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Rules of origin in Norway's regional trade agreements

To what extent do the rules reflect Norway's interests?

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Table of contents

1 Introduction

1.1 Rules of origin in Norway's RTAs

This thesis analyses preferential rules of origin in Norway's regional trade agreements (RTAs), seeking to assess to what extent these rules reflect Norway's interests. As of today, Norway has 35 RTAs in force with 41 countries,[1] with active negotiations ongoing with 11 more countries.[2] Considering that an RTA is a reciprocal trade agreement between two or more members of the World Trade Organization (WTO), RTAs aim to facilitate trade in goods according to Article XXIV of the General Agreement on Tariffs and Trade 1994 (GATT 1994).[3] A central element in this regard is to provide so-called preferential treatment (see part 1.2). For trade in goods,[4] this means that products originating in a Party to an RTA will benefit from lower or zero customs duties when imported to another Party, compared with identical products originating in another WTO member (a non-party).[5] In other words, the origin of the product will determine whether a product qualifies for preferential tariff treatment.[6] This is where rules of origin (RoO) come into play.

Simply put, RoO determine the economic nationality of goods,[7] based on where they have been made.[8] In this respect, RoO can be preferential and non-preferential (see Sections 5-11 and 5-12 of the Norwegian Movement of Goods Act).[9] Both types of rules determine where a product originates from, but it is only under preferential RoO that a product's origin qualifies for preferential tariff treatment.[10] Moreover, preferential RoO enables the importing country to ensure that only products originating in an RTA partner country benefit from tariff concessions.[11] Originating status is in other words linked to an economic benefit. For example, fresh or chilled filets of cod originating in Norway are exempted from customs duties when imported to the EU (avoiding a tariff of 18 per cent),[12] while cotton sweaters originating in the EU are exempt from

[1] See Table 1, Appendix 2.

[2] See Table 4, Appendix 2.

[3] WTO (2023a).

[4] GATT 1994 uses both "products" and "goods".

[5] The applicable customs duties for Norway are found in the Customs Tariff, see the Norwegian Regulation on classification of goods (forskrift 21. desember 2022 nr. 2429 (tolltariffen)).

[6] The terms "tariff" and "customs duty" mean the same and will hereafter be used interchangeably, see Britannica (2022).

[7] European Commission (n.d. a).

[8] WTO (2023b).

[9] Lov 11. mars 2022 nr. 9 (vareførselsloven).

[10] European Commission (n.d. a).

[11] Islam (2006) p. 256.

[12] See commodity code 0304 44 10 10 in the EU's Customs Tariff, cf. TARIC (2023a).

customs duties when imported to Norway (compared with an ordinary customs duty of 10.7 per cent).[13]

At the same time, it should be noted that not all products covered by RoO in an RTA can get preferential treatment,[14] as this depends on whether a Party has committed itself to reduce the customs duties. If a product is not covered by market access concessions, this will be apparent from a specific Annex to an RTA,[15] or from the product not being listed in the concessions. For example, agricultural products for which no preferential treatment is given are marked with an "X" in the schedules of concessions in Norway's RTA with the United Kingdom (UK).[16]

Meanwhile, RoO are not simple or straight-forward. In fact, RoO are often criticized for *inter alia* being highly complex,[17] thereby contributing to increased costs for businesses and customs administrations,[18] see part 1.3.1. For example, RoO might determine that cod caught in the Norwegian Economic Zone and exported from Norway does not originate in Norway (see part 3.2.1.2), but that cod caught by a Russian vessel originates in Norway because the cod has been salted prior to exportation (see part 3.2.4.2). These subtle differences can in turn affect the customs duties charged at importation. For instance, in the case of Norway's RTA with Mexico, salted cod originating in Norway can be imported duty free, while non-originating salted cod faces a customs duty of 15 per cent.[19]

A key point to take away from these examples, is that a product's preferential status will vary with the RTA and the product[20] in question. This means that an analysis of RoO in Norway's RTAs must consider all agreements. At the same time, a comprehensive analysis provides an opportunity to uncover patterns of similarities and differences across Norway's RTAs, discuss possible implications, and get a clearer picture of rules that reflect Norway's interests. In this respect, Norway provides for an interesting case because it has both RTAs with pan-European partners where RoO are the same (so-called "PEM rules", see part 1.3.1, 2.3 and 2.4.2), and RTAs with other countries where RoO differ in each case (see part 2.4.3). Moreover, Norway has an interesting economic profile where both offensive and defensive considerations make up

[13] Norwegian Customs Tariff (2023a).

[14] Tolletaten (2023a).

[15] See for example Annex II and VI to EFTA-GCC.

[16] See Annexes III and V.

[17] Trebilcock (2020) p. 39.

[18] Islam (2006) p. 269.

[19] See commodity code 03056201 in the Mexican Customs Tariff (2023).

[20] Materials go into the manufacture of a "product". In RoO, "goods" covers both "products" and "materials", see for example Article 1 (f) of Annex I to EFTA-Indonesia and Article 1 (d) of the PEM Convention. However, "goods" is not always used in RoO, see for example Annex I to EFTA-Ecuador which only uses "materials" and "products".

Norway's interests (see part 2.5). Lastly, an analysis gives an opportunity to address the role of RoO in promoting trade, seen from a more critical perspective. This entails a discussion of whether the rules serve their intended purpose.

1.2 The WTO

As implied above, the legal framework under the WTO provides a natural starting point for an analysis of RoO. One of cornerstones of the WTO is the principle of non-discrimination.[21] This principle builds on National Treatment and the Most Favoured Nation (MFN) obligations,[22] the latter of which is reflected in Article I (1) of GATT 1994 for trade in goods. According to this provision, any favourable conditions granted by a WTO member to any product "originating" in or destined for another country, with respect to "customs duties and charges of any kind imposed on or in connection with importation or exportation", shall be granted to other WTO members as well.

The MFN obligation is connected to Article II, which commits WTO members to accord to the commerce of other members treatment no less favourable than provided for in their national schedules of concessions, see paragraph 1 (a). These schedules describe the maximum tariffs that can be applied to goods from other members,[23] using the Harmonized System (HS) as common nomenclature to classify goods (see part 2.1).[24] Accordingly, imported products shall be exempt from customs duties and all other duties or charges of any kind imposed on or in connection with importation which exceed those in the schedules, see paragraph 1 (b) and (c). The duties in the schedules are "bound" MFN tariffs, but WTO members can apply lower tariffs on a non-discriminatory basis ("applied" tariffs).[25]

At first glance, WTO rules seem to give imported products equal treatment when it comes to the imposition of customs duties, no matter which country they originate from. However, despite 98 per cent of world trade being accounted for by WTO members,[26] customs duties are not always imposed in a non-discriminatory or uniform way.[27] In fact, the GATT itself provides for major derogations from the MFN principle, related to the existence of free trade agreements (FTAs), customs unions and special and differential treatment of developing countries.[28] The legal basis for these exceptions (for trade in goods) are set out in Article XXIV for free trade

[21] WTO (2023c).
[22] Van den Bossche (2017) p. 38-39.
[23] WTO (2022a).
[24] WTO (2023d) cf. WCO (n.d. a).
[25] World Bank Blog (2016).
[26] WTO (2023e).
[27] Islam (2006) p. 256.
[28] Trebilcock (2020) p. 9.

areas[29] and customs unions. For developing countries, the basis is a decision of 1979 of the contracting parties to GATT 1947 (the so-called *Enabling Clause*).[30] Under all these arrangements, WTO members are allowed to grant better tariff treatment than the MFN principle requires, in the form of zero or reduced customs duties (preferential treatment).[31]

As mentioned, preferential RoO serve to differentiate between goods which qualify for preferential treatment, and goods which do not. These rules can be unilateral or reciprocal. In this regard, the WTO distinguishes between RTAs and "preferential trade arrangements" (PTAs). RTAs are reciprocal and include customs unions, free trade areas/FTAs, and trade arrangements between developing countries.[32] In contrast, PTAs refer to developed WTO members granting unilateral privileges such as the General System of Preferences (GSP) and non-reciprocal preferential programs, to products originating in developing and least-developed countries. While RTAs are discriminatory by restricting favourable market access conditions to the RTA Parties,[33] the same can also be said for PTAs. Hence, both RTAs and PTAs provide for preferential treatment.

In contrast to preferential RoO, non-preferential RoO are used to identify products that are subject to WTO consistent measures, such as anti-dumping and countervailing duties, country of origin markings,[34] trade statistics,[35] but also MFN treatment (see for example Section 4-2 (2) of the Norwegian Customs Duty Act).[36] Moreover, non-preferential RoO are unilateral and decided on a national level by the exporting country,[37] see for example Section 5-12 of the Norwegian Movements of Goods regulations.[38] They are also motivated by different kinds of non-preferential commercial policy considerations,[39] and do not determine whether products qualify for preferential treatment.

Meanwhile, despite the importance of RoO for the level of customs duties imposed on trade in goods, no agreement has been reached in the WTO on what RoO should look like. The Uruguay round did lead to the WTO Agreement on Rules of Origin which established a three-year

[29] Established by FTAs.

[30] Van den Bossche (2017) p. 672 and 687-688.

[31] Non-WTO members can also refer to Article XXIV of GATT 1994 in their RTAs, see for example Article 1 (2) (a) of EFTA-Bosnia and Herzegovina, and of EFTA-Serbia.

[32] RTA parties are not necessarily located in the same geographical region.

[33] WTO (2023a).

[34] Islam (2006) p. 256.

[35] WCO (n.d. b) p. 11 and 14.

[36] Lov 11. mars 2022 nr. 8 (tollavgiftsloven).

[37] Tolletaten (2020a).

[38] Forskrift 27. oktober 2022 nr. 1901 (vareførselsforskriften).

[39] European Commission (2022a) p. 5 in the case of the EU.

harmonization program for non-preferential RoO, but even there the efforts stalled early on.[40] For preferential RoO, Annex II contains a common declaration which sets out some very general commitments as well as a definition.[41] However, the declaration does not contain substantially binding provisions on preferential RoO, even if it can be argued that they serve a contextual purpose.[42]

The bottom line is therefore that WTO members still can formulate, adopt, and apply the RoO that they find appropriate,[43] if otherwise consistent with the WTO. Moreover, while work is being done to draft multilateral guidelines on RoO, notably in the framework of the Revised Kyoto Convention under the World Customs Organization (WCO),[44] it is still necessary to turn to the individual RTAs to analyse provisions on preferential RoO.

1.3 Why analyse Norway's RTAs?

1.3.1 Legal and economic factors

Among the RTAs that Norway has in force,[45] 29 have been entered into together as FTAs with the other member states of the European Free Trade Association (EFTA), namely Switzerland, Liechtenstein and Iceland.[46] In addition, Norway, Liechtenstein and Iceland have an FTA in force with the UK. Preferential trade with Switzerland is in turn regulated by the EFTA Convention, while preferential trade with the EU is mainly regulated by a bilateral FTA of 1973 and the EEA Agreement of 1994 (which also regulates trade between Norway, Iceland and Liechtenstein).[47] Trade with the EU is supplemented by additional "Article 19 agreements" on agricultural products,[48] and several agreements on trade in seafood including the use of quotas.[49] All these RTAs provide for preferential treatment, and thereby RoO.

From an analytical point of view, both legal and economic reasons warrant taking a closer look at Norway's RoO. These can be summarized in three main points. First, the rules are

[40] WTO (n.d. a).

[41] Paragraph 2 defines RoO as "those laws, regulations and administrative determinations of general application applied by any Member to determine whether goods qualify for preferential treatment under contractual or autonomous trade regimes leading to the granting of tariff preferences". The commitments relate to judicial review, transparency, confidentiality, positive standards, non-retroactivity of changes and administrative assessments, see Van den Bossche (2017) p. 460.

[42] Delev (2022) p. 31.

[43] Islam (2006) p. 257.

[44] WCO news (2021).

[45] See Table 1, Appendix 2.

[46] Norway is not part of any customs union.

[47] Tolletaten (2018).

[48] Government.no (2021).

[49] Tolletaten (2023b).

characterised by both differences and similarities. The variations are partly due to the sheer number of RTAs in force, whereby the EFTA States are only second to the EU and the UK in having the most RTAs of any WTO member. By region, Europe also tops the statistics (159 RTAs in 2022).[50] Differences also arise because RTAs are subject to negotiations between different partners, at different times. The influence, ambitions and expectations of these partners will vary with the agreements. For example, while Protocol 4 of the EEA Agreement is 178 pages long,[51] the RoO in EFTA-Philippines only cover 31 pages.[52]

As for similarities, several provisions are commonly found across RTAs (see part 2.2). Importantly, this harmonisation of RoO can in some instances be intended and lead to identical rules being adopted across RTAs. This is the case with the Regional Convention on pan-Euro-Mediterranean preferential RoO (the PEM Convention).[53] The PEM Convention has 24 Contracting Parties including Norway and the other EFTA States, the EU, and most other European states (except for the UK, Russia, and Belarus).[54] Today, Norway has 20 RTAs with PEM rules (see for example Protocol 4 of the EEA Agreement). Given that the Secretariat of the Convention is the EU,[55] which also stands for most of Norway's trade in goods,[56] it is both natural and relevant to compare PEM rules with non-PEM rules when analysing RoO in Norway's RTAs (see part 3).

Second, an analysis can shed light on the legal and economic implications of RoO (see part 4). As mentioned, the rules provide the key to unlock the benefits provided by market access concessions. In addition to a legal analysis, it is therefore necessary to assess the legal implications (see part 4.2). In parallel, Norway's trade profile makes it an interesting analytical case in terms of economic implications (see part 4.3).

On one hand, Norway has an open economy and a long history of trade with other nations.[57] This is reflected in applied MFN tariffs being set at 0 for almost all products in Chapters 25-97 of the Customs Tariff, and for seafood products within Chapters 1-24.[58] For these "industrial"

[50] WTO (2022b).

[51] See EFTA (2022a).

[52] Annex I and Appendix I.

[53] See Council Decision 2013/94/EU.

[54] However, the RoO in Norway's FTA with the UK also build on PEM rules, see parts 2.4.3 and 3.

[55] European Commission (n.d. b).

[56] In 2021, the EU accounted for 55 per cent of imports and 58 per cent of mainland exports excluding oil and gas, see SSB (2022a).

[57] Store norske leksikon (2021).

[58] Norwegian Customs Tariff (2023b).

(non-agricultural) products,[59] the simple average applied MFN tariff was 0.4 per cent in 2021.[60] These low tariffs reflect international developments where the world average customs duty rate has declined to only 2.6 per cent in 2017.[61] Even if a world average duty rate masks high tariffs in certain sectors such as agricultural products,[62] low tariffs give a strong incentive to import materials to consume or use in domestic manufacturing.

On the other hand, while 95.5 per cent of non-agricultural products could be imported duty free to Norway in 2021 (when applying the MFN rate), the share for agricultural products[63] was 51.7 per cent.[64] Moreover, Norway is only a little more open compared to the weighted average of other OECD countries when looking at trade in both goods and services,[65] having a share of 29 per cent of GDP for imports and 42 per cent for exports in 2021.[66] In fact, the share of Norway's exports has declined over the past 20 years,[67] losing more market shares globally than any other OECD country.[68] Neither is the economy very diversified. While products from the process industry accounts for almost 20 per cent of the total value of Norwegian exports (including products such as metals, fertilizers, ferroalloys, mineral and chemical products),[69] Norway's economy relies heavily on exports requiring limited processing, including oil, gas and seafood.[70] A key question is therefore to what extent the RoO reflect these different aspects.

As for global value chains, Norway is a very integrated country. Compared to other OECD countries, Norway is characterised by a low "backward participation" rate in global value chains (16.8 per cent foreign inputs in gross exports in 2014) and a high "forward participation" (45.3 per cent in 2014). This means that the share of Norwegian inputs used by importing countries to manufacture exports to other countries, is significantly higher than the share of foreign inputs in Norwegian exports. In turn, this can be explained by the prevalence of rich natural resources and commodity exports,[71] meaning intermediate or semi-finished products used in the manufacture of other goods. Data from the WTO indicates a similar pattern, with forward participation at 39 per cent in 2018 and backward participation at 15.7 per cent. The total of 54.7 per

[59] Regjeringen.no (2009).
[60] WTO (n.d. b), see "MFN Applied" in Part A.1.
[61] World Bank (2023a).
[62] UNCTAD (2020) p. 8.
[63] "Agricultural" products are defined in Annex I to the WTO Agreement on Agriculture.
[64] See Part A.1 in WTO (n.d. b).
[65] NHO (2018) p. 189-190.
[66] OECD (n.d).
[67] Menon Economics (2022) p. 9-11.
[68] Menon Economics (2021a) p. 3.
[69] Norsk Industri (2016) p. 7 and 11.
[70] Store norske leksikon (2021).
[71] Ringstad (2018) p. 11-13.

cent is higher than the averages in Asia, Europe, North or South America.[72] In contrast, Switzerland and Iceland are not only less integrated into global value chains, but also have a higher backward participation rate than forward.[73] This indicates that their exports contain more finished products compared with Norway. An important question is therefore if the RoO reflect the importance for Norway of exporting intermediate products.

Lastly, an analysis of Norway's RTAs gives the opportunity to assess whether RoO promote trade and thereby serve their intended purpose. This can be done by addressing five points of criticism which will be elaborated on in part 5. First, RoO can be criticised for being highly complex and somewhat arbitrary,[74] at least from an economic point of view.

Second, these characteristics must be viewed in context with the proliferation of RTAs, combined with the lack of legal harmonization. This proliferation has had a negative "spaghetti bowl" effect on international trade by generating complex *sui generis* rules such as RoO,[75] creating increased transaction costs for businesses.[76] RoO have therefore been called the "unsavory sauce" on the spaghetti, leading to reduced use of preferential treatment.[77]

Third, by making concessions de facto dependent on overcoming non-tariff barriers such as RoO, the conditions for preferential treatment become less transparent and accessible. This can hinder the stated purpose of RTAs, which is to facilitate trade in goods without raising barriers.[78]

Fourth, RoO can be used as a tool to limit trade liberalisation, prevent trade deflection,[79] and *de facto* "export" a country's domestic protectionism to its RTA partners.[80] In this respect, import-competing industry will often lobby governments to adopt strict or rigid RoO,[81] or impose

[72] WTO (n.d. c).

[73] Switzerland has a total participation rate of 42.6 per cent, with backward participation at 24 per cent and forward at 18.6 per cent, see WTO (n.d. d). Iceland has a total participation rate of 47.2 per cent, with backward participation at 29.8 per cent and forward at 17.4 per cent, see WTO (n.d. e). No WTO data is available for Liechtenstein.

[74] Trebilcock (2020) p. 39.

[75] Bhagwati (2008) p. 61-69.

[76] Trebilcock (2020) p. 10.

[77] Felbermayr (2019) p. 2.

[78] WTO (2023a).

[79] Trade deflection refers to a situation where imports from third countries enter a free trade area via the RTA partner with the lowest external tariff, enabling third countries to "free ride" on the RTA concessions, see EPRS (2017) p. 1-2. RoO hinder trade deflection, see Felbermayr (2019) p. 1.

[80] Delev (2022) p. 27 and 43.

[81] Islam (2006) p. 257.

high tariffs in order to avoid competition from imported products. Elements of protectionism can be expected in these areas.

Fifth and finally, RoO can be criticised for being trade-diverting,[82] given that restrictive rules can limit trade and promote a protectionist agenda. Since trade diversion entails a redirection of trade from a more efficient supplier in a non-party to a less efficient supplier in an RTA Party,[83] the degree of restrictiveness will be important.

1.3.2 Research questions

This thesis will discuss the above-mentioned issues by analysing RoO in Norway's RTAs. The aim is to assess to what extent these rules reflect Norway's interests. This entails answering three research questions, which will be addressed in chronological order.

1. What characterises RoO in Norway's RTAs?

The first question entails a legal analysis of the rules themselves, building on a comparison between PEM and non-PEM rules, see part 3. The aim is to identify similarities and differences, keeping in mind areas which reflect Norway's interests (see part 2.5). In this regard, the analysis focuses on the most important common provisions to obtain originating status (see part 2.2).

2. What are the implications for Norway's interests?

The second question entails a discussion of the consequences stemming from the legal analysis, see part 4. The aim is to assess to what extent the rules reflect Norway's interests, when looking at implications. In this respect, both legal and economic implications will be addressed. This includes evaluating how RoO have been implemented in Norwegian legislation and the room for interpretation, but also how differences identified in part 3 affect Norway's economic interests. Most weight will be given to the latter part.

3.Do the RoO promote trade?

Finally, the last question entails a discussion of whether RoO promote or hinder trade, see part 5. The aim is to assess to what extent the rules reflect Norway's interests, when looking at the rules' purpose. By bridging the criticism of RoO with the conclusions of the analysis and the discussion of implications, this part evaluates how the case of Norway's RTAs correlates with

[82] Felbermayr (2019) p. 1.

[83] Burfisher (1998) p. 19.

the theoretical framework and general academic predictions. This includes highlighting areas where more empirical research is needed.

1.4 Scope and delimitations

The thesis will analyse preferential RoO in Norways RTAs, *de lege lata*. Despite providing for a potentially interesting comparative source, non-preferential RoO and preferential RoO under the GSP scheme fall outside the scope. This is due to limited space available as well as different policy considerations underlying those RoO. Moreover, the thesis will not analyse RoO in RTAs between other countries, for the same reasons.

Furthermore, the analysis will focus on the main provisions which determine whether a product qualifies for originating status (see part 3.2). These provisions consist of several articles as well as product-specific rules. As a result, only a more limited overview will be given of RoO of a more administrative character, more technical provisions, and rules concerning proofs of origin (see part 3.3). These provisions are arguably less important as they relate to documentation and verification of originating status, rights and obligations, and because they have a more limited impact on a product's originating status.

It should also be noted that PEM rules consist of both the PEM Convention and the so-called "revised rules" (RPEM).[84] RPEM rules are meant to replace the ones of the current Convention and have been agreed but not formally adopted, see part 2.3. Nonetheless, the analysis below will focus on the provisions of RPEM since these are most up to date and therefore better reflect PEM members' interest. Notably, Norway, the EU and other Parties have already started implementing RPEM on a transitional basis, cf. part 2.3.2.1.[85]

Finally, the comparison with non-PEM rules will assume that RPEM has been adopted by all PEM members, for ease of analysis. In this regard, the analytical point of reference is the RPEM rules contained in Council Decision (EU) 2019/2198.[86] Even if both RPEM and the rules of the Convention are written out in Protocol 4 of the EEA Agreement, the rules in the Council Decision are closer to the rules which were agreed (cf. part 2.3.3 for issues regarding the EEA Agreement). The RoO of the PEM Convention will be analysed when there are relevant differences to highlight.

[84] In this thesis, "PEM" will refer to both RPEM and the rules of the Convention, unless otherwise specified.

[85] See also Table 1, Appendix 2.

[86] See link in the reference list.

1.5 Methodological challenges

An RTA is a "treaty" according to Article 2 (1) (a) of the Vienna Convention on the Law of Treaties (VCLT). The convention largely codifies customary international law and is thereby binding on Norway, despite not having ratified the VCLT.[87] The key provisions in this respect are Article 31-33 concerning treaty interpretation, which are considered to codify international law.[88] RoO in Norway's RTAs must therefore be interpreted in "good faith" in accordance with their "ordinary meaning" in their "context", and in light of the RTAs' "object and purpose", see Article 31 (1). Article 32 allows recourse to supplementary means of interpretation only if the meaning according to Article 31 is left obscure or ambiguous (see litra (a)) or leads to a manifestly unreasonable or absurd result (see litra (b)). Article 33 on treaties authenticated in multiple languages is less relevant for Norway's RTAs, as most agreements are only authenticated in English.

However, an analysis of RoO in Norway's RTAs faces some methodological challenges. First, there is generally a lack of transparency surrounding Norway's RTA processes, including on RoO. RTA negotiations take place without much public scrutiny, and no texts are published until the agreement is made public. This has resulted in criticism of RTAs and Norway's trade policy,[89] but also makes it impossible for external actors to compare Norway's starting positions on RoO with the final provisions. Moreover, limited access to preparatory work reduces the role of supplementary means of interpretation, see VCLT Article 32.

Second, Norway's RTAs are usually not complemented by interpretative agreements, instruments or practice made in connection with or after the conclusion of the treaty, see VCLT Article 31 (2) and (3). Only three EFTA FTAs contain so-called "explanatory notes", which can provide guidance when interpreting RoO (see part 2.4.3). There are also explanatory notes to the PEM Convention, even if these have not been adopted by all PEM parties (see part 2.3.1.2). Moreover, existing explanatory notes provide very limited guidance to the provisions which are the focus of this thesis.

As for practice as a source of interpretation, there is no public information on the use of dispute settlement procedures under Norway's RTAs. Neither do the three WTO dispute settlements regarding Norway and the EU concern RoO.[90] Furthermore, even if there are judicial cases on a national level which concern preferential RoO (including in the EU),[91] these cases will not be

[87] Ruud (2018) p. 24 and 86.

[88] Müller (2017) p. 226-227.

