating materials up to a percentage of the alcoholic content in a bottle and bulk container.

Percentage of Non-originating Materials: Normally, in a bottle, the alcoholic content remains at 40% to 45% and the rest are added water and flavours. Hence, for alcoholic products, excluding GI-tagged products like Scotch Whisky including Single Malts, Cognac, Wine, Tequila, Champagne, etc., other alcoholic products irrespective of bottled and bulk, should be brought under the value addition criteria where 10% of the total 40% to 45% alcoholic content may be allowed to be added from a different country of origin. It means, Government of India should consider allowing 10% of the value of the alcoholic content as non-originating materials in a bottle or in bulk under the rules of origin.

Wholly Obtained for GI Products: Geographical Indications of Goods, are defined as that aspect of industrial property which refer to the geographical indication referring to a country or to a place situated therein as being the country or place of origin of that product. Typically, such a name conveys an assurance of quality and distinctiveness which is essentially attributable to the fact of its origin in that defined geographical locality, region or country. Under Articles 1 (2) and 10 of the Paris Convention for the Protection of Industrial Property, geographical indications are

covered as an element of IPRs. They are also covered under Articles 22 to 24 of the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement, which was part of the Agreements concluding the Uruguay Round of GATT negotiations. India, as a member of the World Trade Organization (WTO), enacted the Geographical Indications of Goods (Registration & Protection) Act, 1999 has come into force with effect from 15th September 2003.

GI-tagged spirits and wines can only be manufactured in a specific location with specific weather conditions, process making, maturation, etc. When traded across borders, no third-party/country content or materials can be added while making these products for exports. Hence, for GI tagged products, the wholly obtained criteria may be the suitable rules of origin criteria for trade under an FTA.

Self-certification: Government of India may consider self-certification for meeting the rules of origin criteria instead of a declaration through an official document. However, verification by the designated authorities on a random basis may be considered for checking of any violation of the rules of origin criteria.

Re-Labeling Provisions: Also, Government of India should consider providing for break-bulk and re-labelling provisions through a third country while retaining the original Country of Origin. This is particularly applicable in the case of the EU and UK where individual country shipments may be small. For GI-tagged products, the Original Country of Origin i.e., wholly obtained criteria will continue to apply notwithstanding any routing through a third country.

Rules of ENA: Besides alcohol in bottle and bulk, another important product in this sector is Un-denatured ethyl alcohol (ENA) covered under HS Code 2207. Theoretically, un-denatured ethyl alcohol (ENA) with alcoholic strength of over 80% volume can be brought into India and diluted with water to make Indian Made Foreign Liquor (IMFL). However, commercially, this route may not be feasible for any company in India. Moreover, even if the imports come under a preferential duty route, it will also be subject to other local taxes and fees in the country that is applicable for domestic ENA as well. For instance, when imported ENA enters into India, such imports attract local taxes such as Import Permit Fee, Export Permit Fee (for moving one state to another), Central Sale Tax, Permit Fee, Transport Fee, etc. these are also applicable for domestic ENA when it moves from one state to the other. In addition to these local taxes, imported ENA is subjected to international logistics costs and India's basic customs duty.

In addition, imports also face regulatory hurdles at the port of entry and also while entering into states. Further, for making alcoholic beverages, the quality of ENA is very important. ENA that is available in the domestic market in all states may not necessarily be suitable for making alcoholic beverages, Hence, companies rely on a minimum / specific quality ENA. For instance, some companies that are making alcohol in the state of Kerala rely on ENA from Punjab. Hence, they have to pay a hefty logistics cost for transporting that ENA from far north of India to the south.

Hence, even if imported ENA does come into India, such imports will not be economical for Indian companies to be used in making alcoholic products. Additionally, the item will arrive at one port and will need to be sent to the IMFL manufacturing units situated across the country. For this, along with the international freight, domestic freight will also be applicable.

However, to be on the safe side and to ensure that companies do not use the imported ENA route for manufacturing alcohol by mere dilution with water, the government may consider putting HS code 2207 under the wholly obtained category for imports under preferential tariffs.

Rules of origin suggestions that Government of India may adopt in its ongoing and future trade agreement discussions		
HS Code	Products	Suggested RoO Provisions
2204.10	- Sparkling wine	10% of the value of the alcoholic content as non-originating materials in a bottle or in bulk and, self-certified by the supplier with verification by the authorities on a random basis.
2204.21	- Other wine; grape must with fermentation prevented or arrested by the addition of alcohol: In containers holding 2 litres or less	
2204.22	- Other wine; grape must with fermentation prevented or arrested by the addition of alcohol: In containers holding more than 2 litres but not more than 10 litres	
2204.29	- Other wine; grape must with fermentation prevented or arrested by the addition of alcohol: Other	
2204.30	- Other grape must	
	Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances.	
2205.10	- In containers holding 2 litres or less	10% of the value of the alcoholic content as non-originating materials in a bottle or in bulk and, self-certified by the supplier with verification by the authorities on a random basis.
2205.90	- Other	
2206.00	Other fermented beverages (for example, cider, perry, mead, saké); mixtures of fermented beverages and mixtures of fermented beverages and non-alcoholic beverages, not elsewhere specified or included.	
	Undenatured ethyl alcohol of an alcoholic strength by volume of 80% vol or higher; ethyl alcohol and other spirits, denatured, of any strength.	
2207.10	- Undenatured ethyl alcohol of an alcoholic strength by volume of 80 % vol. or higher	Wholly Obtained
2207.20	- Ethyl alcohol and other spirits, denatured, of any strength	
	Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80% vol; spirits, liqueurs and other spirituous beverages.	
2208.20	- Spirits obtained by distilling grape wine or grape marc	10% of the value of the alcoholic content as non-originating materials in a
2208.30	- Whiskies	
2208.40	- Rum and other spirits obtained by distilling fermented sugar-cane products	

Rules of origin suggestions that Government of India may adopt in its ongoing and future trade agreement discussions		
HS Code	Products	Suggested RoO Provisions
2208.50	- Gin and Geneva	bottle or in bulk and, self-certified by the supplier with verification by the authorities on a random basis.
2208.60	- Vodka	
2208.70	- Liqueurs and cordials	
2208.90	- Other	

ABBREVIATIONS


- Rules of origin (RoO)
- Trade agreement (TA)
- World Trade Organisation (WTO)
- Preferential Trade Agreement (PTAs)
- Alcoholic Beverages (alco-bev)
- General Agreement on Tariffs and Trade (GATT)
- Change in Tariff Classification (CTC)
- Value Content (VC)
- Regional Value Content (RVC)
- Import Content (MC)
- Value of Parts (VP)
- Technical Requirement (TECH)
- Free Trade Agreement (FTA)
- Wholly Obtained (WO)
- Change in Tariff Sub-heading (CTSH)
- Regional Value Addition (RVA)
- European Free Trade Association (EFTA)
- Comprehensive Economic and Trade Agreement (CETA),
- North America Free Trade Agreement (NAFTA)
- Freight on Board (FOB)
- Value of Non-Originating Materials (VNM)
- Bottled in Origin (BIO)
- Bottled in India (BII)
- Geographical Indication (GI)
- Indian-made Foreign Liquor (IMFL)
- Un-denatured Ethyl Alcohol (ENA)

About **VeK**

Global Business Partners in Policy Advisory & Communication, Research & Economic Data Analysis, with in-depth knowledge of Legal, Trade, and Regulatory Affairs, specializing in various industries such as Agriculture, Automotive, Consumer Affairs, Processed Food, Manufacturing, Mining, Pharma & Healthcare, and Tourism.

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