[89] Eide (2021) and Attac Norge (2021).

[90] WTO (2023 f). Dispute settlement under RTAs can be initiated under the WTO, see for example Article 11.1 of EFTA-Indonesia.

[91] For an overview of EU case law, see page 12-16 (European Commission 2022b).

binding on other countries (whether PEM or non-PEM rules). Importantly, case law in Norway also provides limited clarification regarding interpretation. The relatively few cases focus on the issue of penalties and criminal liability resulting from the misuse of proofs of origin, and not the content of RoO themselves.[92]

Finally, Norway's interests on RoO remain undefined – at least publicly. In addition to agreements being subject to negotiations, no "model text" (position paper with ideal provisions) has been published to show what RoO Norway wants to have in its RTAs.[93] This is in contrast to for example Norway's draft model treaty on investment agreements of 2015,[94] or the OECD Model Tax Convention on Income and on Capital which provides a basis for many of Norway's tax treaties.[95] Therefore, when evaluating what constitutes Norway's interests regarding RoO, it is necessary to piece together available relevant sources and put them in context with important aspects of the Norwegian economy, see part 2.5.

1.6 Outline

Part 2 elaborates on the general characteristics of RoO and introduces common provisions relating to the acquisition of originating status. In addition, a general overview is given of the PEM Convention and RPEM, Norway's RTAs, and Norway's interests regarding RoO. Taken together, these elements provide a useful backdrop for part 3, which analyses the most important common provisions, comparing PEM provisions with non-PEM RTAs. In part 4, the legal and economic implications of the analysis are put into context with Norway's interests regarding RoO. This includes taking a closer look at how the RoO fit in with Norwegian legislation and assessing to what extent the RoO promote Norway's economic interests. Part 5 thereafter places the empirical findings in a theoretical and critical context, seeking to assess if Norway's RoO serve their purpose of promoting trade. Finally, part 6 presents conclusions to the research questions in this thesis and identifies areas where more research is needed.

2 Setting the background

2.1 General characteristics

As mentioned in part 1, preferential RoO are important because they affect the imposition of customs duties and regulate access to preferential treatment. In this respect, RoO form an

[92] Author's interview 16 December 2022 with Susann Nilsen, senior adviser at Norwegian Customs. See for example RG-2005-1555.

[93] EFTA has not published any model texts on their website, but model texts seem to exist at least for trade and sustainable development (Stortinget (2019)), and services (EFTA n.d. a).

[94] Regjeringen.no (2015).

[95] Beck (2022) p. 31.

integral part of national customs law.[96] The calculation of customs duties (and other duties) is based on the information contained in the import declarations submitted to customs authorities. This includes information on the origin of the imported products, but also their classification according to the HS nomenclature and national customs tariffs. Hence, customs authorities are also responsible for the determination and verification of origin,[97] and the correct classification of products after the HS nomenclature.[98]

Understanding HS is important since RoO and the classification of products are intertwined. The HS nomenclature is annexed to the WCO HS Convention of 1988,[99] and is usually updated every five years. It establishes a coding system of six digits to identify products, where two digits denote a "Chapter" (nn), four digits a "heading" (nn.nn), and six digits a "subheading" (nnnn.nn).[100] As most countries including Norway are Contracting Parties to the Convention,[101] the Norwegian Customs Tariff also uses HS to categorise products. As a result, the Tariff divides products in 97 Chapters covering all products and uses commodity codes of eight digits where the first six are identical to HS.[102] Importantly, all RTAs also use HS as a common nomenclature to classify covered products.[103] In some cases, this affects the content of the RoO provisions, most notably for the product-specific rules (see part 2.2.2.1.2 and 3.2.2.2).

Meanwhile, RoO are not a precondition for trade in goods. If there were no customs duties or if they were imposed on a non-discriminatory and uniform way across all states, it would be pointless to obtain preferential origin. However, lack of multilateral agreement in the WTO as well as trade policy developments in general make such scenarios highly unlikely for the foreseeable future.

Even though the world average customs duty rate has declined and reached a relatively low level, governments still use tariffs as a tool to protect domestic industry (in the broad sense) and as a source to provide revenue.[104] For example, the duty rates for milk and cream products in HS 04.01 in the Norwegian Customs Tariff ranges from 388 to 443 per cent. At the same time, there has been an enormous increase in RTAs following the end of the Cold War,

[96] Islam (2006) p. 256.

[97] WCO (n.d. c).

[98] Tolletaten (2020b).

[99] WCO (n.d. d).

[100] Cf. Rules of origin facilitator (n.d. a).

[101] WCO (2020).

[102] Tolletaten (2023c).

[103] However, the HS numbers contained in RTAs are not automatically adjusted to newer versions of HS and have to be updated by the Parties (Author's interview 16 December 2022 with Susann Nilsen, senior adviser at Norwegian Customs).

[104] Islam (2006) p. 73.

including larger plurilateral agreements.[105] While a WTO Member is on average party to 13 RTAs,[106] a total of 355 RTAs have been notified to the GATT/WTO as being in force of which 317 are FTAs covering trade in goods.[107] This has led to an increase in different RoO across RTAs.

In principle, it should therefore be challenging to identify common characteristics. As mentioned in part 1.3.1, RoO in RTAs are subject to negotiations. This leads to rules that will deviate on a case-by-case basis, depending on factors such as the economic profile of the countries involved, their comparative strength, but also compromise solutions. Moreover, RoO will reflect variations in how products are made. In today's globalised world, most products are manufactured or processed in more than one country (also due to multinational corporations).[108] Even livestock, vegetables and fruits produced in a single country often rely on imported fertilizers or concentrates, as is the case for Norway.[109]

In parallel, trade increasingly consists of value-added and intermediate products or components, connected through global value chains. More than half of global merchandise exports consist of trade in intermediate products, while the average import content of exported products was 40 per cent in 2015.[110] In turn, using input materials from different countries makes it more difficult to determine the economic nationality of an exported product.[111]

Meanwhile, the increasing complexity resulting from the proliferation of bilateral, plurilateral and overlapping RTAs with differing RoO is partly counterbalanced by common provisions in RTAs and multilateral agreements. Examples include the PEM Convention in Europe, and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) around the Pacific. Common provisions provide a natural starting point for a comparative analysis of RoO.

2.2 Common provisions

2.2.1 Categories on a general level

RoO in an RTA can be divided into four main types of provisions. First, certain requirements must be met to obtain "originating status", meaning that the product originates in a Party to an agreement. Second, there are provisions on proof of origin, which serve to demonstrate to

[105] Trebilcock (2020) p. 9 and WTO (2023g).
[106] Van den Bossche (2017) p. 674.
[107] WTO RTA Database (2022).
[108] Islam (2006) p. 266.
[109] Landbruksdirektoratet (2022) p. 12-13 and 17-19.
[110] Van den Bossche (2017) p. 11-14.
[111] Van den Bossche (2017) p. 457.

customs authorities of the importing Party that products are originating. Third, there are provisions of a more administrative character, including on the duties of the importer and exporter, the right to deny preferential treatment, cooperation, and verification of originating status. Finally, RoO contain common provisions of a more technical character, such as how products are qualified as units in relation to HS classification, or what accessories, spare parts and tools that form part of a product. Additionally, all agreements contain provisions on definitions.

The most important provisions for this thesis concern the group of requirements to obtain originating status. In this regard, it is possible to identify several common provisions that appear in most RTAs.[112] These will be presented below and further elaborated on in part 3.

2.2.2 Common provisions on how to obtain originating status

2.2.2.1 Wholly obtained or substantial transformation

RoO will always contain requirements on how a product must be manufactured to obtain originating status. These requirements are usually introduced in an article entitled "General Requirements" (see for example Article 2 of RPEM or Article 2 in EFTA-Philippines),[113] and are further elaborated in separate provisions. In essence, a product mainly qualifies for preferential treatment in two ways: Either by being "wholly obtained", or by undergoing a "substantial transformation".[114] The difference between these two "methods" of production lies in the use of non-originating materials.

2.2.2.1.1 Wholly obtained

RoO usually list in a separate provision the categories of products that must be "wholly obtained", see part 3.2.1. The requirement of "wholly obtained" signifies that all materials used in the manufacture of a product must originate in the producing country. Typical examples include food products grown and harvested in a party, minerals extracted from the soil, or live animals born and raised there.[115] However, products can also include waste and scrap, or products obtained from cell culture (see for example Article 3 in EFTA-Ecuador). These examples show that wholly obtained products can be quite varied.

For some of these products, it might seem difficult or virtually impossible to use non-originating materials (not wholly obtained) in the production. However, it is possible to import for example

[112] In the case of the EU, see European Commission (n.d. c).

[113] Unless otherwise specified, this thesis hereafter refers to the article numbers in the specific Annexes to the different non-PEM RTAs, and in Appendix I to RPEM. See Appendix 3 to this thesis for an overview of the relevant Annexes and Appendices to non-PEM RTAs.

[114] Rules of origin facilitator (n.d. b).

[115] Ibid.

non-originating grains and grow originating vegetable products, see part 3.2.1.2. Nevertheless, by in principle not allowing for any use of non-originating materials, the requirement of wholly obtained remains the strictest rule with regards to the production method.

2.2.2.1.2 Substantial transformation and the product-specific rules

If materials used in the manufacture of a product are not 100 per cent wholly obtained, the product can still qualify for preferential treatment if non-originating materials undergo a "substantial transformation" (see part 3.2.2). This principle is enshrined in an own provision usually entitled "Sufficient Working or Processing" (see Article 4 in EFTA-Philippines or Article 4 of RPEM) or "Sufficiently Worked or Processed Products" (see for example Article 4 in EFTA-Ecuador). This provision in turn refers to the so-called product-specific rules (see for example Annex II to RPEM).

The product-specific rules (PSRs or "list rules") play a key role in RoO because they lay down the required type of working or processing when using non-originating materials in the manufacture, see part 3.2.2.2. In this sense, PSRs clarify in detail the level of substantial transformation that is required for any given product to obtain originating status. The PSRs also cover all kinds of products based on the HS nomenclature, whether or not they are covered by market access concessions under the agreement (see part 1.1). In this regard, PSRs are not indicative of the real extent of preferential treatment.[116]

In practice, the list rules reflect the two main ways a product can qualify for preferential treatment, namely being wholly obtained or substantially transforming non-originating materials. In the latter case, the PSRs will build on one or more of three types of criteria,[117] in addition to the use of wholly obtained.

First, the "ad valorem rule", also known as "regional value content", "added value calculation" or "value added" rule, requires that a specific percentage of non-originating materials can be used in the production, and conversely that a specified percentage of the value of the good must consist of local content.[118] For example, RPEM allows for arms and munitions in HS Chapter 93 to be produced using non-originating materials, so long as the value of these materials does not exceed 50 per cent of the ex-works price of the final product (i.e. when it leaves the factory).[119] Inversely, at least 50 per cent of the ex-works price must be made up by materials

[116] See for example Note 9 of Appendix I to Annex I to EFTA-Chile.

[117] Rules of origin facilitator (n.d. b).

[118] Rules of origin facilitator (n.d. c).

[119] See European Commission (n.d. d) for a definition of ex-works price.

originating in the producing country (or in a country with which "cumulation" is applicable, see part 2.2.2.4).

Second, the method of "change in tariff classification" requires that the processing of materials results in a change in HS classification, when going from material to final product.[120] This means that the material and the product cannot be classified in the same place, depending on the level of classification. For example, the PSRs in EFTA-Indonesia[121] allows for ships, boats and floating structures in HS Chapter 89 to be manufactured using non-originating materials of any HS heading (four-digit level) except that of the final product, see Appendix 1 to Annex 1.[122] This means that it is not possible for a Norwegian exporter to import for example a used fishing vessel originating in Russia, modernize and reexport it as a fishing vessel originating in Norway, because the heading remains the same (HS 89.02). However, it is possible to transform a platform supply vessel (HS 89.01) originating in Russia into a fishing vessel (89.02) originating in Norway.

Third and lastly, the method of "specific processing" requires a particular processing or manufacturing operation to be carried out at a particular stage.[123] The content of these specific processing rules will depend on the type of product, taking into account the need to go beyond "minimal operations", see part 2.2.2.3. For example, unwrought aluminium in HS Chapter 76 (heading 76.01) can obtain originating status under RPEM if it is manufactured "by thermal or electrolytic treatment from unalloyed aluminium or waste and scrap of aluminium". This rule reflects a specific process whereby unwrought aluminium is manufactured.

2.2.2.2 The general tolerance rule

The *de minimis* rule or general "tolerance rule" is a provision that allows for a limited percentage of non-originating materials to be used in the production without affecting the originating status of the product. This percentage is often set between 5 and 15 percent of the total value of the product,[124] sometimes 20 per cent,[125] and gives an exporter the advantage of not having to fulfil the requirements of the PSR, see part 3.2.3.

For example, the tolerance rule in Article 4 (4) in EFTA-Indonesia makes it possible for a Norwegian producer of designer t-shirts to use cheap fabrics from China and get originating status

[120] Rules of origin facilitator (n.d. d).

[121] See Appendix 3 (to this thesis) for an overview of the Appendices that contain the PSRs in non-PEM RTAs. RPEM PSRs are contained in Annex II to Appendix I to RPEM.

[122] The FTA also contains an alternative list rule for Chapter 89, consisting of an ad valorem rule.

[123] Rules of origin facilitator (n.d. b).

[124] Rules of origin facilitator (n.d. e).

[125] See for example Article 4 (4) (a) in EFTA-Indonesia.

on the final product without having to fulfil the list rule, as long as the value of the Chinese materials and all other non-originating components do not exceed 20 per cent of the ex-works price.[126] In other words, the general tolerance rule provides an exception to the starting point where originating products must be wholly obtained or undergo a substantial transformation.

2.2.2.3 Insufficient working or processing (minimal operations)

Meanwhile, RoO will always require that a minimal amount of working or processing is carried out in a Party, in order to confer originating status (see part 3.2.4). The provision on "insufficient working or processing" or "minimal operations" therefore lists examples of operations that are deemed too simple and thereby insufficient to obtain originating status. This applies when fulfilling a PSR or using cumulation (see below),[127] but also when staying within the value limit of the general tolerance rule. The provision thereby ensures that a certain amount of processing always is done in the originating country.

2.2.2.4 Cumulation

Cumulation (or "accumulation") is another common provision which affects the way a product can obtain originating status, see part 3.2.5. In short, cumulation makes it possible to consider a product originating in one country or a process carried out there, to be originating or carried out in another country.[128] As with the general tolerance rule, cumulation modifies the starting point where originating products must be wholly obtained or undergo a substantial transformation.

In its basic form, cumulation permits originating materials from one Party to be used in the manufacture of a product in another Party (bilateral cumulation). An example is Article 6 (1) in EFTA-Philippines, which makes it theoretically possible for a Norwegian producer of salted cashew nuts to export them to the Philippines as originating in Norway under the agreement, provided that the cashew nuts originate in the Philippines. In so doing, the product satisfies the PSR for HS Chapter 8, which requires that all materials of Chapter 8 used are wholly obtained.

Cumulation can also involve more than two parties (diagonal cumulation), or even countries which are not part of the agreement (extended cumulation, also called cross- or third party cumulation).[129] In all cases, cumulation makes it easier to obtain originating status since originating materials can be disregarded when fulfilling the PSR for the product. If the manufacturing

[126] Otherwise, the list rule (for HS Chapter 61) in EFTA-Indonesia requires that non-originating materials be knitted or crotched.

[127] European Commission (n.d. e).

[128] European Commission (n.d. c).

[129] Rules of origin facilitator (n.d. f).

only uses originating materials, it essentially provides for a third way to obtain originating status (in addition to wholly obtained and substantial transformation).

2.2.2.5 The principle of territoriality and outward processing

Another central element is the principle of territoriality. This provision implies that originating products must be produced within the Parties and cannot leave their territory without losing originating status,[130] see part 3.2.6. For example, a Norwegian exporter of cod cannot send the fish to China to be fileted before export without losing originating status, due to the principle of territoriality.

However, this strict starting point is subject to exceptions such as cumulation and outward processing, which both allow for processing operations to be carried out in a non-party.[131] In the previous example, outward processing would allow the cod to be fileted in China and returned to Norway before export, without losing originating status (provided that the value added in China is limited). See for example Article 10 (3) cf. (1) in EFTA-Indonesia and Article 13 (3) of RPEM.

2.2.2.6 Direct transport or non-alteration

Finally, related to the principle of territoriality is the direct transport rule and non-alteration rule, which both require that an originating product be sent directly between the Parties without having been altered or manipulated in another country.[132] The main difference between these two rules lies in whether documentary evidence of non-manipulation is mandatory or not, see part 3.2.7.

As with the principle of territoriality, this main rule of direct transportation can be subject to exceptions which, subject to certain requirements allow products to be transited trough or stored in other countries.[133] For example, ferro-silicon exported from Norway to Ecuador can be transited via the EU without losing its originating status, provided that the goods remain under the supervision of customs authorities in the country of transit and only undergo limited operations to keep the products in good condition, see Article 14 (2) in EFTA-Ecuador. If an RTA provides for cumulation with a specific country, a product can be processed in that country without breaching the direct transport rule, see notably Article 7 (7) of RPEM.

[130] European Commission (n.d. c).

[131] WTO (n.d. f).

[132] European Commission (n.d. f) and European Commission (n.d. g).

[133] Tolletaten (2020c).

2.3 The PEM Convention and the revised rules

2.3.1 The PEM Convention

2.3.1.1 General background

The fundamental goal of the so-called "PEM zone" is to create a system of Pan-Euro-Mediterranean cumulation. To make this happen between multiple countries across different RTAs, it is necessary to have legal arrangements that secure mutual recognition of each other's RoO. The PEM cumulation system does this by relying on two common building blocks, namely a network of FTAs (between the Parties involved) and identical RoO.[134]

The PEM cumulation system was established in 1997 and has since gradually expanded to include most countries in Europe and around the Mediterranean. As of today, the PEM zone includes the EU, the EFTA states, the Balkans (Albania, the Republic of North Macedonia, Montenegro, Kosovo, Bosnia and Herzegovina, Serbia), the participants of the Barcelona Process (Israel, Morocco, Jordan, Algeria, Egypt, Tunisia, Palestine, Lebanon, Turkey, Syria), Moldova, Georgia, Ukraine, and the Faroe Islands. Except for Syria and Kosovo, all are parties to the PEM Convention which opened for signatories in 2011.[135] The Convention greatly facilitates the ambition of adopting identical RoO, by replacing a network of around 60 bilateral protocols with a single legal instrument. One Convention should also be easier to update than a network of different RTAs.[136] Meanwhile, not all signatory parties have FTAs established between them.[137]

2.3.1.2 The structure of the PEM Convention

The RoO of the PEM Convention are contained in Appendix I. The rules are preceded by Part I-IV which contain articles on general provisions, provisions on the establishment and functioning of a Joint Committee, on accession of third parties, and miscellaneous provisions.

Briefly summarizing parts I-IV, each Party is represented in the Joint Committee which acts by unanimity, see Article 3. The Joint Committee is *inter alia* responsible for adopting explanatory notes and guidelines (Article 4 (2) (a)), changes to the Convention (Article 4 (3) (a)), and decisions on accession from new countries (Article 4 (3) (b)). The main criterium for accession is having an FTA with preferential RoO with at least one PEM member, see Article 5 (1). The Convention is completed by Appendix II, which contains special derogations from Appendix I regarding trade between certain parties. These derogations do not concern Norway, except for

[134] European Commission (n.d. h).

[135] European Council (n.d.).

[136] European Commission (n.d. b).

[137] Commission Notice 2021/C 418/12.

Annex IX which specifies that full cumulation is allowed under the EFTA-Tunisia agreement, and Annexes VI and VII regarding the originating status of products from Andorra and San Marino.

Appendix I is structured into six "Titles" and seven annexes. Title I (General Provisions) consists of a single article on definitions. Title II (Definition of the Concept of "Originating Products") comprises nine provisions detailing how to obtain "originating products", followed by three provisions on "Territorial Requirements" in Title III. Title IV (Drawback or Exemption) prohibits refunds or exemptions from customs duties for materials going into originating products meant for export (see Article 14). Title V includes 16 provisions on "Proofs of Origin", while Title VI encompasses six provisions on "Arrangements for Administrative Cooperation". In total, Titles I-VI contain 35 articles.

As for the seven annexes, these comprise provisions on the PSRs (Annexes I and II), more detailed requirements for proofs of origin (Annexes IIIa, IIIb, Iva, Ivb), and a list of partners (including EFTA) which do not apply the partial duty drawback provisions in Article 14 (7), see Annex V. The important elements for this thesis are Title II of Appendix I, Annex I and Annex II.

Finally, the Convention is complemented by explanatory notes elaborated in 2007, which shed light on the understanding on some of the provisions.[138] Even though not all PEM members have formally adhered to the explanatory notes, Norwegian Customs includes the explanatory notes when referring to the rules of the Convention (and RPEM).[139] These notes constitute an instrument made after the conclusion of the treaty and must be considered with the context when interpreting the PEM Convention, see VCLT Article 31 (3) (a). However, most of the notes pertain to provisions on proofs of origin and administrative provisions, and not the provisions which confer originating status (see Title II). In this respect, they provide limited guidance when analysing the provisions which are the focus of this thesis.

2.3.2 The revised PEM rules (RPEM)

2.3.2.1 General background

RPEM is intended to replace the RoO of the Convention and were last set forth for adoption in 2019. Unfortunately, the rules could not be unanimously adopted due to concerns from some Contracting Parties. As a result, some PEM members agreed in February 2020 to adopt RPEM on a transitional and bilateral basis, until they can be formally adopted as new rules of the PEM Convention. These members include Norway and the EFTA States, the EU, Georgia, Bosnia

[138] Explanatory notes 2007/C 83/01.

[139] Tolletaten (2022a).

and Herzegovina, Kosovo, Israel, Montenegro, North Macedonia, Turkey, Lebanon, Moldova, Serbia, Ukraine, and Jordan.[140]

In practice, transitional RPEM rules are incorporated into the respective RTAs as alternative rules alongside the Convention. For exporters, having alternative rules mean that they must choose whether to use RoO in the PEM Convention or RPEM, when exporting their products within the PEM zone.[141] Additionally, having alternative rules creates some legal issues concerning inter-applicability between the two sets of RoO.[142] These issues will not be detailed here.

According to the EU, RPEM aims to make the RoO easier for businesses and better adapted to their needs.[143] Briefly summarized, RPEM contains a more liberal general tolerance rule than the Convention (15 per cent instead of 10), a less strict rule regarding transport of products (a non-alteration rule instead of a direct transport rule), the possibility to claim duty drawback on most products (instead of a ban), improved possibilities for cumulation by allowing for "full cumulation", more flexibility regarding accounting segregation[144] rules, and not least changes in the PSRs to make them simpler and more flexible.[145] The most important changes will be explained and analysed in part 3.

2.3.2.2 The structure of RPEM

Structurally, RPEM introduces some changes except for Titles I-V. The arrangements on administrative cooperation have been divided in two Titles, see Title VI (Principles of Cooperation and Documentary Evidence) and Title VII (Administrative Cooperation). These are followed by Title VIII (Application of Appendix I) which contains five specific provisions on the application of RPEM for Liechtenstein, Ceuta and Melilla, Andorra, San Marino, and the EEA, respectively.

As a result, there are 41 articles in total compared to 35 in the Convention. However, a closer look indicates that most of these changes do not stem from substantial differences, but rather organisational and structural considerations. The administrative arrangements are in essence still made up of the same provisions, while the five articles in Title VIII were already embedded

[140] European Commission (n.d. b).

[141] European Commission (2021) p. 5.

[142] Commission Implementing Regulation (EU) 2022/2334 see paragraphs 5 and 6.

[143] European Commission (n.d. b).

[144] The provision on accounting segregation is in this thesis included in the group of technical provisions (see part 3.3.2.1).

[145] European Commission (n.d. b).

in several provisions of the Convention. For example, Article 37 of RPEM on the EEA is mirrored in Article 2 (1) I of the Convention, which clarifies that originating products from the "EEA" are considered originating in an EEA party (e.g. "Norway") when exported to a PEM member outside of the EEA. Hence, most of the structural changes seem to be motivated by the aim to strengthen clarity and consistency between provisions, and to improve readability. As of today, no additional explanatory notes have been drafted or approved in connection with RPEM.

Lastly, amending the Convention to incorporate RPEM will require a PEM Joint Committee decision and updates of all relevant RTAs (requiring Joint Committee decisions under each agreement). Some minor technical amendments must also be made to provisions in Titles I-IV of the Convention. As for the mandate of the Joint Committee, RPEM does not entail any changes.

2.3.3 The requirement of identical RoO

As mentioned, cumulation under PEM presupposes that FTAs are in force between all the parties involved in cumulation, and that RoO are identical. However, it is not clear what the requirement of "identical" rules entails in practice. The PEM Parties have not clarified when or to what degree liberal or restrictive differences in wording or substance will breach the requirement of identical rules, cf. Article 33 (1) of the PEM Convention.[146] Neither is Norwegian Customs aware of any known judicial decisions which clarify the legal content.[147]

Moreover, Appendix II to the PEM Convention already contains deviating provisions for some partners, see part 2.3.1.2. In addition, RPEM allows Parties to agree on deviating provisions for full cumulation (see Article 7 (5) and part 3.2.5) and comprises derogations for duty drawback (see Article 16 (5) and (6)).

Importantly, the Protocol 4 of the EEA Agreement also contains elements which make its RoO peculiar to that RTA. First, the provisions differ from the Convention by providing for a form of full cumulation (see Article 2 (1) whereby products can obtain originating status in the "EEA", permitting a product to be manufactured in territories of the EEA). Second, having "EEA" origin differs from the usual starting point in PEM where products originate in an exporting country. Combined with full cumulation, this creates a need for adjustments in the text and supplementary provisions on documentary evidence (see Article 27 of Protocol 4 on supplier's declaration cf. Annex V and VI). Moreover, the EEA characteristics also make it necessary to write out all PEM provisions in full (see part. 2.4.2 regarding linkages). Third and

[146] Author's interview 16 December 2022 with Susann Nilsen, senior adviser at Norwegian Customs.
[147] Ibid.

finally, certain agricultural products under the EEA Agreement adhere to a separate and different set of RoO. This peculiarity stems from Article 19 of the EEA Agreement, which commits the parties to review conditions for trade in agricultural products every two years, with a view towards increased liberalisation, see paragraphs 2 and 3. The negotiations under this article have resulted in three agreements covering selected products,[148] in addition to an Agreement in the form of exchange of letters of 1992 which contains its own and deviating RoO. Even though the three agreements have been amended so that the product-specific rules of Protocol 4 (PEM rules) now apply, the RoO of 1992 are still in force for all agricultural products covered by Article 19. Notably, these RoO do not provide for cumulation.

On this background, it is possible to raise the question as to how strict the criterium of "identical" rules is interpreted in practice. It should also be mentioned that the above-mentioned RoO of 1992 have not been published on the websites of Norwegian Customs or The Norwegian Agriculture Agency. This raises further issues as to the legal status of these rules, and to what extent these RoO are followed in practice by businesses and Norwegian authorities.

2.4 A general overview of Norway's RTAs

2.4.1 Mostly EFTA FTAs

Almost all of Norway's 35 RTAs have been concluded as FTAs together with the other EFTA states.[149] The exceptions are two bilateral FTAs with the Faroe Islands and Greenland, respectively, and the FTA with the EU of 1973. Furthermore, the EFTA Convention provides for preferential trade between the EFTA states themselves, complemented (and superseded in practice) by the EEA Agreement when it comes to trade between Iceland, Liechtenstein, and Norway. This leaves a tally of 30 RTAs that consist of EFTA FTAs, including the FTA which Norway, Iceland and Liechtenstein have concluded with the UK.

In general, concluding RTAs together as EFTA presumably gives some advantages. First, the combined economic force of the EFTA States should make it more interesting for other free trade partners to negotiate and conclude an FTA with Norway. Second, teaming up makes it possible to pool resources and make the negotiation process more efficient, also considering that the EFTA Secretariat provides for technical assistance.[150] Third, to the extent that provisions on RoO are consistent throughout EFTA's FTAs, the sheer number of concluded agreements is a legal argument for adopting EFTA's provisions and approach to RoO. This is especially valid when negotiating with partners with relatively few FTAs. Finally, EFTA has also

[148] Stortingets utredningsseksjon (2019) p. 2-6.

[149] See Table 1, Appendix 2.

[150] EFTA (n.d. b).

valuable negotiating experience. Taken together, this provides EFTA with leverage that can be advantageous in negotiations on RoO.

Meanwhile, provisions in EFTA FTAs will reflect the interests of *all* EFTA States, and not only Norway. In practice, this means that EFTA's positions on RoO will be influenced by offensive and defensive interests of each EFTA State. The legal and economic interests of the other EFTA States might be limited or specific for the smallest economies of Iceland and Liechtenstein, or broader and more general for Switzerland. In respect of the latter, it should be noted that the Swiss GDP equalled about 800 billion USD in 2021 (20^{h} place globally), compared to 482 billion for Norway (29nd place), 25 billion for Iceland (106th place) and about 6 billion for Liechtenstein (153th place).[151] When adjusting for the size of the population, Liechtenstein ranks 2nd globally in GDP per capita, followed by Switzerland in 6th place, Norway in 7th and Iceland in 14th place.[152]

However, internal differences do not imply that the EFTA States do not have common positions on RoO. Rather, the many FTAs in force are proof that the EFTA states both agree upon and see the benefit of having common positions. The main exception concerns market access for agricultural products, which are usually dealt with through bilateral agreements between the EFTA states and the FTA partner. RoO do not contain exceptions for individual EFTA States.

Finally, regarding the structure of RoO in EFTA FTAs, the main provisions are usually contained in an "Annex" or "Protocol" to the Chapter on Trade in Goods, supplemented by "Appendices" or "Annexes", respectively. Furthermore, as with the PEM Convention, there is a Joint Committee under each EFTA FTA which *inter alia* is mandated to amend the Annexes/Protocols and Appendices/Annexes by consensus, see for example Article 12.2 (3) of EFTA-Indonesia cf. Article 10.1 (4) (both in the main part of the agreement). In RTAs containing PEM rules, it is also the Joint Committees under those agreements which decide whether to adopt RPEM as alternative rules, see for example Joint Committee decision no. 1 of 2021 of the EFTA-Serbia Joint Committee.

2.4.2 The RTAs containing PEM rules

As a of today, Norway has 20 RTAs containing PEM rules, including the EFTA Convention, the EEA Agreement, and the FTA with the EU of 1973.[153] Hence, about two thirds of Norway's RTAs contain PEM rules. Moreover, Norway has RTAs in force with all PEM parties except

[151] World Bank (2023b).

[152] World Bank (2023c).

[153] See Table 1, Appendix 2.

for Algeria, Syria, Kosovo and Moldova.[154] Regarding the latter two countries, active negotiations are ongoing but have not yet been concluded. Meanwhile, Norway's FTA with Greenland contains PEM rules even though Greenland is not a PEM Contracting Party. This means that Greenland is a "third country" with regards to the PEM Convention and that PEM cumulation is not possible.[155]

RPEM has been implemented as alternative rules in eight RTAs so far, namely the EEA Agreement, the EFTA Convention, the FTA with the EU, the FTA with Greenland, and EFTA's four FTAs with Albania, Montenegro, North Macedonia and Serbia, respectively.[156] In addition, the FTA with the UK has incorporated the PSRs of RPEM (despite the UK being a third country in relation to the PEM zone, like Greenland). The ambition of Norway and the EFTA states is to implement RPEM with all PEM members.[157]

The legal mechanisms used to incorporate PEM rules vary with the different RTAs. In ten agreements, the provisions of the PEM Convention have been written out in full, see for example Protocol 4 to the EEA Agreement (cf. part 2.3.3) and Protocol B to EFTA-Israel. On the other hand, nine RTAs contain "linkages" to PEM in the form of provisions stating that the PEM Convention shall apply and is incorporated and made part of the agreement, see for example Annex VIII to EFTA-Montenegro or Protocol B to EFTA-Albania. The same technique is used in RTAs applying RPEM, except for the EEA Agreement. Finally, EFTA-Bosnia and Herzegovina provides for a different solution, containing a single provision in the main agreement which stipulates that the Convention both replaces a previously attached protocol on RoO, and that the rights and obligations of the Parties are governed by the Convention, see Article 8 (1) and (2).

Summing up, linking the FTAs to the PEM rules seems to provide for the most efficient legal mechanism to ensure that there are no discrepancies between the RTAs and the PEM rules, see part 2.3.3. Except for the EEA Agreement, this should be feasible in all other PEM RTAs.

2.4.3 The RTAs containing non-PEM rules

Of Norway's 15 RTAs containing non-PEM rules, all are EFTA FTAs.[158] Moreover, all the FTAs have been entered into with trade partners that are not "pan-European" except for the FTA with the UK, which contains provisions which mix RPEM with non-PEM rules.

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[154] Commission Notice 2021/C 418/12.

[155] In respect of RPEM, a "third country" is located outside the PEM zone. In respect of non-PEM FTAs, a third country is a non-party.

[156] Tolletaten (2022a).

[157] Author's interview 16 December 2022 with Susann Nilsen, senior adviser at Norwegian Customs.

[158] Including the FTA with the UK, see EFTA (n.d. c).

In contrast to PEM RTAs, non-PEM FTAs always contain a complete set of provisions on RoO, see for example Annex I to EFTA-Indonesia. Furthermore, non-PEM FTAs differ in structure. First, the RoO are usually divided in "Sections" rather than "Parts". Second, while the provisions on "originating products" and territorial requirements are usually structured similarly as RPEM, the overall structure is generally less rigid and more variable. Third, provisions on proofs of origin vary when it comes to the possibility of using origin certificates in addition to origin declarations (see part 3.3.2.2). For example, Article 19 in the FTA with the UK only provides for origin declarations, while Article 15 in EFTA-Central American States provides for both origin declarations and EUR.1 certificates. Presumably, structural variations are also a consequence of bilateral negotiations (as opposed to PEM RTAs).

As for explanatory notes, five non-PEM FTAs contain provisions which obligate the parties to elaborate and agree on such notes.[159] In addition, the FTA with the UK empowers the Sub-Committee on Trade in Goods to adopt explanatory notes, see Article 2.19 (5) (i) of the main agreement. In all these cases, explanatory notes are adopted on a Sub-Committee level (below the Joint Committee), except for EFTA-Central American States which explicitly requires approval by the Joint Committee. However, it seems to be common practice that the Joint Committee "endorses" explanatory notes if these are adopted in the Sub-Committee, see for example the Joint Committee decision no. 2 of 2006 under the EFTA-Chile FTA. Arguably, sub-Committees in all RTAs might "recommend" explanatory notes to the Joint Committee even if not explicitly mandated to do so.[160]

If explanatory notes have been approved, they provide a legal source for interpretation of the RoO, see VCLT Article 31 (2) (a) and (3) (a). Yet, the scope of these notes ranges from encompassing many provisions (Chile and Korea), only a few targeted provisions (Mexico), to no provisions at all – at least so far (see EFTA-Singapore, EFTA-Central American States and the FTA with the UK). Moreover, as with the PEM Convention, few of the notes concern requirements to obtain originating status (see part 2.2.). On this background, it can be said that explanatory notes – so far – play a limited role as a source for interpretation of non-PEM rules.

2.5 What are Norway's interests?

2.5.1 Introductory remarks

As mentioned in part 1.5, there is generally little transparency surrounding Norway's RTAs. Additionally, since negotiation results reflect a mix of interests and compromise solutions, it

[159] EFTA-Chile, EFTA-Korea, EFTA-Singapore, EFTA-Mexico, EFTA-Central American States.

[160] See for example Annex VII (3) (e) to EFTA-Indonesia.

will always be difficult to discern what Norway's interests are regarding RoO based on the negotiated text only. Still, by looking at available sources related to RTAs and trade policy, it is possible to identify three general priorities for RoO which reflect Norway's interests. These priorities focus on the benefits for Norwegian businesses, with both defensive and offensive considerations in mind.

2.5.2 Liberalisation of trade in goods

The first priority relates to the stated goal of RTAs. Article XXIV (4) of GATT 1994 clarifies that RTAs should facilitate trade and increase trade integration, and not increase trade barriers. At the same time, the objective to liberalise trade in goods is explicitly stated in Norway's RTAs, see for example Article 1.2 (a) of EFTA-Indonesia and Article 1.1 (2) (a) of EFTA-Georgia.[161] Hence, RoO should facilitate and liberalise trade in goods.

The Norwegian Government highlights how Norway is an open economy which relies on an open, rule-based, fair and predictable trading system. Moreover, Norway's export revenues are a precondition to finance strong welfare schemes.[162] On this background, it can be deducted that RoO should function as a tool to liberalise trade which can increase Norwegian exports.

In this regard, the draft resolutions which accompany all FTAs subject to ratification in the Norwegian Parliament can explicitly mention that the RoO provide for "liberal" rules. For example, the draft resolution to ratify EFTA-GCC mentions that the RoO are "the most liberal and simple rules" in any RTA concluded so far. Specifically highlighted are elements of the PSRs, including more liberal ad valorem rules and fewer rules based on specific processing,[163] cf. Part 2.2.2.1.2.

In other cases, the draft resolutions only describe some of the main RoO provisions without categorizing the rules as "liberal", see for example the FTA with the UK,[164] EFTA-Ecuador,[165] and EFTA-Philippines.[166] Meanwhile, other sources might contain comments from Norwegian authorities on the negotiation result. For example, the website of the Norwegian Ministry of Trade and Fisheries points out that the RoO in the FTA with the UK provides for "more liberal" RoO, making it easier to qualify for preferential treatment when exporting products to the UK.[167]

[161] See the main part of the agreements.
[162] Regjeringen.no (2021a) p. 13.
[163] Prop. 132 S (2009-2010) p. 14.
[164] Prop. 210 S (2020-2021) p. 18.
[165] Prop. 93 S (2018-2019) p. 10.
[166] Prop. 111 S (2016-2017) p. 11-12.
[167] Regjeringen.no (2021b).

Still, it must be underlined that the aim of liberal RoO first and foremost applies to seafood products and other industrial products. In addition to most of these products being duty free according to the Norwegian Customs tariff, they include offensive export interests (see part 1.3.1). Liberal RoO should therefore be expected for industrial products. Conversely, different considerations will apply to Norway's defensive interests.

2.5.3 Safeguarding defensive interests

Even though the RTAs' objective of liberalising trade in goods applies to all sectors, it is a priority for Norway to safeguard defensive interests related to the agricultural sector.[168] These defensive interests must be balanced against offensive interests, such as improved market access for Norwegian seafood and industrial products, with a view to securing predictability for Norwegian agricultural producers.[169] Balancing these interests can however be difficult in an RTA setting,[170] especially when Norway has one of the world's most liberal tariff regimes for industrial products, but one of the most protectionist for agricultural products. This must be viewed in context with other non-economic factors, such as ideological and rural development considerations as well as ideas of food safety and self-support.[171]

In this respect, tariff-based import regulation (i.e. using tariffs to protect domestic producers), represents one of the most important policy tools to secure agricultural production in Norway, as tariffs cover over 80 per cent of domestically produced goods.[172] The aim is *inter alia* to ensure that imports of agricultural products do not compete with goods produced in Norway.[173] The rate of these customs duties varies but is highest for sensitive goods such as meat, eggs, dairy and corn products. Moreover, tariffs are seasonally based for products such as potatoes, berries and other vegetables, and generally lower for processed agricultural products (PAPs).[174] In these latter cases, the total duty rates (beyond preferential treatment) vary according to the content of sensitive raw materials, subject to an application to The Norwegian Agriculture Agency (see the RÅK regulation).[175] Finally, agricultural products which are not produced in Norway, such as coffee/tea, tropical fruits and sugar, are duty free.[176]

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[168] Regjeringen.no (2021a) p. 19.
[169] Prop. 200 S (2020-2021) p. 62.
[170] Farsund (2020) p. 105.
[171] Melchior (2020) p. 21-23.
[172] Regjeringen.no (2020).
[173] Landbruks- og matdepartementet (2022) p. 2.
[174] Regjeringen.no (2020).
[175] Forskrift 20. desember 2012 nr. 1424 (RÅK-forskriften), cf. Tolletaten (2023d).
[176] Regjeringen.no (2020).

The need to safeguard defensive agricultural interests is also valid for the other EFTA states including Switzerland, which applies a similar tariff regime for agricultural products.[177] In fact, Iceland, Switzerland and Norway are in the top four OECD countries where farmers receive the highest level of agricultural support, measured in per cent of gross farm receipts. In 2021, this support amounted to about 58 per cent for Iceland (1st), 49 for Switzerland (4th) and 50 per cent for Norway (2nd).[178]

Nonetheless, the aim to safeguard Norwegian (or EFTA) agricultural interests is not explicitly stated in the RTAs themselves. Instead, there are provisions that reflect these defensive interests, notably exclusions from market access concessions and (still) high preferential tariffs on imported agricultural products. Draft resolutions can also be indicative. For example, the draft resolution on EFTA-Ecuador highlights that the agreement safeguards Norwegian sensitivities in the agricultural sector.[179] In the draft resolution on the FTA with the UK, the government underlines how Norwegian agricultural interests have been given weight in the negotiations, and that gras-based production in the meat and dairy sector has been shielded.[180]

In terms of RoO, it can therefore be presumed that it will be in Norway's interest to use RoO as a tool to safeguard defensive agricultural interests. In practice, this should entail requiring that agricultural products be wholly obtained, and/or that product-specific rules restrict the possibility to use non-originating materials in the production.

2.5.4 Provide opportunities for Norwegian businesses

Finally, a third priority is to secure RoO that provide new trade opportunities for Norwegian businesses. In this respect, the Norwegian government aims to conclude RTAs that increase export, create new jobs in Norway and gives access to new markets (i.e. provides more trade opportunities). This especially concerns exports of products other than oil and gas.[181]

The question is to what degree this is achieved through Norway's RoO. As of today, no statistics or surveys have been published by Norwegian authorities in which the use of RTAs is addressed, including how RoO are perceived or used by businesses. However, the EFTA States have recently started to analyse the use of preferential treatment under RTAs, leading to a report being published in May 2022. The so-called "EFTA FTA Monitor" provides insight into

[177] Federal Office for Agriculture (2023).
[178] OECD (2023).
[179] Prop. 93 S (2018-2019) p. 9.
[180] Prop. 210 S (2020-2021) p. 16.
[181] Regjeringen.no (2021a) p. 13.

preferential trade on an EFTA aggregate level between 2018 and 2020.[182] Similar surveys might be expected from Norwegian authorities.

Naturally, Norway and the EFTA States would probably not conclude RTAs that did not facilitate trade (in addition to safeguarding defensive interests). This would also be non-compatible with Article XXIV of the GATT 1994. It can therefore be presupposed that RoO in Norway's RTAs to a certain extent must reflect the interests of the Norwegian business community, both regarding imports and exports. Rather, the question is to what extent the RoO provide real opportunities for increased trade. This issue will be addressed in the next parts of this thesis.

3 The Analysis

3.1 Introductory remarks

The main goal with part 3 is to answer the first research question on what characterises RoO in Norway's RTAs. As mentioned above, the analysis will compare RPEM with non-PEM rules (all EFTA FTAs), supplemented by the rules of the PEM Convention if these are different and relevant to highlight.

The analysis will be divided in three parts. Part 3.2 will analyse the main provisions on how to obtain originating status, see part 2.2.2. This entails giving an overview of each provision as well as comparing scope and conditions. The second part (3.3) will briefly evaluate other types of provisions related to proofs of origin, administrative aspects, and technical issues including definitions, see part 2.2.1. Finally, the third part (3.4) will draw up some conclusions on an aggregate level.

3.2 Provisions on how to obtain originating status

3.2.1 Wholly obtained

3.2.1.1 Overview

PEM

The RPEM Article 3 "Wholly obtained products" requires products to be made up of materials obtained in the producing country (see part 2.2.2.1.1). In this regard, paragraph 1 lists products which shall be considered wholly obtained when exported to another Contracting Party. Paragraph 2 contains three cumulative requirements regarding "its vessels" and "its factory ships" conducting sea fishing according to litra (h) and (i) of paragraph 1.

[182] EFTA (2022b).

Meanwhile, paragraphs 3 and 4 clarify that the EU member states (paragraph 3) and the EFTA States (paragraph 4) are to be regarded as Contracting Parties in relation to paragraph 2. The purpose is to clarify that individual EU member states and EFTA States are individual "Parties".

Non-PEM

In non-PEM FTAs, the wholly obtained provision also lists products which shall be considered wholly obtained,[183] see for example Article 3 in EFTA-Ecuador. However, there is no equivalent to paragraph 3 and 4 in RPEM, as the definition of a "Party" is located elsewhere.[184] Moreover, there are no definitions of "its vessels" and "its factory ships" as in RPEM paragraph 2, except for in the FTA with the UK and EFTA-Mexico. Meanwhile, four RTAs (EFTA-Chile, EFTA-Mexico, EFTA-Philippines, and EFTA-Central American States) contain explanatory footnotes regarding a few elements. These clarifications mainly relate to fermentation, cell culture, and territorial issues under the law of the sea.

3.2.1.2 Scope and conditions

Scope

RPEM Article 3 (1) exhaustively lists 13 types of products which are considered wholly obtained. These include products which are relevant for Norway's offensive and defensive interests, such as mineral products and natural water extracted from the soil or seabed of a Party (litra (a)), plants and vegetable products grown or harvested there (litra (b)), products from slaughtered animals born and raised there (litra (d)), products obtained there by fishing or hunting (litra (f)), products from aquaculture (litra (g)),[185] and products from sea fishing taken by a party's vessels outside of any territorial sea (litra (h)). In addition, RPEM contains three relevant provisions in Annex I (introductory notes to the PSRs) which concern the possibility to use non-originating materials for certain agricultural products grown and harvested in a Party (see Note 4.1), and products obtained from cell culture and fermentation (see Note 9.1 and 9.2), see below.

Remarkably, all products listed in RPEM are found in the 15 non-PEM FTAs. Despite variations in wording, the similar scope indicates that there is general agreement across RTAs as to the type of products that should be considered as wholly obtained. Nevertheless, there are some differences.

First, the scope for vegetable products in litra (b) is wider in non-PEM FTAs, because it allows for more use of non-originating materials. On one hand, Note 4 in Annex I to RPEM clarifies

[183] See Article number 3 or 4 in these agreements.

[184] See for example litra (a) of the Article *Definitions* in EFTA-Indonesia and EFTA-Philippines.

[185] The addition of litra (g) is the main difference compared to the PEM Convention, see European Commission (2021) p. 10.

that agricultural products within HS Chapters 6-10, 12 and heading 24.01 which are grown or harvested in a Party are originating even if the bulbs, grafts, buds, rootstock, cuttings or other live plant parts are imported (i.e. non-originating). This possibility is already implied in the wording in litra (b) (cf. that "plants" and "vegetable products" must only be grown or harvested). However, Note 4 also excludes products in HS Chapters 11 (including products of the milling industry), 13 (lacs, gums etc.) and 14 (including vegetable products not covered elsewhere. The non-PEM FTAs do not contain such a carve-out, thereby providing for a wider scope.[186]

Second, all non-PEM FTAs except two group products obtained from aquaculture together with those obtained from hunting or fishing (see for example Article 3 (e) in EFTA-Indonesia). By not defining "aquaculture" any further, these agreements go further than RPEM litra (g) which only opens for the importation of non-originating eggs, fry, larvae or fingerlings,[187] and provided that the resulting molluscs, fish, crustaceans and other aquatic invertebrates are "born and raised" there. In principle, this means there is more room to import non-originating materials under non-PEM rules.

As for the two exceptions, Article 4 (c) in EFTA-GCC provides for a stricter scope by explicitly including aquaculture products with live animals born and raised there. Hence, non-originating fry etc. cannot be used. In contrast, Article 3 in the FTA with the UK contains both a separate litra (g) for products from aquaculture, but also a definition which goes further than RPEM by allowing for "aquatic organisms" to be obtained from seed stock "such as" eggs, roes, parr, smolts, fingerlings or fry (see the footnote to litra (g)). In addition to not restricting the import to "eggs, larvae, fry or fingerlings", the term "aquatic organisms" possibly lets a wider range of animals to be produced.

Third, three newer FTAs include separate literals for products obtained from cell culture,[188] and products obtained from fermentation (for products falling within HS Chapters 29-39).[189] These products are included as litra (g) and (h) in EFTA-Ecuador and EFTA-Philippines, and litra (f)

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[186] The interpretative notes to the PSRs in EFTA-Ecuador and EFTA-Central American States contain a similar provision as Note 4 of RPEM, but those notes cover all products in HS Chapters 6-14.

[187] For definitions of fry and fingerlings in the case of salmon, see Marine Scotland Science (2022) Appendix 2.

[188] Cell culture is "the cultivation of human, animal or plant cells under controlled conditions (…) outside a living organism", see footnote 1 to Article 3 (g) in EFTA-Ecuador. This will often be products in HS Chapter 30, see Article 3 (f) in EFTA-Central American States.

[189] Litra (g) in EFTA-Central American States also includes HS Chapter 28. Fermentation is "a biotechnological process in which human, animal or plant cells, bacteria, yeasts, fungi or enzymes are used in the production process", see footnote 2 to litra (h) of Article 3 in EFTA-Ecuador. Fermentation is mainly used by in the chemical, pharmaceutical and food industry to produce chemical compounds, cellular materials and fermented products on an industrial scale, see Store norske leksikon (2022).

and (g) in EFTA-Central American States.[190] While it may be argued that some of these products are "vegetable products", or products derived from live animals born and raised there, products from human cells or involving bacteria and fungi are for example not directly covered. There is also a substantial difference between for example producing chicken meat grown in a laboratory, and meat from a chicken born and raised on a farm.[191]

Nonetheless, while RPEM does not include such products in the article, Notes 9.1 and 9.2 of Annex I determine that such products are "originating".[192] Still, RPEM differs by not only linking originating status to the PSRs, but also by limiting cell culture to HS Chapter 30 and introducing several carve-outs from HS Chapters 29-39 with regards to fermentation (see Note 9.2.). Hence, non-PEM FTAs seem to provide a clearer – and wider – scope. Nonetheless, these products are probably most of interest for Switzerland which has an important pharmaceutical sector,[193] and projects ongoing relating to fermentation and cultivation of food products.[194]

Conditions

Strikingly, except for the footnotes on cell culture and fermentation noted above and RPEM paragraph 2 (see below), Norway's RTAs do not provide for definitions or clarifications regarding the terms used in the provision. As a result, terms such as "vegetable products", "aquaculture" and "waste and scrap" are not clearly defined. Neither is the use of terms consistent. However, differences in terminology between RPEM and non-PEM FTAs mainly regard the level of clarity. Furthermore, the exhaustive listing of covered products in any case provides an outer limit to any extensive interpretation.

As for explicit conditions, these vary according to the type of product and how it is obtained. Most often, the interpretation seems unproblematic. For example, it is logical that mineral products in a Party's soil or seabed must be "extracted" according to RPEM Article 3 (1) (a), and that vegetable products have to be "harvested" there, see litra (b).

However, where a product must be "born and raised", it is not clear at what stage in a life cycle a live animal is "born". Is it for example sufficient for a mare to be pregnant, or must it give birth to the foal (cf. RPEM litra (c))? Neither is the duration of "raised" very clear. For example, how long must a non-originating cow be raised in a Party to produce wholly obtained milk (see RPEM litra (d))? Seemingly, the answer will vary with the type of product.

[190] See Article 3 in those FTAs.

[191] CNBC (2021).

[192] Both Notes contain definitions similar to the EFTA FTAs.

[193] Pharmaceutical technology (2018).

[194] F&D technology (2022).

Moreover, the requirements must be interpreted in context with the practical aspects of the product. For example, it would make less practical and economic sense for a horse breeder to export a pregnant mare. On the other hand, the horse breeder might save time and money if it is possible to export the horse as originating before it reaches full adulthood. As a result, the term "born and raised" should be interpreted based on the product's characteristics, but also the market on which it is sold.

As for the conditions for sea fishing, several points should be noted. First, both RPEM and non-PEM FTAs allow for products of sea fishing to be taken by a Party's vessels and factory ships from outside any territorial sea, see RPEM paragraph 1 (h) and (i) and for example Article 3 (i) and (j) in EFTA-Ecuador. This wording must be viewed in context with a country's sovereign rights to exploit natural resources in the exclusive economic zone, see Article 56 (1) (a) of the United Nations Convention on the Law of the Sea (UNCLOS), but also to share management of fish stocks. Notably, over 90 per cent of fisheries in Norway is conducted on shared stocks. As a result, a series of agreements have been concluded with neighbouring states,[195] leading also to fish being landed in Norway by foreign vessels.[196] On this background, it becomes necessary to determine the nationality of the ships that conduct the sea fishing, to determine the origin of the products.

In this regard, both RPEM and non-PEM FTAs require that vessels and factory ships be registered in a Party and fly the flag of that Party, see RPEM paragraph 2 (a) and (b) cf. for example Article 3 (f) in EFTA-Indonesia. These two requirements must be viewed in context with Article 91 (1) of UNCLOS, which commits every state to set conditions for registration of ships in its territory. In addition, Articles 91 (1) and 92 (1) of UNCLOS entail that every ship on the "high seas" (beyond the exclusive economic zone, see Article 86) must have the nationality of one flag state only, and that there is a genuine link between vessel and flag state. This linkage is tied to the process of registration.

On the other hand, RPEM differs from non-PEM RTAs by containing explicit ownership requirements. RPEM paragraph 2 (c) requires that the ship be either at least owned by 50 per cent nationals of the importing or exporting Party, or at least 50 per cent owned by companies of one of the Parties or public entities or nationals, provided that the main place of business as well as the head office is in the importing or exporting Party. These requirements do not infringe the non-discrimination principle in Article 4 of the EEA agreement.

[195] Fisheries.no (2007) p. 9-10.

[196] NOU 2019:21 p. 55-58 cf. figure 5.10.

In contrast, almost all non-PEM FTAs do not contain any explicit ownership requirements.[197] However, commercial fishing in Norway is only allowed for vessel owners having a permit, see Section 4 (1) of the Act on the Participant.[198] More importantly, registration entails requirements regarding ownership and place of residence (for both owners and crew), see Sections 5 and 5 a. This means that a company *inter alia* must be owned by at least 60 per cent Norwegian nationals, see Section 5 (2). Considering that RPEM Article 3 (2) only requires an ownership of 50 per cent nationals, the Norwegian requirements actually end up being stricter than RPEM.

Finally, it should be underlined that the PEM Convention additionally requires that the master and officers of ships and at least 75 per cent of the crew are nationals of the exporting Party.[199] This stricter requirement has been deleted in RPEM. RPEM also allows for the requirements in paragraph 2 to be fulfilled in the exporting Party or the importing Party. As a result, a vessel can for example be registered in Norway (see litra (a)) and at least 50 per cent owned by Turkish nationals (see litra (b)), provided that the fish is exported from Norway to Turkey (or vice versa).

3.2.1.3 Conclusion

For the most part, there are not many substantial differences between RPEM and non-PEM rules with regards to the wholly obtained article. The scope is largely the same, with a similar exhaustive list of covered products and minor differences regarding clarity. Moreover, except for footnotes relating to cell culture, fermentation and aquaculture as well as RPEM paragraph 2, no RTA contains clarifications regarding the conditions or terms used in the article. Interestingly, this does not seem to create challenges regarding the interpretation of the provision.

Still, there are some differences between RPEM and non-PEM rules. First, newer EFTA FTAs also include products from cell culture and products from fermentation in the list of covered products. Second, the scope of products obtained from aquaculture seems to be slightly wider in EFTA FTAs compared to RPEM, due to a more general wording. Both of these differences reflect sectors where EFTA States have specific interests, notably products from aquaculture and sea fishing in the case of Norway. On the other hand, the apparent differences with regards to products of sea fishing are less important in practice, due to legal constraints in Norway regarding ownership and place of residence.

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[197] EFTA-Mexico contains identical requirements as Article 4 (2) of the PEM Convention regarding ownership and nationality of the crew.

[198] Lov 26 mars 1999 nr. 15 (deltakerloven).

[199] See litra (d) and (e) of paragraph 2.

3.2.2 Sufficient working or processing and the product-specific rules

3.2.2.1 Overview

PEM[200]

The provision on "Sufficient working or processing" is in RPEM Article 4. The main rule is contained in paragraph 1 and states that non-wholly obtained products are "sufficiently worked or processed" if they fulfil the requirements contained in Annex II (i.e., their PSRs, see part 2.2.2.1.2.). This means that it is necessary to turn to the list rules to assess the scope and conditions regarding sufficient working and processing, see part 3.2.2.2 below.

Paragraph 2 clarifies that if an "originating" product according to paragraph 1 thereafter is used as an input material in the manufacture of another product, no account shall be taken of the non-originating materials used in the first product. This is called "roll-up" or the absorption principle.[201] It follows from interpreting paragraph 1 in context with paragraph 2 that sufficient working or processing confers originating status. This is also explicitly stated in Article 2 (b) (General Requirements).

As for paragraphs 3 to 6, these are of a more technical nature. In brief, they provide for the possibility to calculate the value of non-originating materials and a product's ex-works price using an average calculation method. This is an addition compared to Article 5 of the PEM Convention, making it possible to consider fluctuations in currency rates and costs.[202]

Non-PEM

Essentially, the article on sufficient working or processing is substantially the same in non-PEM FTAs.[203] Despite some minor variations in the wording, the article always begins by clarifying that products obtained from non-originating materials, or which are not wholly obtained, are sufficiently worked or processed if they fulfil the PSRs, see for example Article 4 (1) in EFTA-Philippines. Moreover, non-PEM FTAs contain a similar rule to RPEM paragraph 2 regarding the originating status of the product when further processed into another product, see for example Article 5 (1) in EFTA-Chile.[204]

On the other hand, there are some structural differences. First, all non-PEM FTAs include provisions on the general tolerance rule (see part 3.2.3) in the article on sufficient working or processing, see for example Article 4 (4) in EFTA-Indonesia. This is also the case for the PEM

[200] For this article, the FTA with the UK contains the same rules as RPEM.

[201] Rules of origin facilitator (n.d. g).

[202] See European Commission (2021) p. 11-15.

[203] The provision is located in article 4 or 5 in the FTAs.

[204] In the case of EFTA-Korea, the same is also clarified by the explanatory notes to Article 5.

Convention, see Article 5 (2). Second, six non-PEM FTAs contain additional provisions clarifying that the working or processing can be carried out by several producers in the exporting country.[205] Finally, most non-PEM FTAs do not provide for average calculation as in paragraphs 3 to 6 of Article 4 of RPEM. The exceptions are EFTA-Indonesia, EFTA-Ecuador and EFTA-Hong Kong, which all contain a simpler (and vaguer) provision on average calculation compared with RPEM.

3.2.2.2 Scope and conditions: The product-specific rules

3.2.2.2.1 Introductory remarks

As mentioned in part 2.2.2.1.2, the PSRs or "list rules" will determine whether the working or processing of non-originating materials is "sufficient" to obtain originating status. In the RTAs, the PSRs are always structured in tables where the first column covers all products classified after the HS nomenclature (see part 2.1). The level of classification in the column varies with the amount of PSRs and highlighted product groups, which can be on a HS Chapter level or below. Moreover, there is a corresponding PSR for each line of classified product group. The PSRs can apply for whole HS Chapters or contain "ex-outs" (with deviating PSRs from the chapter rule.) There can also be more than one rule (alternative or cumulative rules), either in the same column (RPEM) or in separate columns (see for example EFTA-Philippines). Meanwhile, PSRs will always use one or more combinations of criteria presented in part 2.2.2.1.2, i.e., the ad valorem rule, a specific processing or working operation, the wholly obtained criterium, or a change in tariff classification.[206] Regarding the latter, the PSR can require a change of Chapter, a change in tariff heading (CTH), or a change in tariff subheading (CTSH).

Finally, the analysis of PSRs in Norway's RTAs is quite comprehensive. After giving an overview of RPEM and non-PEM FTAs in part 3.2.2.2.2, the analysis of scope and conditions for sufficient working or processing will therefore be divided in three main parts. These reflect Norway's defensive and offensive interests and are based on three groups of products, namely agricultural products (part 3.2.2.2.3), seafood products (part 3.2.2.2.4) and other industrial products (part 3.2.2.2.5).

3.2.2.2.2 Overview

PEM[207]

The RPEM list rules are contained in Annex II, preceded by introductory notes ("Notes") in Annex I which provide clarifications and guidelines for the interpretation of the PSRs. Regarding Annex I, there are nine Notes in total (over seven pages), which are mostly of a technical

[205] See EFTA-Ecuador, EFTA-Korea, EFTA-GCC, EFTA-Peru, EFTA-Colombia and EFTA-Singapore.

[206] See Note 1 to RPEM Annex I.

[207] The FTA with the UK contains product-specific rules identical to RPEM.

and explanatory nature. The Notes with substantial implications include the already-mentioned Notes 4.1 regarding agricultural products grown from non-originating seeds etc. (see part 3.2.1.2), and 9.1-9.2 regarding the originating status of products obtained from cell culture and fermentation, respectively. In addition, Notes 6 and 7 provide for tolerance rules for textile products (either 15 per cent weight or value, see part 3.2.3), while Note 8 defines what constitutes "specific processes" in relation to some products under HS Chapter 27 (mineral fuels etc.). Finally, Note 9.3 lays down types of "transformations" for many chemical products in HS Chapters 28-39 which are sufficient to obtain origin according to RPEM Article 4.

As for the PSRs in Annex II, some general aspects should be noted. First, RPEM list rules are quite extensive. In total, there are PSRs for about 280 groups of products within all HS chapters, making the annex 60 pages long. Second, around 175 of these groups of products contain alternative rules, giving producers the possibility to choose from one or more different rules. Third, the PSRs vary both in type and complexity.

In this regard, the most used criterion in absolute terms is specific processing, mentioned in about 200 RPEM rules. This is mostly due to the PSRs for textile products in HS chapters 50-63, which usually comprise several alternative specific processing rules for each product type. Furthermore, there are about 140 rules mentioning a change in tariff classification criterion, and around 110 comprising ad valorem rules.[208] These latter rules allow for the use of non-originating materials with a value of 40-50 per cent of the ex-works price and only regard industrial products in HS chapters 25-97, except for white chocolate (HS 17.04) and chocolate with cocoa (18.06). Finally, 16 rules use a wholly obtained criterion, while 22 weight rules allow a specific weight percentage of non-originating materials to be used (instead of value). These last two criteria only concern agricultural products.

Finally, RPEM PSRs differ in some respects from the PEM Convention. According to the EU, weight rules for agricultural products are supposed to reduce the impact of price and currency fluctuations compared to ad valorem rules. Second, the PSRs in some agricultural chapters have been amended to better reflect sourcing patterns, while others have been simplified.[209] As for industrial products, fewer cumulative conditions and specific rules derogating from HS Chapter rules, more alternative rules, and simpler rules for textile products, are all intended to make the rules simpler, more lenient, and easier to apply for the exporters.[210] However, the question is whether RPEM list rules are indeed "simple" and "liberal" when comparing to non-PEM rules.

[208] Some PSRs use several criteria at the same time.

[209] European Commission (2021) p. 22.

[210] European Commission (2021) p. 24-29.

Non-PEM[211]

Like RPEM, all non-PEM FTAs contain introductory notes to the PSRs. However, except for EFTA-SACU, EFTA-Singapore and EFTA-Mexico which contain similar introductory notes as in Annex I to the PEM Convention, the notes in the other FTAs are usually considerably shorter and less complex. To a large extent, this is due to the lack of similar notes as RPEM Noes 6-9 regarding textile products and specific processes for products under HS Chapters 27 and 29-39.

As for the PSRs themselves, a look at the three most recent FTAs (EFTA-Ecuador, EFTA-Indonesia and EFTA-Philippines) reveals several key findings regarding the general structure of non-PEM PSRs. On one hand, there are similarities. First, a common trait is that the wholly obtained criterion is mainly used for agricultural products. Second, both non-PEM FTAs and RPEM makes much use of the change in tariff classification criterion, with CTH (change in tariff heading) being the most frequent variant.[212] Third, the non-PEM PSRs also include a substantial share of alternative rules. Compared to RPEM where about 63 per cent of the total product groups contain alternative rules, the percentage ranges between around 32 per cent in EFTA-Philippines, 38 per cent in EFTA-Indonesia, to 58 per cent in EFTA-Ecuador.[213] The share in EFTA FTAs is somewhat lower, but this is partly due to the high number of alternative rules for textile products in RPEM.

On the other hand, there are important differences. First, the non-PEM FTAs contain significantly fewer list rules than RPEM. The total amount of PSRs ranges from approximately 185 in EFTA-Philippines (19 pages), 155 in EFTA-Ecuador (26 pages), to about 120 in EFTA-Indonesia (17 pages). These are far less than the 280 list rules in RPEM (60 pages). In turn, fewer list rules should improve readability and make the PSRs more user-friendly, provided that the rules themselves are not more complicated.

In this respect, the second point is that non-PEM PSRs are less complex. This is partly due to fewer criteria being employed in general, but also due to the types of criteria that are used the most. For instance, there are almost no specific processing rules in the three non-PEM FTAs in question. In fact, there are only 12 specific rules in EFTA-Indonesia (usually used in combination with another criterion), three specific rules in EFTA-Ecuador (in HS Chapters 61-63), and one in EFTA-Philippines (within HS Chapter 15). Since specific rules tend to be more specially

[211] In the older EFTA-Mexico and EFTA-Singapore, the RoO and PSRs for agricultural products are in the bilateral agricultural agreements.

[212] CTH is used around 65 times in EFTA-Indonesia, 100 times in EFTA-Ecuador, and 75 in EFTA-Philippines.

[213] The share of alternative rules is approximately 60/185 in EFTA-Philippines, 90/155 in EFTA-Ecuador, and 45/120 in EFTA-Indonesia.

adapted to the product type in question and therefore more intricate, fewer specific processing rules reduces the overall level of complexity.

Moreover, the non-PEM alternative rules rely on the ad valorem criteria.[214] This has an impact on overall complexity, because the ad valorem rule is arguably the intuitively easiest criterion to understand together with wholly obtained. Furthermore, in addition to there being almost no weight rules in the newest non-PEM FTAs,[215] there are also fewer PSRs that use several criteria in combination. For example, the number of rules using combinations varies from 16 in EFTA-Ecuador, seven in EFTA-Indonesia, to only one in EFTA-Philippines, compared with around 60 in RPEM.

Finally, and importantly, the PSRs in all non-PEM RTAs tend to be more liberal in content. The key indicator in this respect is the percentage level of the ad valorem rule. Even though the percentage varies across non-PEM FTAs, including examples where the range goes lower such as EFTA-Korea (25-60 per cent), EFTA-Colombia (30-65 per cent) and EFTA-Central American States (20-70 per cent), the newer agreements indicate that Norway and EFTA prefer more liberal ad valorem rules compared to RPEM. While the latter allows for non-originating materials up to a value of 40-50 per cent of the ex-works price of the product, the percentage level is mainly 70 per cent in EFTA-Indonesia and 65 per cent in EFTA-Philippines.[216] The range is also somewhat higher in EFTA-Ecuador, with 60 per cent being the most used percentage followed by 50 per cent, with 40 per cent used for textile products and clocks (HS Chapter 91).

Summing up, the overview therefore indicates that non-PEM FTAs PSRs seem less complex and more liberal than RPEM. However, to get a more complete picture, it is necessary to analyse the detailed content of PSRs for products of specific interest to Norway.

3.2.2.2.3 Agricultural products

As mentioned in part 2.5.3, the most sensitive agricultural products for Norway are the ones where customs duties remain relatively high even when granting preferential treatment (if at all). A look at the level of customs duties and preferential tariff rates in the Norwegian Customs Tariff confirms that Norway's defensive interests mainly regard meat (HS Chapter 2 and headings under Chapters 16 and 19-21), eggs and dairy (Chapter 4 and headings under Chapters 18, 19 and 21-23), corn and related products (Chapters 10, 11 and heading 12.09), but also live

[214] The only exception concerns HS Chapter 71 in EFTA-Indonesia, where there are specific alternative rules for three groups of precious metals.

[215] There is only one such rule in EFTA-Ecuador (HS 19.02), and two in EFTA-Philippines (HS 19.02 and 19.04).

[216] Both FTAs contain a percentage of 40 per cent for clocks in HS Chapter 91. This limited percentage ensures that most of value creation remains in the Party producing clocks, i.e., Switzerland, thereby reflecting a defensive interest for EFTA.

animals (cf. headings 01.01-01.05), plants including flowers (Chapter 6), vegetable products (HS Chapter 7), edible fruits (in Chapter 8), as well as many different products meant for animal feed (across Chapters).[217] Imports of processed products in HS Chapters 16-24 are less sensitive, although preferential treatment does not necessarily mean duty free access (see for example Chapter 20 regarding preparations of vegetables etc.).

In terms of RoO, safeguarding these defensive interests should entail the use of relatively strict PSRs. Strikingly, both RPEM and the non-PEM FTAs indeed employ the wholly obtained criterion quite similarly for the most sensitive products.[218] This is the case for the chapter rules in HS Chapters 1, 2, 4, 6, 7, 8, 10, 11 and 16[219]. At the same time, wholly obtained PSRs must be interpreted in context with the wholly obtained article. For example, the wholly obtained PSR for live animals in Chapter 1 entails that they must be "born and raised" in the exporting party according to the wholly obtained provision. Furthermore, while vegetable products in Chapter 7 and edible fruits and nuts in Chapter 8 require that all materials of these chapters be wholly obtained, the open wording of the relevant literals in the wholly obtained article (see Note 4 in the case of RPEM) allows such products to be grown from imported non-originating seeds, bulbs etc.

Regarding preparations of meat and seafood in HS Chapter 16, the RPEM rule looks stricter by requiring that not only materials from Chapter 2 (or 1) are wholly obtained, but also Chapter 16 (and 3, see below regarding seafood products). However, since products in Chapter 16 are made from animals in Chapters 2 (and 3), a wholly obtained rule for Chapter 16 is synonymous with a wholly obtained rule for Chapter 2 (and 3).

Nonetheless, there are a couple of substantial differences and variations worth noting. For example, the three newest non-PEM FTAs as well as EFTA-Colombia and EFTA-Central American States contain an "ex-out" for dried beef in HS 02.10.20, where the rule is CTH. There is no such rule in the RPEM. Moreover, EFTA-Indonesia and EFTA-Chile contains ex-outs for headings 06.01 (bulbs, etc.) and 06.02 (other live plants etc.) providing for CTH.

Another example concerns HS Chapter 11 (products of the milling industry etc.). While all non-PEM FTAs use a chapter rule whereby all materials of Chapters 10 (cereals) must be wholly

[217] In 2020, about 60 per cent of animal feed was produced in Norway. The ambition is to raise this share compared to imports, see Landbruksdirektoratet (2021).

[218] EFTA-Canada uses the rule "A change from any other chapter" which means wholly obtained, cf. footnote 1 in Appendix I to Annex C. Generally, the PSRs in EFTA-Canada differ from all other FTAs by not containing chapter rules, by listing PSRs for all headings and subheadings, and by basing almost all PSRs on a change in tariff classification.

[219] See below for EFTA-Philippines and EFTA-GCC regarding Chapter 16.

obtained, the RPEM rule additionally requires that all materials from Chapters 8 (fruit and nuts), 11 and several headings under Chapters 7 (vegetables etc.) and 23 (food residues and waste etc.) also are wholly obtained. The three newer non-PEM FTAs also contain ex-outs for headings 11.05 (flour etc. made from potatoes) and 11.08 (starches and inulin) with PSRs more liberal than the chapter rule.[220]

Finally, EFTA-Philippines is the only agreement which contains a rule for Chapter 16 that allows for the use of non-originating materials from any other Chapter except for Chapter 16. In practice, this means that the meat from Chapter 2 (and seafood from Chapter 3) can be non-originating. However, this possibility to use non-originating meat remains theoretical because Norway has not granted any market access for agricultural products from the Philippines in Chapter 16 (see Annex IX to that agreement). The same point applies to the CTH list rule in EFTA-GCC for mortadella and hotdogs within HS heading 16.01 (see the bilateral agreement on agriculture).

3.2.2.2.4 Seafood products

As mentioned in part 1.3.1, fishery products are regarded as non-agricultural products (i.e., industrial products). In the case of Norway, this is reflected in such goods being duty-free according to the Norwegian Customs Tariff. At the same time, exports of fish and seafood products were significant in 2021 and amounted to about 120 billion NOK,[221] most of which was in HS Chapter 3 (fish etc.).[222] The question is therefore how the PSRs reflect the importance of exports of fish and other seafood in HS Chapter 3, but also headings 16.03-16.05 for preparations of seafood, 15.04 (fish oil) and subheading 2301.20 (flour and pellets from seafood).

A closer look reveals that non-PEM rules usually contain more liberal PSRs for seafood products, despite some variations. For HS Chapter 3, RPEM requires that all materials be wholly obtained. This is also the case for EFTA-Ecuador, EFTA-Korea and EFTA-Hong Kong. In contrast, while almost all non-PEM FTAs employ the same type of chapter rule,[223] nine agreements contain ex-outs for both fish fillets etc. of HS heading 03.04 and for dried, smoked or salted fish of heading 03.05.[224] The scope of the ex-outs in HS Chapter 3 is subject to

[220] EFTA-Philippines also has an ex-out for HS 11.01.

[221] Fisk.no (2022). For 2022, the number was 151.4 billion NOK, see Norges sjømatråd (2023).

[222] See Table 2, Appendix 2 for all mentioned export numbers.

[223] EFTA-Singapore and EFTA-Canada do not have a chapter rule for HS Chapter 3.

[224] The remaining EFTA-Mexico and EFTA-Central American States only have ex-outs for HS 03.05. The latter FTA contains an ex-out for cod and some other fish within HS heading 03.04 in the case of Costa Rica, and additionally for smoked salmon in the case of Panama.

variations,[225] but the list rule almost always uses a CTH rule.[226] Such a rule can in turn be beneficial for a country such as Norway, which has agreements with neighbouring countries on shared management of fish stocks. For example, a CTH rule for HS 03.04 allows a Norwegian producer to fillet fresh, chilled (HS 03.02) or frozen (03.03) Russian cod and thereafter export the fish fillets (HS 03.04) with Norwegian origin.

As for preparations of seafood in HS Chapter 16, non-PEM FTAs indicate a similar pattern. As mentioned, the RPEM rule for Chapter 16 requires that all materials from Chapters 2, 3 and 16 be wholly obtained. On the other hand, all non-PEM FTAs except for EFTA-Mexico and EFTA-Hong Kong contain more liberal rules for seafood products within headings 16.03-16.05.[227] The non-PEM rules either consist of a CTH rule (allowing for the use of non-originating fish and seafood classified in HS Chapter 3 but also other headings of Chapter 16), or a rule only allowing non-originating materials from Chapter 3.[228]

Meanwhile, the PSRs for HS 15.04 (fish oil) and 23.01.20 (flour and pellets from seafood) provide two rare examples where RPEM contains a more liberal rule than in several non-PEM FTAs. Regarding HS 15.04, RPEM contains an ex-out which allows for the manufacture from materials of any heading (including 15.04). This is the most liberal list rule possible, requiring only production steps beyond minimal operations (see part 2.2.2.3). At the same time, the heading covers both refined and unrefined fish oil, making it necessary to allow the use of "any heading" if refining non-originating, unrefined fish oil. In contrast, while the same rule of any heading is also found in many non-PEM FTAs, this is not the case for several agreements.[229]

A similar situation concerns HS 23.01.20, where RPEM and nine non-PEM FTAs use a CTH rule, allowing for non-originating seafood from HS Chapter 3 to be used. However, five FTAs require that these materials be wholly obtained,[230] as is the case with the list rule in the PEM Convention. RPEM provides for a more liberal rule in these cases.

[225] For example, EFTA-Mexico only includes cod under the ex-out regarding HS 03.05. On the other hand, EFTA-Singapore, EFTA-SACU and EFTA-GCC contain additional ex-outs for some products of headings 03.06 and 03.07.

[226] EFTA-Canada uses CTSH for HS 03.05.

[227] EFTA-Korea and EFTA-GCC do not contain an ex-out for HS 16.03. However, in both cases this heading is covered by the chapter rule which allows for the use of non-originating materials from Chapter 3.

[228] EFTA-Korea additionally requires that the value of these materials do not exceed 50 per cent of the ex-works price for 16.04 and 55 per cent for 16.05.

[229] These include EFTA's FTAs with Singapore, Chile, Korea, Peru, GCC, Philippines and the Central American States.

[230] EFTA-Mexico, EFTA-Korea, EFTA-GCC, EFTA-Hong Kong, EFTA-Central American States.

3.2.2.2.5 Other industrial products

HS Chapters 25-97 cover a wide range of different product types with many different list rules. The customs duty rates for almost all these products are set to zero in the Norwegian customs tariff, with preferential treatment (zero duties) given to the remaining textile products. At the same time, these Chapters include offensive interests for Norway. The PSRs for these most important export products are analysed below in chronological order based on HS classification, complemented by export statistics for 2021.[231]

Chapter 27 – Mineral fuels etc. (energy products)

The most important chapter by far in terms of export value is HS Chapter 27, which includes oil and gas products as well as electric energy. In 2021, the value of such exports equalled about 926 billion NOK, covering several HS headings.

In terms of PSRs, RPEM contains a chapter rule which lets producers choose between CTH or an ad valorem rule of 50 per cent. In addition, five ex-outs concerning parts of HS heading 27.07 and headings 27.10-20.13 all provide the choice between carrying out a specific process as defined in Note 9 in the introductory notes, or using a CTH rule with the possibility to use non-originating materials from the same heading if their value does not exceed a 50 per cent ad valorem rule.

In comparison, non-PEM FTAs vary in terms of complexity and the type of list rules used. For example, EFTA-Korea only contains a CTH rule while EFTA-Canada contains both specific processing rules and rules requiring a change in tariff classification. Moreover, older agreements such as EFTA-Mexico, EFTA-Singapore, and EFTA-SACU resemble RPEM by combining a CTH chapter rule with several ex-outs providing for specific processing rules and/or ad valorem rules in combination with CTH. On the other hand, EFTA's FTAs with Peru, Hong Kong, Ecuador, Colombia, and the Philippines more simply let the producers choose between a change in tariff classification rule (CTH or CTSH) or an ad valorem rule (60-65 per cent).[232] Finally, EFTA-Indonesia, EFTA-Central American States, EFTA-Chile and EFTA-GCC allow for materials from any heading to be used.[233]

On this background, Norway seems to accept specific processing rules, changes in tariff classification rule and/or a high enough ad valorem percentage for HS Chapter 27, but also any heading PSRs.

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[231] See Table 2, Appendix 2.

[232] EFTA-Philippines additionally has ex-outs for waste oils in HS subheadings 2710.91 and 2710.99, requiring that all materials be wholly obtained. EFTA-Ecuador and EFTA-Colombia contain a CTH ex-out for heading 27.15.

[233] EFTA-GCC also contains an ad valorem rule of 60 per cent as an alternative chapter rule.

Chapters 28 and 29 – Organic and inorganic chemicals

Two other important Chapters for Norway include HS Chapters 28 (inorganic chemicals etc.) and 29 (organic chemicals). In 2021, exports in Chapter 28 totalled about 6.6 billion NOK while Chapter 29 accounted for about 12.8 billion NOK. Notably, subheading 2804.69 (Silicon) is the most important subheading in Chapter 28 (4.6 billion NOK), while subheading 2924.29 (Cyclic amides etc.) essentially makes up the most of exports under Chapter 29 (11.5 billion NOK). Both Chapters *inter alia* include relevant components used in fertilizers, which in turn are classified in HS Chapter 31.[234]

The RPEM PSRs for Chapters 28 and 29 are relatively simple, providing for two alternative main rules.[235] The exporter must either fulfil a CTH rule allowing for the use of non-originating materials from the same heading if their value does not exceed 20 per cent of the ex-works price, or an ad valorem rule of 50 per cent. Notably, the chapter rule is the same for fertilizers in Chapter 31.

Most non-PEM FTAs also use CTH or alternative ad valorem rules as the chapter rule for Chapters 28 and 29.[236] Moreover, the older EFTA-Mexico, EFTA-Singapore and EFTA-SACU use similar chapter rules as RPEM, despite containing several more ex-outs in both Chapters (similarly to the PEM Convention).[237]

On the other hand, most non-PEM FTAs provide for more liberal rules than RPEM. EFTA-Colombia and EFTA-Peru allow for the use of materials in the same heading up to a value of 30 per cent of the ex-works price, while EFTA-GCC and EFTA-Hong Kong provide for ad valorem rules of 60 per cent as alternative rules. In addition, newer FTAs such as EFTA-Ecuador, EFTA-Indonesia and EFTA-Central American States, but also the older EFTA-Hong Kong and EFTA-Chile allow for the use of non-originating materials from any heading. EFTA-Philippines only employs the any heading rule for products of Chapter 28 (except for subheading 2844.50). For most agreements, non-PEM FTAs are again more liberal than RPEM.

[234] Table 2, Appendix 2 shows low exports in HS Chapter 31, even though Yara has significant exports of mineral fertilizers from Norway, see for example Teknisk Ukeblad (2014). This is probably due to confidentiality reasons, see Section 7 (1) of the Statistics Act (lov 21. juni 2019 nr. 32 (statistikkloven)), which requires that official statistics do not identify a statistical unit and disclose individual data.

[235] Chapter 29 contains ex-outs for headings 29.01, 29.02 and 29.05.

[236] Among these, EFTA-Peru and EFTA-Colombia provide for CTSH or an ad valorem rule. Moreover, Canada differs again by basing its rules on CTSH and CTH, sometimes also containing ad valorem rules.

[237] EFTA-Mexico however stands out by containing about 50 ex-outs in Chapter 29.

Heading 71.10 – Platinum and Palladium

Regarding Chapter 71 (precious metals etc.), Norway has a significant export interest in palladium within HS 71.10 (platinum). Within the 5.8 billion NOK exported from HS 71.10 in 2021, palladium in HS 71.10.21 accounted for 4.4 billion.

For 71.10, the RPEM PSR is based on using either CTH or one of two alternative specific processing rules if the palladium is in an unwrought form.[238] This includes the possibility to use non-originating metals from HS 71.10, so long as they are fused and/or alloyed or separated through processing). If the palladium produced is semi-manufactured or in powder form, RPEM contains a specific processing rule requiring manufacture from unwrought materials.

In non-PEM FTAs, the older EFTA-SACU, EFTA-Singapore and EFTA-Mexico contain similar PSRs as RPEM. Moreover, EFTA-Korea, EFTA-Chile, EFTA-Central American States, EFTA-Indonesia and EFTA-Hong Kong contain similar rules but do not distinguish as RPEM between the form of the product. In addition, EFTA-Canada uses CTSH or processing rules partly like RPEM.

On the other hand, EFTA-GCC, EFTA-Peru and EFTA-Colombia provide for a CTH rule or an ad valorem rule (50-60 per cent) while EFTA-Ecuador and EFTA-Philippines allows for materials from any heading to be used. In these latter agreements, there is therefore room to use or mix in non-originating palladium in the production without recurring to specific processes, provided that the operations go beyond minimal operations.[239] Nonetheless, the PSRs for HS 71.10 in most non-PEM FTAs are rather similar than different to RPEM.

Chapters 72-83 – Base metals (except aluminium)

For base metals products in HS Chapters 72-83 other than aluminium (HS Chapter 76, see below), the most important export interests concern HS headings 72.02 (ferro-alloys), 79.01 (unwrought zinc) and 7502 (unwrought nickel in 7502.10). The export value for these three headings amounted to 25.9 billion NOK in 2021.

Interestingly, the RPEM PSRs for these three headings all consist of CTH. This simplicity is probably due to such products usually being obtained from (imported) ores etc. classified in HS Chapters 26. In this respect, the resulting processing will in any case entail CTH.

[238] The CTH rule also precludes the use of headings 71.06 (silver) and 71.08 (gold).

[239] Any working or processing operation on palladium as a metal will probably go beyond minimal operations.

Similarly, non-PEM FTAs employ CTH for the abovementioned headings. However, nine FTAs differ by additionally providing for alternative ad valorem rules (50-70 per cent).[240] This provides producers with increased flexibility and more liberal rules, allowing to mix in non-originating materials from the same heading. In contrast, older agreements tend to restrict themselves to CTH as the only rule, alike to RPEM.[241]

Chapter 76 – Aluminium

According to the official statistics, Norway exported products of Chapter 76 with a value of around 45.6 billion NOK in 2021. The most exported products from Norway are unwrought aluminium in HS heading 76.01 (35.4 billion NOK) and aluminium plates etc. in HS 76.06 (5.4 billion NOK).

In terms of heading 76.06, the applying RPEM chapter rule *combines* CTH with an ad valorem rule of 50 per cent. As for HS 76.01, RPEM contains an ex-out which gives the choice between using the chapter rule or a specific processing rule (requiring thermal or electrolytic treatment from unalloyed aluminium or waste and scrap of aluminium).

In comparison, several non-PEM FTAs share similarities with RPEM. On one hand, the older EFTA-Mexico and EFTA-Singapore employ a similar chapter rule as in RPEM (covering heading 76.06), but only the RPEM specific processing rule for heading 76.01. In addition, while EFTA-Chile contains the processing rule for 76.01 but a chapter rule of CTH or a 50 per cent ad valorem rule, EFTA-SACU contains the same rules as in RPEM (and the PEM Convention).

On the other hand, while EFTA-Canada uses a CTH rule for 76.06 and a CTSH rule for 76.01, the remaining non-PEM FTAs including the newer ones contain a chapter rule which gives the option between CTH *or* an ad valorem rule (50-70 per cent). The highest percentages are contained in EFTA-Indonesia (70), EFTA-Philippines (65), and EFTA-GCC, EFTA-Hong Kong, EFTA-Ecuador, EFTA-Korea (all at 60).

As a result, most FTAs neither contain specific processing rules for 76.01 nor a cumulative rule for 76.06, with several agreements yet again containing higher ad valorem rules. Nonetheless, it can be said that the picture is more nuanced regarding PSRs for HS Chapter 76, with several similarities to RPEM.

[240] See EFTA's FTAs with GCC, Ecuador, Colombia, Peru, Hong Kong, Philippines, Indonesia, Chile, and Central American States.

[241] EFTA-Mexico, EFTA-Korea, EFTA-SACU, EFTA-Singapore, and EFTA-Canada.

Chapters 84 and 85 – Machinery

The total export value of machines etc. in HS Chapters 84 and 85 amounted to about 64 billion NOK in 2021. Examples of exported products include HS 85.44 (insulated electric conductors) for around 5 billion NOK, and 84.11 (Turbo-jets, turbo-propellers and other gas turbines) for around 4.1 billion NOK. However, relatively low numbers spread throughout Chapters 84 and 85 reflect the fact that many different products can be relevant.

For both HS Chapters 84 and 85, RPEM gives the option of choosing between CTH or a 50 per cent ad valorem rule as chapter rule. Meanwhile, both Chapters contain several ex-outs which usually cover multiple headings. These ex-outs mainly differ from the chapter rule by either precluding the use of non-originating materials from certain headings if using CTH, or by providing for an ad valorem rule only.[242] The PSRs are however simpler than the rules in the PEM Convention, having reduced the number of ex-outs and increased the percentage level in the ad valorem rules (from 25-50 per cent in the Convention to 50 per cent in RPEM).

Like RPEM, the chapter rule in almost all non-PEM FTAs consists of CTH or alternative ad valorem rules, except for EFTA-Hong Kong (CTSH or ad valorem rule) and EFTA-Canada.[243] However, while the average ad valorem percentage in the older agreements is around 50 per cent, the percentage is mainly 50-65 per cent in the FTAs with GCC, Hong Kong, Ecuador, Canada, and the Philippines. The most liberal agreements are EFTA-Indonesia, EFTA-Central American States and EFTA-Chile, which in both Chapters allow for the use of non-originating materials from any heading.[244] In addition, EFTA-Philippines uses the any heading rule for most products in Chapter 85.[245]

As for the exceptions from chapter rules, about half of non-PEM FTAs (mostly older agreements) contain ex-outs in both Chapters, mainly to preclude the use of certain non-originating materials from specific headings. These ex-outs mostly pertain to individual headings, even though some of the rules group products like RPEM. On the other hand, the other half only contain chapter rules or few ex-outs with deviating list rules. Given that many of these agreements also allow for a higher value percentage of non-originating materials to be used, it can be concluded that non-PEM PSRs for Chapters 84 and 85 are often simpler and more liberal than RPEM.

[242] Additionally, subheadings 8542.31-39 contain a specific processing rule as an alternative to the ad valorem rule.

[243] The rules in EFTA-Canada for Chapters 84 and 85 consist of CTH or CTSH and in combination with ad valorem rules.

[244] EFTA-Central American States contains an ex-out in Chapter 84 for heading 84.18 (CTH except from 8418.91).

[245] Except for ten ex-outs on a subheading-level which almost all provide for CTH or ad valorem rules of 65 per cent.

Chapter 89 – ships, boats and floating structures

The maritime and offshore sector is important for Norway.[246] This is reflected in a significant export of vessels and floating structures in HS Chapter 89, which amounted to 17.9 billion NOK in 2021.

Interestingly, the RPEM list rule for Chapter 89 is relatively simple. The chapter rule gives the option of choosing between CTH (except for hulls of heading 89.06[247]) or an ad valorem rule of 40 per cent. Similarly, all non-PEM FTAs give the choice between a change in classification (mostly CTH) or an ad valorem rule (mostly 50 per cent), except for EFTA-Canada.[248]

However, the ad valorem rules are higher in all non-PEM FTAs except for EFTA-Canada. The most liberal FTAs are the ones with the highest ad valorem rules such as EFTA-GCC, EFTA-Hong Kong and EFTA-Ecuador (60 per cent),[249] EFTA-Philippines (65 per cent), EFTA-Indonesia and EFTA-Central American States (70 per cent).

On the other hand, it should be noted that one of the alternative rule in EFTA-Philippines forbids the use of non-originating materials from Chapter 89. This means for example that it is not possible under that rule to transform a used non-originating platform supply vessel of HS heading 89.01 into a fishing vessel of heading 89.02 and obtain originating status.[250] Nonetheless, the overall analysis indicates that the PSRs for HS Chapter 89 are more liberal in non-PEM FTAs.

3.2.2.3 Conclusion

The analysis above reveals both similarities and differences between RPEM and non-PEM PSRs for products of importance to Norway. In one end, the list rules for agricultural products are to a large extent the same for the most sensitive products. This is due to the consistent use of the restrictive wholly obtained criterion. Furthermore, there are also some similarities between RPEM and non-PEM list rules especially for Chapter 27 (mineral fuels etc.), Chapter 76 (aluminium) and for platinum in 71.10, despite variations across non-PEM FTAs.

In the other end, non-PEM PSRs are generally fewer and less complex than RPEM. Most importantly, PSRs for major exported industrial products are also more liberal in many non-PEM

[246] Norges Rederiforbund (2014).

[247] Other vessels including warships etc.

[248] EFTA-Canada contains four PSRs based on a change in tariff classification, of which three have alternative rules based on a change in tariff classification combined with an ad valorem rule.

[249] EFTA-Ecuador also contains a more liberal CTSH rule instead of CTH.

[250] Several Norwegian ship repair yards convert ships, see Menon Economics (2021a) p. 38-39.

FTAs. This is mainly due to higher ad valorem rules and the possibility to use non-originating materials from any heading. Notably, the incidence of more liberal ad valorem rules is higher in HS Chapters 89 (ships), 28 (inorganic chemicals etc.), 29 (organic chemicals), 72-83 (base metals), 84-85 (machinery), 89 (ships), and to a lesser extent Chapters 76 (aluminium) and 27 (mineral fuels etc.). Meanwhile, any heading is mostly found in HS Chapters 27, 28, 29, and 84-85. However, this PSR is less frequent and more used in newer FTAs. In this regard, the analysis seems to indicate a tendency where older non-PEM FTAs contain similar rules as RPEM, while newer FTAs employ more liberal and/or simpler rules. This is generally the case for all important export products.

Finally, even if RPEM provides for more liberal PSRs in some cases for fish oil in HS 15.04 and flours etc. of seafood in 2301.20, most non-PEM FTAs contain more liberal rules for seafood products by allowing for CTH in HS headings 03.04 (fish fillets etc.), 03.05 (dried, salted, smoked fish) and 16.03-16.05 (processed seafood products).

3.2.3 General tolerance rule

3.2.3.1 Overview

PEM[251]

The RPEM general tolerance rule is contained in Article 5 "Tolerance rule".[252] The main rule in paragraph 1 stipulates that non-originating materials can be used notwithstanding the requirements of the PSRs, provided that their weight or value does not exceed a certain limit. For agricultural products in HS Chapters 2 and 4-24 (except for fishery products in Chapter 16), the materials must not exceed 15 per cent of the net weight of the product, see litra (a). For most other (industrial) products, non-originating materials must not exceed a value limit of 15 per cent of the ex-works price see litra (b). However, the general tolerance rule does not apply to textile products in Chapter 50-63 for which separate tolerances apply (see Note 6 and 7 of the introductory notes, which provide a weight or value rule of 15 per cent for certain textile products).[253]

Paragraph 2 clarifies that the application of paragraph 1 does not make it possible to exceed the percentages of any ad valorem rule in the PSRs. Finally, paragraph 3 clarifies that the tolerance rule applies for products where materials must be wholly obtained according to the PSRs, but

[251] For this article, the FTA with the UK contains the same rules as RPEM.

[252] See part 2.2.2.2.

[253] The PEM Convention contains an ad valorem rule of ten per cent for all products except Chapters 50-63. Additionally, the relevant notes 5 and 6 contain a weight rule of 10 per cent and a value rule of 8 per cent, respectively.

not to wholly obtained products in accordance with Article 3.[254] Paragraph 3 also states that it is without prejudice to Article 6 on Insufficient working or processing (see part 3.2.4).

Non-PEM

Like RPEM, all non-PEM FTAs provide for a general tolerance rule. However, the relevant provisions are located within the Article on sufficient working or processing (see part 3.2.2), apart from EFTA-Canada which has a separate Article 5 on "Tolerance". Furthermore, the FTAs vary in the use of weight and/or value as the criterion for the tolerance rule. About half of the FTAs contain combinations of value and weight rules, with the other half using value as the sole criterion.

Moreover, while about half of the agreements contain an equivalent provision to RPEM paragraph 2, EFTA-Ecuador, EFTA-Philippines, and EFTA-Korea have similar provisions to RPEM paragraph 3. At the same time, all FTAs except for EFTA-Indonesia, EFTA-Hong Kong and EFTA-Central American States explicitly clarify that the tolerance rule does not apply to wholly obtained products according to the article.

In any case, the provisions must always be read in context with the other RoO. In this respect, it is worth recalling that both RPEM and non-PEM FTAs allow for the general tolerance rule to be used in combination with the "roll-up" principle mentioned in part 3.2.2.1. For example, this means it is possible to use the general tolerance rule and mix in non-originating cod from Russia when producing fish fillets in HS 03.04, and then use the general tolerance rule again when processing fish cakes in HS 16.04.

3.2.3.2 Scope and Conditions

When comparing RPEM to non-PEM FTAs, three points of differences can be noted. First, while RPEM excludes textile products with reference to specific tolerances, most non-PEM FTAs do not. The exceptions are the older EFTA-Singapore, EFTA-Mexico and EFTA-SACU, which alike to PEM refer to specific tolerance rules in the introductory notes.[255] Other products are covered by the scope of the general tolerance rule in both RPEM and non-PEM FTAs, except for EFTA-Korea which in fact excludes products from HS Chapters 1-24 (seemingly also fish and fishery products) unless the non-originating materials are classified in another subheading than the product, see Article 5 (3).

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[254] This understanding is linked to a technical provision on the unit of qualification, see part 3.3.2.1.

[255] Additionally, Article 5 (2) in EFTA-Chile refers to Notes 5 and 6 in Appendix I containing introductory notes. However, this must be due to an *incuria*, as Appendix I was updated through Joint Committee decision No. 1/2013 and no longer contains similar Notes as in PEM. As a result, there is no longer any tolerance rule for textile products.

Second, the conditions for agricultural and industrial products vary with the agreements. On one hand, the RPEM weight rule for agricultural products is meant to avoid price and currency fluctuations, e.g. for products under HS Chapters 19, 20, and 21.[256] On the other hand, while five FTAs contain a separate weight rule for textile products in Chapters 50-63 (allowing up to 10 per cent of the net weight to be non-originating),[257] five non-PEM FTAs contain one ad valorem rule for all products.[258] Meanwhile, EFTA-Canada contains a weight rule of 10 per cent for textile products and a 10 per cent ad valorem rule for other products, but also provides for a tolerance of 40 per cent for Chapters 1-38, 40-49, 64-97 depending on conditions relating to classification and PSRs.[259]

Third and finally, the percentage of the RPEM ad valorem rule is in fact higher than in most non-PEM FTAs. Apart from EFTA-Hong Kong as well as the newer EFTA-Philippines and EFTA-Indonesia which all provide for 20 per cent, other non-PEM FTAs do not go beyond a general tolerance rule of 10 per cent (like the PEM Convention). In this respect, RPEM is more liberal than most non-PEM agreements.

However, it should be kept in mind that the ad valorem rules for PSRs in non-PEM FTAs are generally more liberal than RPEM. This can have a bigger impact for the exporters than the percentage of the general tolerance rule, also because the latter cannot be added to the PSR ad valorem rules. A similar argument applies to the non-PEM list rules for textile products in Chapters 50-63, which are generally less complex than RPEM.

3.2.3.3 Conclusion

On one hand, the comparison indicates some similarities. This concerns the inclusion in many non-PEM FTAs of a separate weight tolerance for textiles, and the fact that some older FTAs contain similar provisions as RPEM regarding textile products. At the same time, it is not immediately clear whether a weight rule for agricultural products or textiles provide an advantage for Norway, given that these are not important export products.

On the other hand, most non-PEM FTAs do not exclude textile products from the scope. In addition, about a third of FTAs only contain an ad valorem rule which applies to all products. Such measures make the general tolerance rule less complex. Nonetheless, by allowing for 15 per cent non-originating materials to be used, RPEM still provides for a more liberal general tolerance rule than in most non-PEM FTAs.

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[256] European Commission (2021) p. 22.

[257] EFTA-Ecuador, EFTA-Korea, EFTA-Peru, EFTA-Colombia and EFTA-Canada.

[258] See EFTA-Indonesia, EFTA-Philippines, EFTA-Hong Kong, EFTA-GCC and EFTA-Central American States.

[259] See Article 4 (2) and Note 4 (a) of Appendix I.

3.2.4 Insufficient working or processing (minimal operations)

3.2.4.1 Overview

PEM[260]

The article on "Insufficient working or processing" is located in Article 6 of RPEM. As mentioned in part 2.2.2.3, the provision mainly consists of an exhaustive list of working or processing operations that are always deemed insufficient to obtain originating status, see paragraph 1. Conversely, the purpose is to ensure that a minimum level of operations is always carried out (to obtain originating status). In this regard, paragraph 2 clarifies that all operations carried out in the exporting Party shall be taken into account when considering whether operations are insufficient according to paragraph 1.

Non-PEM

In non-PEM FTAs, the equivalent provision is located in Article 5 or 6.[261] As with RPEM, the article mainly consists of a first paragraph which exhaustively lists operations deemed insufficient. Moreover, the article usually contains a similar provision to RPEM paragraph 2.[262]

On the other hand, non-PEM FTAs additionally contain a provision which defines the terms "simple" and "simple mixing" (see below). These terms are used to denote certain insufficient operations and are defined in nine agreements, see for example Article 5 (3) (a) and (b) in EFTA-Ecuador. While EFTA-Hong Kong as well as the newer FTAs EFTA-Central American States, EFTA-Philippines and EFTA-Indonesia only define "simple", EFTA-Canada is the only FTA which does not contain any clarification at all.[263] In contrast, RPEM contains a footnote to litra (p) stating that the PEM Contracting Parties will include a definition of 'simple assembly' in the explanatory notes (presumably after RPEM is adopted).

3.2.4.2 Scope and conditions

In general, the scope of the article is largely the same in RPEM and non-PEM FTAs. While there are 18 different operations listed in paragraph 1 of RPEM,[264] non-PEM FTAs usually include 16 or 17 operations which are mostly similar.[265] Examples in RPEM include simple

[260] For this article, the FTA with the UK contains essentially the same rules as RPEM.

[261] EFTA-Ecuador, EFTA-Philippines, EFTA-Peru and EFTA-Colombia use the title "minimal operations".

[262] Except for EFTA-Canada and EFTA-Hong Kong.

[263] The article in EFTA-Canada is – again - very different. In addition to only listing four types of operations that are deemed insufficient, the chapeau links these to an insufficient change in tariff classification.

[264] RPEM contains one literal more than the PEM Convention, see litra (o) on simple addition of water or dilution etc.

[265] The exceptions are EFTA-Canada and EFTA-Mexico, the latter of which groups operations differently and in fewer literals.

painting or polishing (see litra (e)), simple packaging operations (litra (k)), affixing marks or labels etc. (litra (l)), and simple mixing of products (litra (m)), cf. the equivalent literals (f), (m), (l) and (n) in EFTA-Ecuador. Moreover, both RPEM and non-PEM FTAs generally lack definitions of the terms and operations mentioned, as is the case with the wholly obtained provision (see part 3.2.1.2).

As for the definitions of "simple" operations and "simple mixing" in non-PEM FTAs, many modern operations will not be considered "simple". For instance, Article 5 (2) in EFTA-Indonesia defines "simple" as not using "special skills" or machines etc. specifically meant to carry out an operation. This means that packaging of products will not be simple and insufficient according to litra (c) or (l) of paragraph 1 if the machine is intended for packaging. For example, a Norwegian company can therefore import non-originating pharmaceuticals (HS Chapter 30), repackage them with specifically intended machinery, and export the products to Indonesia with Norwegian origin. This is possible because the list rule allows for materials from "any heading" to be used, in practice only requiring that the working or processing goes beyond minimal operations. A similar interpretation of "simple" is probable in RPEM.

Meanwhile, there are also some more substantial differences between RPEM and non-PEM FTAs. However, these mostly relate to clarity or do not affect Norwegian export interests. Nonetheless, it can be mentioned that EFTA-Hong Kong and the four newest FTAs (EFTA-Ecuador, EFTA-Philippines, EFTA-Indonesia, and EFTA-Central American States) have a separate literal for "freezing and thawing". While "freezing" of for example fresh meat during storage or transport counts as a "preserving operation" covered in RPEM litra (a),[266] "thawing" is not covered by the wording and does not make sense as a preserving operation. Hence, thawing is not insufficient *per se* according to RPEM.

Arguably, the most important implication of the provision stems from the operations that are *not* mentioned in the article, as these are considered sufficient. This follows from an antithetical interpretation, cf. the exhaustive listing in all agreements. Notably, relatively easy operations such as drying, salting, smoking are not included in any RoO set, and must therefore constitute sufficient working or processing.[267] This can have implications for an important exporter of fish such as Norway. For example, salting, drying and smoking of fish results in a change of tariff classification from HS 03.02 and 03.03 to 03.05. If combined with a non-PEM FTA where the

[266] See also EFTA-Mexico, EFTA-Peru and EFTA-Colombia which includes "freezing" among examples under litra (a).

[267] The same applies to sweetening (if it goes beyond simple mixing), which is only covered by RPEM litra (n).

list rule requires a change of tariff heading for HS 03.05, a relatively simple operation such as salting can in principle confer Norwegian origin to Russian fish.[268]

3.2.4.3 Conclusion

Generally, the scope and content of the provision on insufficient working or processing is largely the same in RPEM and the non-PEM FTAs. Despite some variations, there seems to be a common understanding across RTAs on the type of operations that are deemed insufficient. In this regard, the most important implications for Norway's interests seem to stem from the type of operations not mentioned in the article. This includes especially the operations of salting, drying and smoking, which are all important for the seafood industry.

3.2.5 Cumulation

3.2.5.1 Overview

PEM

RPEM Article 7 on "Cumulation of origin" and Article 8 on the "Conditions for the application of cumulation of origin" are central provisions, because they constitute the legal building blocks of the PEM cumulation zone (see parts 2.3 and 2.2.2.4). The main rule is contained in paragraph 1, whereby products incorporating originating materials from any other Contracting Party are regarded as originating in the exporting Party.[269] Depending on the number of Parties who contribute with originating materials in the processing, the cumulation can be bilateral (two Parties) or diagonal (three or more).

While paragraph 2 contains rules which determine the origin in the case where the processing does not go beyond minimal operations,[270] paragraph 3 provides for full cumulation (i.e., processing done in one or more Parties is considered as carried out in the exporting Party when the material is further processed there). Full cumulation does however not apply to textiles, which can only benefit from bilateral full cumulation according to paragraph 4, unless Contracting Parties agree between themselves to extend full cumulation to more partners, see paragraph 5 (which also requires that such arrangements are notified), and paragraph 6 regarding minimal operations. Products which do not undergo any processing there keep their origin according to paragraph 7.

As for Article 8, this provision mainly states the two main requirements for PEM cumulation, which are 1) FTAs in place between the Parties involved (see paragraph 1 litra (a)), and 2)

[268] See NRK (2022). Salting is for example enough to fulfil the list rule for HS 03 under EFTA-GCC.

[269] These originating materials do not have to undergo sufficient working or processing, see paragraph 1.

[270] In essence, rules based on which originating material has the highest value.

identical RoO (see litra (b)). In addition to notification requirements in paragraph 2, there are also provisions relating to documentary requirements in paragraph 3 and 4.

Non-PEM

On one hand, cumulation in non-PEM FTAs shares common features with RPEM. All agreements contain the main rule in paragraph 1 of the relevant Article,[271] allowing for cumulation of originating materials between the Parties in the FTAs.[272] Depending on the number of Parties involved under the FTA, cumulation can be bilateral or diagonal. Moreover, even if there are some slight differences in wording, non-PEM FTAs also contain substantially similar provisions to Article 6 (2) and (7).

On the other hand, most non-PEM FTAs do not provide for full cumulation except for EFTA-Canada (Article 21 (1)) and the FTA with the UK (Article 8 (2)). Neither are there any equivalent notification requirements like in RPEM, because cumulation under non-PEM FTAs is fully governed by the provisions of the relevant FTA. As for Article 8 (1) of RPEM, the FTA with the UK is the only agreement to contain similar conditions (see below).[273]

3.2.5.2 Scope and conditions[274]

Regarding the scope, it should first be underlined that bilateral and diagonal cumulation under RPEM and the non-PEM FTAs covers all types of products, including agricultural products.[275] In the case of bilateral RPEM cumulation, this means for example that a Swedish producer of originating wool sweaters in HS 61.10 can use wool originating in Norway and export the sweater with preference to Norway.[276]

In the case of non-PEM diagonal cumulation, a UK producer of ice cream in HS 21.05 can for example use originating dairy materials and sugar from the EU, disregard the list rule regarding

[271] Usually Article 3 or 6, except for Article 21 in EFTA-Canada.

[272] EFTA-Canada is the only FTA which does not provide for cumulation with originating materials, but only full cumulation, cf. Article 21 (1).

[273] EFTA-Ecuador, EFTA-Peru and EFTA-Colombia are also the only FTAs which explicitly state like RPEM that originating materials do not have to be sufficiently processed. However, this is already implied by their originating status and follows from the main rule of cumulation.

[274] There are explanatory notes to the cumulation provision of the PEM Convention, but these provide little guidance for the interpretation besides providing examples, see Explanatory notes 2007/C 83/01 p. 83/1-83/3.

[275] See however part 2.3.3 regarding the case of the EEA Agreement.

[276] Norwegian Customs Tariff (2023c).

those materials,[277] and export the ice cream with UK origin to Norway under the FTA (where preferential treatment is given).[278]

On the other hand, the two non-PEM FTAs providing for full cumulation (EFTA-Canada and the FTA with the UK) do not exclude textile products from the scope like RPEM. Nonetheless, RPEM still provides for better full cumulation opportunities than most non-PEM FTAs, given the number of PEM agreements.

As for the conditions for cumulation, a couple of points should be noted. First, cumulation makes it possible to change the origin from one exporting Party to another Party if the processing in the latter goes beyond minimal operations. This means that salting, drying and smoking of fish are always sufficient operations, and that thawing is enough under RPEM rules, see part 3.2.4.2. For example, a Norwegian company can therefore salt EU fish and export it with Norwegian origin to a PEM country.[279]

Second, EFTA-Ecuador and the FTA with the UK are the only agreements which – alike to RPEM – allow for cumulation with non-parties. In all the other FTAs, cumulation only applies to Parties to the same agreement.[280] Moreover, the FTA with the UK is the only non-PEM agreement which explicitly contains conditions for cumulation as in RPEM Article 8 (1), see Article 8 (6) in the FTA. Like RPEM, the UK agreement requires that FTAs be in place between all the parties involved, see Article 8 (6) litra (a).[281] On the other hand, the FTA with the UK differs by requiring that the materials used must be originating according to the RoO under the agreement (cf. litra (b)), instead of stating that the RoO must be "identical" in all FTAs. This wording reflects the fact that the UK is no longer a Party to the PEM Convention.

Meanwhile, the FTA with the UK could have stipulated that the originating status of materials from non-Parties would depend on the RoO in those FTAs. This is the case for EFTA-Ecuador, where Article 6 (4) only states that "originating materials" from Peru and Colombia are

[277] The FTA with the UK uses RPEM list rules, whereby the list rule for HS 21.05 restricts the use of non-originating sugar and dairy products from HS Chapter 4. By using originating sugar and dairy materials, these restrictions can be ignored.

[278] See for example Norwegian Customs Tariff (2023d).

[279] The same would follow from Article 37 of RPEM, due to the possibility to obtain "EEA origin" according to Protocol 4 of the EEA Agreement.

[280] The FTA with the UK is a special case, allowing for cumulation with all the PEM members – despite the UK no longer being a party to the PEM Convention, see Appendix 3 to Annex I. As a result, cumulation with UK materials within the PEM zone is reliant on PEM Parties being willing to provide for this in their FTAs with the UK. Notably, Article 40 in the FTA between the UK and the EU does not provide for diagonal cumulation. See part 3.2.6.2.

[281] Article 8 (6) also mentions that the processing has to go beyond minimal operations, see litra (c).

originating in a Party if they are "processed or subsequently incorporated into a product obtained in that Party". This wording does not clarify whether materials must be originating according to the RTA between Ecuador, Peru and Colombia, or the RoO in EFTA-Ecuador.[282] However, this peculiar provision was presumably drafted to reflect Ecuador's close trade relationship with Peru and Colombia,[283] implying that the materials must be originating according to Ecuador's RTA with those countries (or EFTAs FTAs with Peru and Colombia, respectively).

Such an interpretation also makes Article 6 (4) in EFTA-Ecuador a rare example of "extended" cumulation, whereby originating materials from a non-Party can be used if all Parties have FTAs in place with that same non-Party. As of today, there are no such provisions in any other non-PEM FTA except for Article 8 (7) in the agreement with the UK, which allows for extended cumulation once a decision to that effect has been adopted by the Joint Committee. Such a decision has not yet been made, making EFTA-Ecuador the only FTA so far having a provision on extended cumulation.

3.2.5.3 Conclusion

Summing up, it should be kept in mind that cumulation can provide for a third way to obtain originating status, if the manufacture only builds on cumulation to obtain originating status. In this sense, both RPEM and non-PEM FTAs contribute to make the RoO more liberal by allowing for cumulation, given that the scope and conditions are not too restrictive. Moreover, all of Norway's RTAs allow for bilateral and diagonal cumulation, covering all types of products.

However, there are differences regarding structure, scope and conditions. First, almost no non-PEM FTAs allow for full cumulation. This might be due to practical considerations, such as the geographical distance to non-PEM partners. In any case, RPEM does contain some restrictions regarding textile products but enables full cumulation for all products if the Parties agree. Second, most non-PEM FTAs do not provide for cumulation with non-parties. In contrast, RPEM allows for cumulation among all PEM members, thereby creating a pan-European PEM cumulation zone. Third and finally, while RPEM requires that the RoO be "identical" in all FTAs providing for diagonal cumulation, almost all non-PEM FTAs require that the materials be originating according to FTA in question. This is because cumulation usually does not apply to non-Parties. The exception is extended cumulation in EFTA-Ecuador, which allows for cumulation with originating materials from Peru and Colombia.

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[282] In addition, it is not clear whether cumulation under paragraph 4 requires processing beyond minimal operations, as the paragraph is "notwithstanding" the conditions of paragraphs 1 to 3, see paragraph 1.

[283] These countries are parties to the Andean Community establishing a free trade area since 1993, see ibce.org (n.d.).

In general, RPEM therefore seems to provide better opportunities for cumulation compared with non-PEM FTAs. This is not surprising, given the purpose of the PEM cumulation zone.

3.2.6 Principle of territoriality and outward processing

3.2.6.1 Overview

PEM[284]

According to Article 13 of RPEM "Principle of territoriality", the manufacture of originating products has to be fulfilled "without any interruption" in a Party, see paragraph 1.[285] There are two exceptions from this main rule. First, paragraph 2 allows for originating products to return from another country if they are the same and have not undergone any processing beyond keeping them in good condition, see litra (a) and (b). Second, paragraph 3 allows for outward processing subject to certain conditions, see below. These conditions are complemented by paragraphs 4 to 7, which provide further clarifications regarding outward processing. Finally, RPEM does not contain any exclusion of textile products, as in Article 11 (7) of the PEM Convention.

Non-PEM

In non-PEM FTAs, the placement of the provision on territoriality varies slightly.[286] However, except for EFTA-Canada, all non-PEM FTAs contain a non-interruption rule in the first paragraph, and the possibility in paragraph 2 to return originating products under similar conditions as RPEM.[287]

On the other hand, while most FTAs allow for outward processing, six FTAs do not contain such provisions at all.[288] Moreover, EFTA-GCC and EFTA-SACU are the only agreements to contain equivalent provisions as RPEM paragraphs 4 to 7. Finally, EFTA-Korea and EFTA-Singapore differ from the rest by providing for outward processing in a separate article and the conditions in a separate appendix.[289]

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[284] The FTA with the UK essentially contains the same provision as RPEM.

[285] See also part 2.2.2.5.

[286] The number of the Article varies between 10 and 13.

[287] EFTA-Canada is in fact the only FTA which does not contain a provision on territoriality, only a provision on returned goods in Article 13. A rule on non-interruption is however contained in Article 2 (2).

[288] EFTA-Ecuador, EFTA-Mexico, EFTA-Peru, EFTA-Chile, EFTA-Colombia and EFTA-Canada. The latter contains a development clause to discuss outward processing within four years after the FTA's entry into force, see Article 13 (2). So far, this has not led to any substantial changes.

[289] See Appendix 3 to EFTA-Singapore and Appendix 4 to EFTA-Korea.

3.2.6.2 Scope and conditions

While both RPEM and non-PEM FTAs contain similar conditions regarding non-interruption and the possibility to return originating products, the scope and conditions for outward processing vary with the agreements in question.

Regarding the scope, both RPEM and most of the relevant non-PEM FTAs do not exclude product groups from outward processing. The exceptions include EFTA-GCC and EFTA-SACU, which alike to the PEM Convention exclude textile products in HS Chapters 50-63.[290]

On the other hand, EFTA-Korea and EFTA-Singapore provide for more liberal rules for certain product groups.[291] These include subheadings within several HS Chapters including 84 and 85 for EFTA-Korea, but only within Chapters 39, 84 and 85 for EFTA-Singapore. In the case of these products, EFTA-Korea allows for non-originating input added in the non-Party to account for 50 per cent of the ex-works price, while the percentage is 40 per cent in EFTA-Singapore. For other products, the rule is only ten per cent as in EFTA-GCC, EFTA-SACU and RPEM (see paragraph 3 (b) (ii)). In contrast, EFTA-Indonesia, EFTA-Philippines, EFTA-Central American States and EFTA-Hong Kong allow for 15-20 per cent of non-originating inputs to be added in the non-Party.

Regarding the conditions, RPEM Article 13 (6) requires that the products exported for outward processing fulfil the relevant PSRs and are not sufficiently worked or processed only because of the general tolerance rule. When reading paragraph 6 in context with subparagraph 3 (a), it can be questioned whether the materials sent out also must be originating before outward processing is carried out.[292] In any case, EFTA-Indonesia, EFTA-Philippines, EFTA-Hong Kong and EFTA-Central American States do not contain a requirement like RPEM paragraph 6 relating to the use of general tolerance rule.[293] This means that it is possible to process materials in a non-Party and only use the general tolerance rule to obtain originating status under these agreements, in contrast to RPEM.

Nonetheless, the conditions in non-PEM FTAs and RPEM are mostly similar. Both RoO require that processing in a non-Party is effectuated under an outward processing scheme or a similar arrangement, see RPEM paragraph 7 and for example Article 10 (3) in EFTA-Indonesia. It is also common to include all costs arising outside of a Party (including transport costs) when considering the size of the value added, see RPEM paragraph 5 and for example Article 11 (4)

[290] See Paragraph 7 in the respective provisions.

[291] See Paragraph 2 (a) of Appendix 4 to EFTA-Korea and 1 (a) of Appendix 3 to EFTA-Singapore.

[292] See European Commission (2021) p. 18-19.

[293] The remaining FTAs allowing for outward processing contain similar rules as RPEM.

in EFTA-Philippines. Moreover, outward processing cannot exceed any ad valorem rule in the PSRs, see RPEM paragraph 4 and for example Article 10 (3) (c) in EFTA-Indonesia.

Finally, outward processing requires that the products be re-imported to the Party and are obtained from the materials exported to the non-Party.[294] This condition is related to the principle of direct transport/non-alteration (see part 2.2.2.6), entailing that an originating product cannot be processed after export unless cumulation is allowed. For example, it is (still) not possible for a Norwegian producer of aluminium car parts to send the products to Germany for holes to be drilled, before direct export to the UK,[295] see Article 16 (3) in the FTA with the UK. If the EU and the UK would have allowed for diagonal cumulation with Norway (as is the case with RPEM), this kind of processing would have been possible.

3.2.6.3 Conclusion

An important point to make regarding outward processing, is that six non-PEM FTAs do not provide for such provisions at all. Moreover, the scope and conditions are mostly similar in both RPEM and the relevant non-PEM FTAs. However, in addition to EFTA-Korea and EFTA-Singapore providing for more liberal rules for certain product types, three newer non-PEM FTAs and EFTA-Hong Kong allow for a higher percentage of value to be added in the non-Party. Given that all costs including transportation and insurance are comprised in the value added in a non-Party, five or 10 percentage points more compared to RPEM could make a difference for Norwegian businesses.

Still, possibilities for cumulation within the PEM zone should to a large extent make up the advantages given in non-PEM FTAs. After all, the size of the PEM zone, the number of Parties involved, and not least the participation of important neighbouring states including the EU, probably makes processing in the PEM zone economically more important for Norway than outward processing outside the PEM area. In this sense, good cumulation possibilities should reduce the negative impact of limitations stemming from the principle of territoriality.

[294] See the chapeau of paragraph 3 and suparagraph (b) (i) in the case of RPEM, and for example Article 11 (3) (a) in EFTA-Philippines.

[295] E24 (2019).

3.2.7 Direct transport or non-alteration

3.2.7.1 Overview

PEM[296]

Article 14 of RPEM contains the provision on "Non-alteration", see part 2.2.2.6. The main rule of direct transportation is contained in paragraph 1, whereby products exported from one Party must be the "same" as those declared for importation in another Party. These products must not be "altered" in a non-PEM Party in any way except to keep them in good condition or affix "marks, labels, seals or any documentation" required by the importing Party, provided that the products remain under customs supervision. For example, price tags or requirements relating to certification could require the affixing of labels etc.

Meanwhile, paragraphs 2 and 3 explicitly allow for the storage and splitting of consignment in "third countries" of transit (non-PEM parties), provided that the products remain under customs supervision. Finally, paragraph 4 enables the importing Party "in the case of doubt" to require from the importer or its representative documentary evidence of compliance with the provision. Paragraph 4 also lists four examples of evidence in this respect, see litra (a) to (d).

In contrast, Article 12 of the PEM Convention is entitled "direct transport". While the main rule is the same, this provision does not allow for splitting in a third country or the affixing of marks etc. to fulfil domestic requirements. In addition, the requirement to provide documentary evidence differs by being mandatory, see paragraph 2. On the other hand, the change to non-alteration in RPEM is not intended to affect the rule of direct transportation according to the EU Commission.[297] Accordingly, RPEM should also allow the operations explicitly mentioned in Article 12 in the Convention, namely warehousing, trans-shipment, unloading, reloading (and operations to keep the products in good condition). The same applies to transport via pipelines in third countries and transportation through other PEM Parties with which cumulation is possible, both mentioned in Article 12 (1) of the PEM Convention.

Non-PEM

Most non-PEM FTAs have entitled the relevant provision "direct transport",[298] see for example Article 11 in EFTA-Indonesia and Article 14 in EFTA-Central American States.[299] Moreover, despite variations in the structure of the article, all non-PEM FTAs provide for a main rule of direct transportation in the first paragraph, complemented by provisions relating to transit,

[296] The FTA with the UK contains the same provision as RPEM.

[297] European Commission (2021) p. 19.

[298] EFTA-Indonesia and EFTA-Philippines have «non-alteration» articles. In addition, the provision in EFTA-Canada is called "transport through a non-party", see Article 14.

[299] The number of the Article varies between 11 and 14.

storage and splitting,[300] as well as documentary requirements. On the other hand, nine FTAs clarify like the PEM Convention that the transit of products via pipelines is allowed.[301] In addition, there are some variations mainly relating to documentary requirements, see below.

3.2.7.2 Scope and conditions

For the most part, the scope and conditions are quite similar in RPEM and non-PEM FTAs. First, there is no exclusion of product types from the scope of the provision. Second, direct transportation is the main rule in all agreements. Third, all RoO allow for storage, splitting and transit of consignments through third countries. In this respect, both RPEM and non-PEM FTAs provide for more liberal rules than the PEM Convention.

As for the conditions relating to documentation, only EFTA-SACU, EFTA-Mexico and EFTA-Canada contain a mandatory requirement like the PEM Convention to provide evidence that the products have not been altered when passing through third countries. On the other hand, while RPEM requires documentary evidence "in the case of doubt", non-PEM FTAs are slightly stricter by requiring evidence "upon request" from the importing Party. The two exceptions are EFTA-Ecuador and EFTA-Philippines, which require evidence when the importing Party has "reason to believe the contrary" (Ecuador) or "reason to believe otherwise" (Philippines). In these latter two cases, the wording implies a reasoned degree of suspicion. This means that the threshold to require evidence is somewhat higher than under RPEM, to the benefit of the importer. Nevertheless, the types of evidence required is in essence the same in RPEM and all FTAs (given that no RoO contain an exhaustive list in this respect).[302]

Finally, only the newer EFTA-Ecuador and EFTA-Philippines provide for the possibility while in transit to affix marks etc. to fulfil domestic requirements as in RPEM. In this respect, RPEM is more liberal than most non-PEM FTAs. Moreover, it should be recalled that RPEM allows for processing to be carried out in other RPEM Parties with which cumulation is applicable, see above. This provides an important exception to the direct transport rule.

3.2.7.3 Conclusion

Substantially, the provision on non-alteration or direct transport is to a large extent similar in RPEM and the non-PEM FTAs. The similarities are probably due to widespread agreement on the fundamental principle that products exported should be the same at the time of importation. If operations are carried out in a third country, this creates uncertainty around the originating

[300] The explanatory notes to Article 14 in EFTA-Korea specify that storage is allowed, see paragraph 2, supplemented by five examples relating to storage and distribution.

[301] The exceptions are EFTA-Chile, EFTA-Ecuador, EFTA-Philippines, EFTA-Canada and EFTA-Mexico.

[302] The explanatory notes in EFTA-Korea and EFTA-Mexico also provide examples of documentary evidence.

status of the product and the validity of the proof of origin issued by the exporter (see part 3.3.2). In this respect, the main rule of direct transportation is in line with the principle of outward processing, which requires that products be reimported before exportation. Both provisions reflect an ambition that preferential treatment be limited to the Parties to the agreement.

The main differences relate to three points. First, RPEM is more liberal by allowing for the affixing in a third country of labels etc. required by the importing Party. Second, RPEM uses a slightly softer wording regarding documentary requirements. Finally, cumulation within PEM provide for more exceptions to the direct transport rule. Taken together, the provision on non-alteration in RPEM therefore seems to be more liberal compared with most non-PEM FTAs.

3.3 Other provisions

3.3.1 Introduction

As mentioned in part 1.4, this thesis focuses on the most important RoO provisions which confer originating status, see parts 2.2.2 and 3.2. Due to this delimitation, only a limited overview will be given below of the other types of provisions contained in Norway's RTAs, namely technical provisions including definitions, provisions on proofs of origin, and provisions of an administrative character.[303] The aim is to briefly highlight how these provisions can affect the promotion of Norway's interests.

3.3.2 A brief comparison

3.3.2.1 Technical provisions

Provisions of a technical character can affect the originating status of a product but arguably less so than the provisions mentioned in part 3.2. To a large extent, these provisions are quite similar across RTAs. For instance, all agreements disregard "neutral elements" (e.g. fuel and energy) used in the manufacturing when considering origin, see RPEM Article 11 and for example Article 8 in EFTA-Indonesia. The same applies for "accessories, spare parts and tools" normally included with a product, see RPEM Article 9 (3) and for example Article 9 in EFTA-Ecuador.

For other provisions, there are substantial variations. For example, on one hand both RPEM and all non-PEM FTAs use HS classification rules to determine the "unit of qualification" (i.e. the unit subject to RoO), see RPEM Article 9 and e.g. Article 7 (1) and (2) in EFTA-Indonesia. This results *inter alia* in a rule where if a consignment contains identical products such as fresh

[303] Consequently, part 3.3 will not emphasize differences between RPEM and the PEM Convention, nor focus on the latter's relevant explanatory notes.

mackerel classified under the same HS heading, each fish must be originating, cf. RPEM Article 9 (1).

On the other hand, the RTAs are not coherent when applying HS General Interpretative Rule 5, whereby packaging normally included is classified with the product.[304] For example, while RPEM and eight non-PEM FTAs consider the non-originating plastic wrapped around an originating cucumber for retail sale, seven other FTAs makes this consideration dependent on other provisions. In this regard, four FTAs disregard packaging for wholly obtained products,[305] while the FTA with the UK, EFTA-Philippines and EFTA-Canada only take the packaging into account if an ad valorem PSR is applied.[306] In contrast, RPEM and the similar FTAs must use the tolerance rule to confer origin on the cucumber when using non-originating plastic, see part 3.2.3.1 regarding RPEM Article 5 (3).

Similarities and differences also apply to the provisions on "Accounting Segregation" and "Definitions". The former allows an "economic operator" to keep fungible materials and fungible products of HS 17.01 (most common sugar) in the same place without keeping them on physically separate stocks, see RPEM Article 12 (1) and (2).[307] In contrast, non-PEM FTAs[308] only allow for accounting segregation of fungible "materials". This implies that the materials must be used in a production before export, see Article 12 (2) in EFTA-Ecuador. Moreover, the FTAs only apply to a "producer", see for instance Article 9 (4) in EFTA-Indonesia. In practice, both elements entail for example that a Norwegian exporter of cod in HS 03.02 cannot store cod with Russian and Norwegian origin without physical separation, because the exporter is not a "producer" (having bought the cod from fishermen) and the cod are "products". On the other hand, both RPEM and non-PEM FTAs emphasize that accounting segregation does not allow more products to obtain originating status compared with physical segregation, see also part 1 in RG-2005-1555.

As for definitions, it can briefly be noted that the RPEM provision in Article 1 (and in the FTA with UK) is more substantial, containing 15 literals compared to for example eight in EFTA-Philippines (even though the number varies with the FTA). In principle, fewer definitions give wider room for interpretation.

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[304] Tolletaten (2022b).

[305] EFTA-Central American States, EFTA-Peru, EFTA-Colombia and EFTA-Ecuador.

[306] See Article 11 in the FTA with the UK and Article 7 (2) (a) in EFTA-Philippines. The latter is silent on the case of wholly obtained products.

[307] «Fungible» means that items have the same quality and characteristics and cannot be distinguished from one another, see RPEM Article 1 (g).

[308] Except EFTA-Chile and EFTA-SACU.

3.3.2.2 Proofs of origin

The most important point regarding proofs of origin, is that all non-PEM FTAs except for EFTA-GCC permit Norwegian exporters to use origin declarations.[309] This means that the exporter only has to provide a statement declaring that the products are originating, see for example Article 12 in EFTA-Indonesia. The same possibility is contained in RPEM Article 18 (1) see Annex III, even though RPEM also uses origin certificates EUR.1 (see Articles 20-22).[310] The EUR.1s are forms which require more information to be filled in as well as an approval from customs authorities of the exporting Party, cf. that the certificates must be "issued" after application (Article 20 (4) cf. (3)). At the same time, RPEM allows Parties to develop electronic EUR.1 certificates and origin declarations, see Article 17 (4). In this respect, Norwegian electronic EUR.1s have been issued since April 2020.[311]

Moreover, both RPEM and non-PEM FTAs contain an article on "Approved Exporter" which allows exporters to complete origin declarations without signature, see RPEM Article 19 (3) and for example Article 14 (1) in EFTA-Philippines.[312] In RPEM, the use of origin declarations and approved exporter status is tied to a value limit of 6000 Euros, over which only approved exporters can complete origin declarations (see Article 19 (1) and Article 18 (1) (b)). A value limit also applies to eight non-PEM FTAs.[313] Furthermore, both RPEM and non-PEM FTAs contain exceptions from the need to issue a proof of origin for small packages and personal travel luggage, see RPEM Article 27 and for example Article 23 in EFTA-Ecuador.

Finally, it should be noted that RoO are not always clear on the possibility for an exporter to use an authorised representative to complete proofs of origin on their behalf. For example, while RPEM Article 20 (1) explicitly allows for representation in the case of EUR.1s, Article 19 on origin declarations only refers to the exporter. Notably, only four non-PEM FTAs explicitly mention that representation is allowed.[314] This leaves it open for interpretation if an exporter can be identified with a representative empowered by the exporter, but also if the RoO allow this representative to reside in a non-party.

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[309] See Article 16 (c) in EFTA-GCC.

[310] The PEM Convention additionally uses EUR-MED certificates and EUR-MED origin declarations, see Article 15 (1) (b) and (c).

[311] Tolletaten (2021a).

[312] The waiver regarding signature is implicit in paragraph 3 of RPEM, which only mentions that a "customs authorisation number" shall appear on the declaration.

[313] See for example Article 19 (1) (b) in EFTA-Ecuador.

[314] See Article 13 in both EFTA-Indonesia and EFTA-Hong Kong, Article 13 (4) in EFTA-Philippines and Article 19 (8) in the FTA with the UK.

3.3.2.3 Administrative provisions

Lastly, administrative provisions are relevant for customs authorities' ability to check whether products are originating, see for example RPEM Article 31 regarding the duty to keep documentary evidence, Article 28 concerning the case of small discrepancies and errors, and Article 29 relating to supplier's declarations (in the case of full cumulation).

The most central element is however the provision on verifications of proofs of origin. In this regard, it should briefly be noted that RPEM and all non-PEM FTAs all build on a system where the exporting Party requests the importing Party to conduct verifications, including at the exporter's facilities, see RPEM Article 34 and for example Article 30 in EFTA-Ecuador.[315] RPEM mainly differs from non-PEM FTAs by also containing provisions on verification of supplier's declarations, see Article 35.

3.3.2.4 Conclusion

Of the three groups of provisions, the administrative ones seem to be the most harmonised across RoO. Similarity provides beneficial predictability for Norwegian businesses. As for proofs of origin, exporters benefit from being able to use the simplest proof of origin (i.e., origin declarations) under all RoO except for EFTA-GCC. At the same time, unclarities relating to the use of representatives and their location could be negative for businesses relying on global value chains or Norwegian multinational corporations. Presumably, limitations in this regard are due to considerations relating to control and verification of originating status (especially in a non-party). Finally, differences in technical provisions might have an impact in certain situations, especially in the case of accounting segregation.

3.4 Conclusion

Looking back at the analysis in part 3, it is possible to draw some general conclusions after comparing the most important provisions which confer originating status.

First, the analysis reveals that there are arguably more differences than similarities between RPEM and non-PEM RoO. The two exceptions concern the provision on insufficient working or processing and the PSRs for sensitive agricultural products. While the most important implications of the former come from the processing operations that are not "simple" or explicitly mentioned in the article, the latter shows how both RPEM and non-PEM rules actively use the wholly obtained criterion to shield sensitive agricultural interests. Moreover, the analysis seems to discern a pattern where older non-PEM FTAs contain similar rules to RPEM or the PEM Convention, while newer non-PEM FTAs contain more liberal rules.

[315] EFTA-Korea is the only FTA which allows the importing Party's customs authorities to be present at verifications, see Article 24 (8).

Second, the identified differences do not always point in the same direction. On one hand, non-PEM FTAs generally contain more liberal rules. For instance, non-PEM FTAs providing for outward processing generally allow for higher values of non-originating inputs to be added in the non-party. Furthermore, in addition to some differences regarding aquaculture in the wholly obtained provision, the PSRs for seafood products in HS Chapters 3 and 16 are usually more liberal than RPEM. The exceptions regard fish oil in HS 15.04 and partly flour and pellets from seafood in HS 23.01.20. Finally, while there are similarities and variations, newer non-PEM FTAs contain less complex and fewer PSRs, but also more liberal list rules for exported industrial products. To a large extent, this is due to higher ad valorem rules but also more use of any heading as a PSR. In addition to the use of alternative rules, these elements provide businesses with increased flexibility and an easier way to obtain originating status.

On the other hand, the analysis shows that RPEM to some extent provides for more liberal rules with regards to non-alteration/direct transport, the general tolerance rule and not least cumulation. Importantly, RPEM possibilities for a larger scale of bilateral, full and diagonal cumulation within the PEM zone can have a significant impact on the use of outward processing in a non-party and the limitations relating to non-alteration/direct transport. If sourcing patterns and value chains allow it, RPEM cumulation could also compensate for more liberal PSRs in non-PEM FTAs. RPEM also allows for a higher general tolerance rule and more exceptions to the rule of direct transportation.

In this light, an important question is to what extent these latter advantages of RPEM might weigh up for the disadvantages, most notably relating to the PSRs for key export products. Do more liberal rules in non-PEM FTAs provide Norwegian businesses with a tangible advantage compared to RPEM? This central question will be addressed in the next part.

4 Implications for Norway's interests

4.1 Introductory remarks

In part 4, the findings and conclusions of part 3 are put in context with the Norwegian legal and economic framework. The aim is to answer the second research question, which focuses on the implications of RoO for Norway's interests (see parts 2.5.2 to 2.5.4). In this regard, part 4.2 looks at how the RoO have been implemented in Norwegian legislation and assesses the room for interpretation. On the other hand, part 4.3 evaluates how the differences identified in part 3 affect the promotion of Norway's economic interests. Both parts highlight benefits and disadvantages of adopting RPEM compared to non-PEM rules.

4.2 Legal implications

4.2.1 Implementation of RoO in Norwegian laws and regulations

In Norway, two new Acts on Customs legislation with regulations entered into force on 1 January 2023, replacing the previous Customs Act of 2007 with regulations. The new laws consist of the Movement of Goods Act (MGA) and the Customs Duty Act (CDA), with regulations for each Act.

According to the Norwegian Ministry of Finance, the decision to split the Customs Act in two was based on the view that provisions on customs duties differ from provisions on the movement of goods, and that tariffs are "duties" which share similarities with added value tax and excise duties.[316] Moreover, the Ministry *inter alia* wanted to improve the structure of the rules and make them more accessible to the users.[317] At the same time, the MGA and the CDA mostly continue the provisions of the Customs Act.[318]

Consequently, the rules on preferential treatment are now located in two Acts instead of one. Section 4-1 of the CDA concerns preferential origin at importation, stating that the origin of a product is determined in accordance with the invoked RTA or the GSP scheme, see paragraph 1. Preferential treatment is anchored in Section 3-1 (1) b of the CDA, linking preferential duty rates to the origin of the products according to the RTAs.[319] Conversely, Section 5-11 (1) of the MGA states that a proof of origin can be issued at exportation in accordance with an RTA or the GSP scheme.

Meanwhile, both Sections refer to the regulations for details regarding the implementation of the RoO in RTAs (see Section 5-11 (2) of the MGA), and the conditions for preferential origin (see Section 4-1 (3) of the CDA). In line with the dualist approach, the RoO have been incorporated into Norwegian legislation. In this regard, the key provisions are Section 4-1-1 of the Customs Duty Regulations (CDR),[320] and Section 5-11-1 of the Movement of Goods Regulations (MGR).[321] These provisions are identical, both stipulating that the conditions in the RTAs

[316] Despite mentioning « WTO » 26 times in the document, the bill is silent on the fact that WTO law differentiates between customs duties and other charges or duties levied at importation, and internal taxes or a charge equivalent to an internal tax (such as the added value tax). Unlike customs duties, internal taxes or equivalent charges are not bound in the national schedules, see Article 2 of GATT 1994 and part 1.2. In turn, the WTO definition implies a tight connection to the movement of goods. Surprisingly, the Ministry does not problematise this at all, see Prop. 237 L (2020-2021).

[317] Prop. 237 L (2020-2021) p. 5.

[318] Prop. 237 L (2020-2021) p. 6 and 8.

[319] The preferential duty rates are contained in the Norwegian Customs Tariff, see Section 3-1 (3) of the CDA.

[320] Forskrift 27. oktober 2022 nr. 1938 (tollavgiftsforskriften).

[321] Forskrift 27. oktober 2022 nr. 1901 (vareførselsforskriften).

(i.e. the RoO) apply as regulations, see paragraph 1 of both provisions.[322] As a result, despite containing relevant provisions in two Acts, the conditions for preferential treatment under RTAs are the same for both exportation and importation.

The regulations also contain other provisions relating to preferential origin, but these pertain to proofs of origin, technical and administrative provisions mentioned in part 3.3. The CDR regulates documentation and proofs of origin at importation (Sections 4-1-2 to 4-1-5) and verification (Section 4-1-6). On the other hand, the MGR regulates the use of accounting segregation (Section 5-11-2), documentation and proofs of origin at exportation (Sections 5-11-3 and 5-11-6), the approved exporter system (Section 5-11-4), and national supplier's declarations (Section 5-11-5). In contrast, there are more detailed provisions on RoO for the GSP scheme (Sections 4-1-7 to 4-1-21 of the CDR and Sections 5-11-7 and 5-11-8 of the MGR) and for (national) non-preferential RoO (see Section 5-12 of the MGR).

In any case, the technique of linking the regulations directly to the RoO in Norway's RTAs is efficient. It ensures that there are fewer discrepancies in case of updates or changes in the agreements. If new annexes or protocols are added, amendments can simply be made to the lists of RTAs in Section 4-1-1 (1) of the CDR and Section 5-11-1 (1) of the MGR. In this respect, it should also be kept in mind that changes in regulations are easier to administer and implement compared with changes in laws and decisions which require parliamentary approval.

4.2.2 Room for interpretation

Given that the regulations refer back to the RoO in the RTAs, it can be questioned to what extent there is room for interpretation. As made evident in part 3, the RoO are often characterised by a generally framed wording which lacks clarifications or definitions, see parts 3.2.1 on the wholly obtained article and 3.2.4 on insufficient working or processing. In addition, publicly available sources on interpretation are very limited. In addition to case law and draft resolutions providing limited information, the very few explanatory notes relating to the provisions in part 3.2 do not provide much interpretative guidance. Meanwhile, even if administrative decisions are issued regularly by Norwegian Customs,[323] there is no public registry for administrative decisions with general applicability and/or which can give interpretative guidance beyond the individual cases. Furthermore, despite the possibility for Norwegian Customs to give exporters advance rulings on the preferential origin of any product,[324] there is no searchable registry as with advance rulings on HS classification.[325] Finally, the PEM Joint Committee has never

[322] Both Acts and regulations use the Norwegian term for «FTAs» even if including the EFTA Convention and the EEA Agreement.

[323] Author's interview 16 December 2022 with Susann Nilsen, senior adviser at Norwegian Customs.

[324] Tolletaten (2020d). See also Article 3 (9) cf. (1) of the WTO Trade Facilitation Agreement.

[325] Tolletaten (2021).

(formally) discussed or clarified issues regarding interpretation of the Convention.[326] On this background, it can be concluded that both Norwegian Customs and businesses must interpret the provisions in part 3.2 on a relatively independent basis.

In turn, this probably creates more uncertainty and unpredictability for Norwegian businesses compared with other policy areas where laws and regulations are more detailed, and where case law provides more interpretative guidance. In this sense, even if Norwegian Customs has a duty to provide guidance according to Section 11 of the Public Administration Act,[327] the room for interpretation makes it necessary for businesses to invest time and resources to acquire the necessary knowledge and competence on RoO across RTAs or pay for such services to be rendered.[328] This leads to increased adjustment costs (see part 1.3.1 and part 5.3.2 below), but can also result in businesses interpreting the rules in a wrong way (whether intentionally or not).

At the same time, Norwegian Customs will probably interpret the provisions in part 3 according to internal guidelines that are not necessarily known to the public. In addition to case law and administrative practice included in legal method, such guidelines could also be based on discussions with RTA partners on interpretation. In this regard, other extra-legal considerations such as the value of the relationship, dialogue and cooperation with the EU, other PEM partners and not least the EFTA States, might also affect the room for interpretation. The same applies for the general aim of promoting Norway's interests.

Meanwhile, domestic legislation can contain requirements which limit the room for interpretation and function as non-tariff barriers to trade. It is for example necessary to apply the Norwegian Agriculture Agency to use outward processing for certain agricultural products without paying duties on reimportation,[329] see the Regulation on Outward Processing.[330] In addition, imports and exports of some products can be subject to permits and certification.[331] As for wholly obtained products, it is necessary to obtain a production licence from Norwegian Authorities to extract petroleum (see Section 3-3 of the Act relating to petroleum activities),[332] or to start fish farming (see Section 4 of the Aquaculture Act).[333] Moreover, as clarified in part 3.2.1.2, commercial fishing in Norway *inter alia* entails requirements relating to ownership and

[326] Author's interview 16 December 2022 with Susann Nilsen, senior adviser at Norwegian Customs.

[327] Lov 10. februar 1967 (forvaltningsloven).

[328] A large share of Norwegian exporters use forwarding agents or customs brokers to assist in adhering to customs legislation, including RoO (Author's interview 16 December 2022 with Susann Nilsen, senior adviser at Norwegian Customs).

[329] Landbruksdirektoratet (2023a).

[330] Forskrift 1. juni 2007 nr. 580 (UB-forskriften). Cf. Section 3-4 (3) of the CDA.

[331] See for example Mattilsynet (2022a) and (2022b).

[332] Lov 29. november 1996 nr. 72 (petroleumsloven).

[333] Lov 17. juni 2005 nr. 70 (akvakulturloven).

place of residence. Hence, domestic requirements can also affect the scope and conditions of the RoO.

4.2.3 Closer to RPEM?

Finally, it can also be asked if RPEM or non-PEM RoO are most in line with Norwegian (legal) interests. This question makes less sense when the regulations refer to the conditions contained in the RTAs. Nonetheless, a common starting point is that Norwegian laws and regulations are presumed to be in accordance with international law.[334] This means that any domestic provision relevant for RoO in principle should be interpreted in light of both RPEM and non-PEM RoO obligations.

It can however be argued that the interpretation of RPEM falls under a different legal category than non-PEM rules. This is due to Section 2 of the EEA Act,[335] see Protocol 35 of the Agreement, which entails that implemented EEA commitments prevail over other statutory provisions in case of conflict. Since both RPEM and the rules of the PEM Convention are contained in Protocol 4 of the EEA Agreement, any other statutory provision relevant for the interpretation of PEM RoO cannot remain in conflict with these rules. However, the potential for conflict is limited given that PEM rules are multilateral and not subject to any sudden changes. Moreover, if future conflicts unintendedly arise relating to interpretation for example in the case of new explanatory notes, changes in Norwegian regulations, or judicial decisions from the Court of Justice of the European Union,[336] these will probably regard provisions mentioned in part 3.3. Nonetheless, conflicts of interpretation cannot be completely excluded.

Consequently, even though it is difficult to claim that some RoO are more in line with Norway's interests, it can be argued that PEM rules have a special position in Norwegian legislation compared with non-PEM RoO. This can theoretically affect the interpretation of all RTAs containing PEM rules.

4.3 Economic implications

4.3.1 RTAs, RoO and trade statistics

When considering how RoO in Norway's RTAs affect Norwegian economic interests, a natural first step is to look at trade statistics. A comprehensive economic analysis of trade in goods before and after each RTA compared with non-RTA countries, is however beyond the scope of this thesis. Second, the effects of an RTA on trade in goods depend on many factors beyond RoO, including the value and scope of market access concessions and tariff reductions, the level

[334] Innføring i folkerett 5. utgave 2018 s. 67-70.

[335] Lov 27. November 1992 nr. 109 (EØS-loven).

[336] See Article 105 of the EEA Agreement on homogeneous interpretation.

of ambition of the RTA, but also factors such as competitiveness, transaction costs, and fluctuations in commodity prices. Third, it is too early to assess the effects of RPEM on trade with PEM countries. Fourth and finally, there will always be important methodological challenges when analysing of the effects of RTAs on trade. This is because an ideal analysis requires an impossible comparison with a benchmark where the RTAs did not exist.[337]

Nonetheless, research suggests that RTAs generally have a positive effect on trade.[338] Statistics for Norway point in the same direction.[339] For example, while the value of imports from all countries increased with 188 per cent from 2001 to 2021, imports from PEM RTA partners increased by an average of 691 per cent compared with an average of 341 per cent for non-PEM partners. On the other hand, world exports increased by an average of 161 per cent in the same period, compared with 216 per cent for PEM partners and 207 per cent for non-PEM countries. These numbers fit with the overall trend where the share of Norwegian exports relative to imports is declining, see part 1.3.1.

Moreover, while EU trade was already high,[340] the growth rate for Norway's most important PEM partner was below world average for both imports (136 per cent) and exports (105 per cent). This fits with a long-term trend where the relative importance of trade with Asian countries including China is increasing. In this respect, trade can be increasing *before* an RTA enters into force. For example, imports from China grew with 1162 per cent in 2001-2021,[341] reaching the highest import value after the EU in 2021.[342] Meanwhile, growth rates for imports and exports to China and other countries with which Norway is currently negotiating an RTA have been much higher than world average (778 per cent on average for imports, and 917 per cent for exports).[343]

On this background, it can be argued that there is a positive correlation between trade growth and RTA negotiations (both PEM and non-PEM), whether or not agreements have entered into force. However, without more research and statistics including on the utilisation of preferential tariff treatment (for RTAs entered into force), it is not possible to draw clear conclusions on the effect of Norway's RTAs or RoO based on these simple statistics alone. In this regard, it is positive that a business survey seems planned for 2023 to gather more knowledge about the

[337] Bureau (2013) p. 6.

[338] See for example Mattoo (2017) p. 4 for RTAs in general, and Kommerskollegium (2019a) p. 3 for EU RTAs. Both studies find that trade increased because of RTAs, by 44 and 48-56 per cent, respectively.

[339] See Table 3, Appendix 2.

[340] The growth percentage levels will more easily be higher when the statistical reference point is low.

[341] See Table 4, Appendix 2.

[342] SSB (2022a).

[343] See Table 4, Appendix 2.

actual use of Norway's RTAs,[344] and that the EFTA FTA Monitor may be improved.[345] In the meantime, it can be suspected that governments do not publish data on preference utilisation since the numbers may indicate that RTA effects are less positive than claimed.[346]

4.3.2 The impact of the RoO

Despite the challenges mentioned above, it is possible to make several points regarding how the RoO promote Norwegian economic interests. These points are grouped below with the three general priorities for RoO presented as Norway's interests, namely liberalisation of trade in goods, safeguarding defensive interests, and providing opportunities for Norwegian businesses (see parts 2.5.2 to 2.5.4).

4.3.2.1 Liberalisation of trade in goods: industrial products

The first aim for RoO is to facilitate and liberalise trade in sectors where Norway has offensive interests (see parts 3.2.2.2.4 and 3.2.2.2.5). For these industrial products, the high value of exports indicates that RoO have not hindered existing trade. At the same time, the numbers do not say whether RoO made exports *difficult*, nor if they are a barrier for further exports. In this regard, it is relevant to look at import statistics.[347] If liberal ad valorem rules or any heading PSRs provide benefits, the statistics should in fact indicate significant imports in the same Chapters or headings. Import statistics can therefore shed light on how liberal RoO affect key exports.

4.3.2.1.1 Seafood products

In terms of the wholly obtained article, both RPEM and non-PEM FTAs allow for aquaculture products to be based on imported non-originating fry etc. However, the import of smolt etc. in HS 03.01 was very limited in 2021, totalling about 27 million NOK. This indicates that the smolt used is often originating as well in Norway. On the other hand, imports of fish oil in HS 15.04 were significant, totalling about 3.9 billion NOK (about twice the export value). While it is not evident how much of this that goes into fish feed etc. compared to 15.04 products meant for export, the import data suggests that some Norwegian exporters benefit from the any heading rule in RPEM and some non-PEM FTAs.

As for the PSRs for seafood, the more liberal CTH rule in non-PEM FTAs for HS 03.04 (fish fillets etc.), 03.05 (dried, salted or smoked fish) and 16.03-16-05 (various seafood preparations) makes it for example possible to fillet fish with Russian or EU origin and obtain Norwegian

[344] Doffin (2022).
[345] EFTA (2022c).
[346] Inama (2022) p. 623.
[347] See Table 5, Appendix 2.

origin, see parts 3.2.1.2 and 3.2.2.2.4. In this regard, imports of fresh or chilled fish in HS 03.02 equalled about 1.9 billion NOK in 2021, with total imports in HS Chapter 3 totalling around 4.1 billion NOK. Even if these imports are limited compared to the value of exports, the numbers indicate that some imports may be filleted etc. (from 03.02) or processed (Chapter 16) and exported with Norwegian origin. The same possibility applies to HS 23.01.20 (flour and pellets from seafood),[348] where RPEM and nine non-PEM FTAs require CTH (see part 3.2.2.2.4).

On the other hand, it is mostly cumulation within the PEM zone which makes it possible to smoke, dry or salt fish originating in another Party and obtain Norwegian origin, see part 3.2.5.2. As a lot of Norwegian fish is processed in EU countries,[349] PEM cumulation makes it possible to keep Norwegian origin when reexported within the PEM zone (despite the direct transport rule). Without the possibility for cumulation, the fish would lose its Norwegian originating status if customs cleared in a transit country and further processed there, see part 3.2.7. This makes cumulation important, as two thirds of Norwegian seafood is exported without processing.[350]

4.3.2.1.2 Other industrial products

For other important industrial products, the more frequent use in non-PEM FTAs of more liberal ad valorem rules and/or any heading seems to provide benefits in most cases. For example, the import values of ships in HS Chapter 89 (about 18.1 billion NOK) and mineral fuels etc. in Chapter 27 (about 47.1 billion NOK) are relatively high. This implies that a potentially significant share of non-originating materials from the same heading is mixed into the final products. In the case of ships, that fits well with a production pattern where Norwegian yards import hulls from abroad and especially from Turkey.[351] As for machinery in Chapters 84 and 85, it is difficult to make assumptions given the variation of products imported, exported, and domestically consumed. However, about three times bigger imports (185.7 billion NOK) than exports (64 billion)[352] indicate that higher ad valorem rules and any heading PSRs can be beneficial.

On the other hand, imports of products within HS 71.10 (palladium), Chapters 28 and 29 (inorganic etc. and organic chemicals), and Chapters 72-83 (base metals) are relatively limited.[353] This seems to reflect little use of non-originating materials under the same heading (or subheading) as the final product, but also that having CTH as a PSR is enough to obtain originating status (as materials change HS position).

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[348] Imports totalled around 2.8 billion NOK in 2021, but there is no possibility to use any heading.

[349] NRK (2019).

[350] Tveiterås (2022) p. 11.

[351] Menon Economics (2021b) p. 59 cf. 8.

[352] See Table 2, Appendix 2.

[353] The same applies to Chapter 31 (fertilizers).

For example, most of the palladium within HS 71.10 is obtained as a biproduct from a Norwegian plant producing nickel, copper and cobalt,[354] which are classified in other Chapters. CTH will also be fulfilled in the process to obtain base metal products in HS Chapters 72-83 (made from ores in Chapter 26), silicon in 28.04.69 (based on quartz in heading 25.06),[355] and cyclic amides in 29.24.29 (for example using ammonia in HS 28.14).[356]

Regarding aluminium, there imports under HS 76.01 (unwrought aluminium) equalled around 6.2 billion NOK in 2021, implying use of non-originating materials in the production.[357] Indeed, the Norwegian company Hydro refuses aluminium from Russia by electrolytic treatment,[358] thereby fulfilling the processing rule of RPEM for HS 76.01. At the same time, if most products are obtained from aluminium ores in HS 26.06 or aluminium oxide in HS 28.18,[359] the CTH rule is fulfilled. In this regard, it might be that the RPEM rule of CTH *and* 50 per cent ad valorem rule is preferable for Norwegian producers, because the combination provides for more flexibility (cf. the alternative processing rule for HS 76.01). Furthermore, prices in the processing industry including aluminium are volatile,[360] making it challenging to rely on an ad valorem rule only (unless the ad valorem percentage is high).

In this regard, sectorial considerations can have an impact on the benefit of having high ad valorem percentages. For example, price volatility affects other key products such as oil and gas (HS Chapter 27),[361] but also fertilizers (HS Chapter 31).[362] Having alternative rules such as ad valorem PSRs can therefore provide exporters with flexibility. However, it is not always clear if it is easier to use an ad valorem rule or CTH. For example, where products contain many different non-originating components such as machinery in HS Chapters 84-85 or military weapons in HS Chapter 93, the exporter must either keep track of the value of all the components or classify all of them correctly according to the HS. Both might be complicated, making it beneficial to let businesses choose which rule they will use.

[354] Aftenposten innsikt (2020).

[355] Teknisk Ukeblad (2022).

[356] Store norske leksikon (2019).

[357] In contrast, imports in HS 76.06 were limited (646 million NOK).

[358] Radio Haugaland (2022).

[359] The official statistics indicate imports of about 8.2 billion NOK in 2021.

[360] SSB (2021).

[361] SSB (2022b).

[362] Fellesskjøpet (2021).

Competitive considerations might also make it beneficial to *restrict* the percentage of the ad valorem rule. For example, given the competition of products originating in non-parties,[363] Norwegian producers of already competitive originating aluminium may want stricter rules especially in the PEM zone (which includes the EU and where RoO are the same). The intent would be to protect an already existing competitive advantage, despite imports being duty free to Norway. Moreover, it can be a point for businesses and/or authorities to avoid a situation where the requirements to obtain origin are *too* simple. For example, is it positive in the long-term for the quality or brand of Norwegian exports if Russian fish is used to export seafood products with Norwegian origin? Is it positive for job creation in Norway if very limited processing is required to obtain origin? Such considerations might explain why there are for instance no ad valorem rules for seafood products of HS Chapter 3 and 16, and why there are domestic nationality requirements relating to ownership of fishing vessels (see part 3.2.1.2). These are factors which can limit trade liberalisation.

4.3.2.2 Safeguarding defensive interests: agricultural products

In terms of agricultural products, the question is whether RoO contribute to limit imports of sensitive products from RTA partners. In this respect, it should first be noted that the top 20 imported agricultural products in 2021 mostly consist of products with zero duties or lower tariffs.[364] Meanwhile, the value of imported agricultural products within HS Chapters 1-24 was relatively limited, representing about ten per cent (84 billion NOK) of all imports (852 billion NOK). Additionally, the most imported single product group was fish feed (24 per cent of the total value), with more sensitive imports such as cheese (one per cent), meat (three per cent), plants and flowers (three per cent) being very limited.[365] Finally, most of the imported value was duty free.[366] This indicates both that preferential treatment was used, but also that high tariff barriers effectively prevent importation of the most sensitive products.

Second, the analysis in part 3.2.2.2.3 shows that the wholly obtained criterion is consistently used as the main PSR for sensitive products. The RoO in Norway's RTAs thereby contribute to safeguard defensive interests but also exemplify how RoO can serve as a policy tool to limit trade. This promotes protectionism, see part 5.3.4.

Finally, imports of agricultural products to Norway are also subject to non-tariff barriers (see part 4.2.2), in addition to customs duties. On this background, it can be questioned to what extent restrictive RoO are crucial to hinder imports of sensitive products. Notably, why should

[363] Global Trade (2022).

[364] See Table 6, Appendix 2. The highest tariffs regard some processed agricultural products and oils in 15.14.1990.

[365] Landbruksdirektoratet (2022) p. 74.

[366] Ibid p. 75 and Figure 57.

the RoO be restrictive when market access is anyways limited in the schedules of concessions? This important question deserves more scrutiny (see part 6.5).

4.3.2.3 Providing opportunities for Norwegian businesses: other key provisions

The third point of interest for Norway is to make sure that RoO provide opportunities to benefit from preferential treatment. As mentioned above, trade statistics indicate that the RoO and PSRs at least do not hinder significant exports. However, these numbers do not say to what extent exports benefit from preferential treatment at importation. Hence, to determine the extent to which there is potential for more exports, it is necessary to obtain more data on the utilisation of preferential treatment. This will also enable researchers to highlight factors contributing to underutilisation.

Meanwhile, it is relevant to assess how the other provisions analysed in part 3.2 affect trade and business opportunities. Notably, the general tolerance rule is relatively limited in both RPEM and non-PEM FTAs. As mentioned above in the case of ad valorem rules, this limitation might be intended. For the authorities, RoO indeed implies striking a balance between promoting production in the exporting country and facilitating trade for businesses. In the case of the general tolerance rule, this results in a rule that is not supposed to be *too* beneficial.

Given that the percentage of the tolerance rule is supposed to be limited, it is quite probable few Norwegian businesses only rely on a general tolerance rule of 10-15 per cent to confer origin. Nevertheless, there is a need to obtain more sector-specific knowledge. The same point regards the RPEM tolerance rule based on weight for agricultural products, where the consequences for Norwegian defensive interests are unclear. In contrast, the specific RPEM tolerances regarding textiles should not affect Norway's interests, given an insignificant textile industry.

As for the provisions on cumulation, outward processing and direct transport/non-alteration, the use and benefits for Norwegian businesses are very much intertwined with the benefits of PEM cumulation. On one hand, Norwegian seafood and car parts provide examples of products being further processed in the EU.[367] For such products, PEM cumulation should give tangible advantages compared with non-PEM FTAs, considering the limitations in the latter agreements imposed by outward processing (low percentage of added value allowed) and direct transportation (forbidding further processing in non-parties).

Moreover, the prevalence of commodity exports and the high forward participation rate in the Norwegian economy (see part 1.3.1) indicates that Norwegian businesses should have an

[367] Røtnes (2020) p. 63 and 46 cf. Chapter 9.

interest in allowing other countries to cumulate with products of Norwegian origin. Given that most Norwegian exports go to the neighbouring EU, having identical PEM rules in a European context should facilitate this ambition. In contrast, efficient cumulation with non-PEM partners except for the UK (see part 3.2.6.2) is hindered by geographical distance, less economic integration, but also much lower trade figures overall.

In any case, there is an absence of publicly available statistics and business surveys on the use of cumulation and outward processing, but also research into how Norwegian materials affect exports patterns in other PEM countries. There is therefore a need to gather further knowledge of the extent to which PEM cumulation provides Norwegian businesses with economic opportunities. In the meantime, non-PEM FTAs still provide for more liberal RoO in general, especially due to the PSRs.

4.4 Conclusion

In terms of legal implications of RoO in Norway's RTAs, the assessment above shows that there is substantial room for interpretation of both RPEM and non-PEM FTAs provisions. This room is not reduced by the national provisions in Norwegian legislation since these in essence refer back to the RoO in the RTAs. Still, PEM rules arguably enjoy a special position due to the link to the EEA Agreement, which theoretically could have an impact on the future room for interpretation. Meanwhile, the lack of public information relating to interpretation is a challenge for Norwegian businesses, leading to increased adjustment costs resulting from legal uncertainty.

In terms of economic implications, the RoO in both RPEM and non-PEM FTAs safeguard sensitive interests relating to the agricultural sector. In contrast, the situation for offensive interests relating to industrial products is less clear.

On one hand, non-PEM FTAs contain RoO which are more inclined to promote exports of key products. This is mostly due to more liberal PSRs, notably higher ad valorem rules and/or using non-originating materials from any heading. In this regard, HS Chapters 27 (mineral fuels etc.), 89 (ships) and 84-85 (machinery) provide examples where the rules seem to provide concrete benefits. Meanwhile, indications are somewhat weaker for seafood products (Chapters 3, 16 and heading 15.04) and unwrought aluminium in 76.01. More notably, there is little indication that businesses make significant use of more liberal PSRs for the remaining key export products. A possible explanation might be that Norway exports many intermediate products requiring limited processing (see part 1.3.1), where CTH is often enough to obtain origin. Hence, having the possibility to use more non-originating input materials than RPEM might be less important for such products. Still, the flexibility given by non-PEM RoO should provide businesses with better opportunities for using non-originating materials in their future exports.

On the other hand, the main advantages of the PEM zone are connected to the possibilities for cumulation. In addition to examples such as seafood products and car parts further processed in the EU, Norway's trade profile with exports of intermediate goods and strong integration in value chains should make cumulation especially beneficial with the neighbouring EU and other PEM countries. However, the economic gains stemming from PEM cumulation are difficult to quantify based on current statistical data. In turn, this makes the advantage of RPEM uncertain.

As a result, there is a need to gather further information from businesses, conduct more sector-specific research, and combine these efforts with a thorough analysis of the utilisation of preferential tariff treatment under RTAs. This will make it possible to determine more precisely what the economic implications are. Importantly, more data and knowledge will make it easier to establish the degree to which PEM cumulation affects Norway's offensive interests, compared with liberal non-PEM PSRs.

5 Do the RoO promote trade?

5.1 Introductory remarks

The last part of this thesis aims to bridge the empirical findings of part 3 and the assessments of part 4 with the academic criticism directed at RoO. The aim is to answer the last research question, which concerns the degree to which RoO in Norway's RTAs promote or hinder trade. In this regard, part 5.2 will recap the main points of criticism mentioned in part 1.3.1, before presenting some additional and useful theoretical framework. Part 5.3 thereafter elaborates on how the empirical findings compare with the academic predictions, seeking to highlight differences between RPEM and non-PEM rules. Finally, part 5.4 presents some conclusions considering the theoretical framework.

5.2 The critical and theoretical framework

The criticism mentioned in part 1.3.1 can be briefly summarized in five main points. First, RoO are criticised for being complex and arbitrary. Second, the spaghetti bowl of proliferating RTAs with diverging RoO leads to complexity and increased compliance costs, affecting the use of preferential treatment. Third, RoO make the conditions for preferential treatment less transparent and accessible, in turn creating a barrier to trade. Fourth, RoO are used as a policy tool to hinder trade and increase protectionism. Fifth and finally, RoO are trade-diverting. All these points are elaborated further below in part 5.3.

Meanwhile, it should be noted that most of the criticism referred to in part 1.3.1 stems from the field of economic theory. It can therefore be useful to draw on additional theoretical contributions from the field of international relations to get a more complete picture. As international

relations *inter alia* focus on interaction between states, contributions from this academic discipline can also shed light on RoO in Norway's RTAs.

In this respect, liberalist and realist theory provide two useful analytical lenses. On one hand, liberalism generally emphasizes the role of free trade and an open, market-based international system, where trade is viewed by states as being mutually beneficial.[368] A key element for co-operation between states in this regard is reciprocity (as in GATT), combined with strengthened international institutions.[369] Moreover, trade arguably creates a complex interdependency whereby states both benefit from trade and suffer from its disruption.[370] Additionally, the role of non-state actors is highlighted.[371] In the case of RoO, liberalism therefore predicts that domestic interest groups will affect how the rules look like. More importantly, RoO should reflect the interests of all RTA Parties and be mutually beneficial, contributing to the aim of liberalising trade in goods.

In contrast, realism emphasizes how states are driven by material self-interest, concerned with their position of power relative to other states. Realism views the state as the main actor on an anarchic international scene, characterised by competition between states which in turn results in conflict. In this world, states only cooperate if it serves the national interest and if they gain more compared with other parties.[372] As opposed to absolute gains emphasised by liberalism, realism underlines the importance of relative gains.[373] In turn, realism expects RoO to reflect the interests of the most powerful states within RTAs, but also promote exports from these states more than it promotes imports from other RTA parties.

Whether realism or liberalism provide the best explanations will be discussed in the conclusion in part 5.4, after evaluating how the case of Norway's RoO add up with the critical framework.

5.3 Empirical findings

5.3.1 Complexity and arbitrariness

The analysis confirms that RoO can be quite complex. This is the case for all Norwegian RTAs, but especially RPEM list rules. As shown in part 3.2.2.2.1, RPEM PSRs (and even more the PEM Convention) are both more numerous and complex than in non-PEM FTAs. This is due to more PSRs in general but also more intricate rules in terms of type and content (see notably

[368] Meiser (2017) p. 24.
[369] Keohane (2012) p. 125-128.
[370] Kapitonenko (2022) p. 62-66.
[371] Ibid p. 72.
[372] Garcia (2013) p. 523.
[373] Meiser (2017), page 25.

the example of textile products in HS Chapters 50-63). Additionally, detailed wording as well as provisions such as full and diagonal cumulation create additional layers of complexity.

On the other hand, the analysis shows that RoO in Norway's RTAs are less arbitrary than mentioned in part 1.3.1, considering the spaghetti bowl effect. While there are indeed variations in rules due to RTAs being subject to different negotiations with different partners (as well as differences between RPEM and non-PEM FTAs), there are also similarities in provisions and PSRs across RTAs. The clearest example is of course the PEM zone, where identical RoO in multiple RTAs contribute to regional harmonization but also predictability for businesses.

However, there are also similarities in structure, provisions and PSRs in many non-PEM FTAs. This indicates that EFTA states have common positions on RoO, possibly in the form of a model text.[374] For example, it is not a coincidence that the wholly obtained provision in most non-PEM FTAs groups products of aquaculture with those obtained from hunting and fishing, and that it does not contain a separate paragraph on requirements for vessels and factory ships, see part 3.2.1. Moreover, non-PEM PSRs are not only generally simpler and allow for higher ad valorem rules than RPEM, but also apply the wholly obtained criterion consistently for sensitive agricultural products (like RPEM), see part 3.2.2.2.3. Such findings of consistency do not support the claim that RoO are arbitrary *per se*.

5.3.2 Spaghetti bowl and costs

The "spaghetti bowl" effect with increasing complexity and costs resulting from the proliferation of RTAs, is mostly attributed to RoO.[375] However, given that RoO in Norway's RTAs are less arbitrary than assumed, regional harmonisation of rules within PEM and consistent provisions across non-PEM FTAs should weaken the spaghetti bowl effect, but also reduce costs stemming from the need to adapt to different rules in different RTAs.

Nevertheless, there is little harmonisation of RoO on a global level, see part 1.2 and 2.1. Moreover, regional influences can increase complexity in non-PEM FTAs because of different traditions and considerations. For example, part 3 shows indirectly that EFTA's FTAs with Peru and Colombia contain many identical provisions. This is presumably due to their membership in the Andean Community. In contrast, the structure of the PSRs in EFTA-Canada deviates completely from other agreements but resembles the rules of the United States-Mexico-Canada Agreement (USMCA). In any case, Norwegian businesses must always check the relevant RTA to find out which RoO that apply. This is also the case for RTAs with PEM rules, where RPEM

[374] See part 1.5.

[375] Bhagwati (2008) p. 61.

has not yet been implemented in all agreements. In this respect, the spaghetti bowl remains on the table, even if the RoO sauce on Norway's RTAs is not always that unsavoury.

As for the question of costs, this thesis does not disprove that RoO can lead to increased transaction and adjustments costs. In general, exporters often complain about the complexity of RoO and costs stemming from compliance.[376] Notably, costs derive from the need to adapt to the different and changing rules, to acquire knowledge and expertise needed to use or administer RoO,[377] and from the potential need to adjust businesses' value chains to fulfil RoO.[378] Requirements for proofs of origin and administrative provisions (see part 3.3) also increase compliance costs. Indeed, academic studies have indicated that fulfilling complex RoO entails additional compliance costs ranging from 3 to 15 per cent of the price of the product,[379] and there is little reason to believe that the situation is different for Norwegian businesses. In turn, increased costs for producers and exporters might lead to increased prices on the end products.

Meanwhile, critics claim that the costs and complexity associated with RoO weaken the utilisation of preferential treatment to less than 100 per cent.[380] This argument seems valid for Norway's RTAs. However, there are other factors which can affect preferential utilisation, such as non-tariff barriers in general but also the value of tariff concessions compared to MFN rates. In case of little difference, some exporters might choose to pay the MFN duty and avoid the hassle of fulfilling RoO especially due to documentation costs.[381] However, the empirical evidence of such behaviour is unclear. Indeed, there are empirical indications that businesses still see the benefit of obtaining origin to get preferential treatment, even when MFN rates are relatively low. This is because profit margins, trade volumes and sectorial considerations also come into play,[382] notably the size of import transactions and the potential for duty savings.[383] Presumably, the situation is similar for Norwegian businesses.

5.3.3 Transparency and accessibility

The case of Norway's RTAs moreover confirms that there is a lack of transparency and accessibility regarding RoO. This follows the general pattern of RTAs, see part 1.5. Moreover, as showed in part 4.2.2, public sources of information regarding interpretation of RoO are very limited. When combined with the complexity and compliance costs associated with RoO, the

[376] Felbermayr (2019) p. 11.
[377] Islam (2006) p. 269.
[378] Felbermayr (2019) p. 2.
[379] Ibid.
[380] Ibid.
[381] Cadot (2006) p. 22.
[382] Inama (2022) p. 490-491.
[383] Kommerskollegium (2019b) p. 1.

lack of transparency and accessibility makes it more difficult to understand RoO and adhere to the requirements to obtain preferential treatment. This also concerns imports to Norway. For example, it matters that the Norwegian Agriculture Agency does not have webpages in English, despite being *inter alia* responsible for granting individual applications for reduced customs duties at importation.[384] On this background, Norwegian authorities are not facilitating a public debate on RoO and how these rules promote or safeguard Norway's interests.

In turn, the lack of transparency raises the question as to what extent domestic groups exert influence on the RoO. On one hand, the level of protection for businesses is not always easy to predict.[385] For example, conditions for production and competition can vary over time, as is the case with commodities subject to price volatility (see part 4.3.2.1). On the other hand, the analysis strongly indicates that the RoO reflect the interests of Norwegian agricultural producers, see part. 3.2.2.2.3. Given that Norwegian export interests are relatively specific, it is also quite probable that important export companies try to exert influence or pressure on Norwegian authorities to promote RoO which safeguard their specific needs (at that point in time). An example concerns the lack of crew requirements for fishing vessels, and the more liberal PSRs for seafood products in non-PEM FTAs.

Yet, receiving industry inputs can also be intended or reflect political agreement. For example, Norwegian Customs is in contact with businesses and receives inputs on RoO.[386] This is also the case with US trade negotiators which rely on industry representatives for advice during negotiations. In addition to ensuring that the RoO (and especially PSRs) meet the industry's technical needs, their advice and involvement also increases the chance of domestic legislative approval.[387] The same arguments also apply to PEM and the RPEM rules.

However, this does not mean that all interests are taken onboard. In the case of the North America Free Trade Agreement (NAFTA)[388] for example, inefficient lobbying led to RoO being less restrictive for large but politically dispersed industries who would have benefited from more stringent RoO.[389] Similarly, it is probable that not all Norwegian businesses are consulted (or heard) in the processing of drafting RoO.

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[384] Landbruksdirektoratet (2023b), cf. forskrift 22. desember 2005 nr. 1723 om administrative nedsettelser av tollavgiftssatser for landbruksvarer.

[385] Freund (2010) p. 37.

[386] Author's interview 16 December 2022 with Susann Nilsen, senior adviser at Norwegian Customs.

[387] Chase (2008) p. 510-511.

[388] Now replaced by USMCA.

[389] Chase (2008) p. 527.

5.3.4 RoO as trade-limiting

Regarding RoO being used as a policy tool to limit trade liberalisation, prevent trade deflection, and promote protectionism, the case of Norway provides mixed evidence. First, rules that are intended to be not too simple or liberal (see part 4.3.2.1) can limit trade liberalisation. Most notably, this is the case for agricultural products. Moreover, despite RPEM aiming to liberalise RoO compared with the PEM Convention (see part 2.3.2.1), the analysis throughout part 3 reveals that it is usually older non-PEM FTAs that share similarities with RPEM provisions, despite RPEM being put forth for adoption in 2019. This indicates a more frequent use within RPEM to limit trade liberalisation through the RoO. In contrast, RoO in non-PEM FTAs seem to have evolved in a more liberal and simpler direction over the years, *de facto* and *de jure* promoting the liberalisation of trade in (industrial) goods.

Second, preventing trade deflection is traditionally considered (by economists) as being the main reason for having RoO.[390] As briefly mentioned in part 1.3.1, trade deflection means that imports from third countries enter a free trade area through the RTA partner with the lowest tariffs and then are moved to the partner with higher tariff. This can lead to a race to the bottom in a tariff setting, to attract imports.[391] Given that RoO are meant to avoid that third countries "free ride" on the benefits given by an RTA,[392] this goal also applies to Norway.

In this regard, some critics claim that preventing trade deflection is unnecessary. The reason is that MFN tariffs are often low and similar between RTA parties, and that transportation costs reduce the benefits of profiting from trade deflection.[393] However, as shown with the case of sensitive agricultural products for Norway, other policy considerations come into play when limiting the advantages of preferential treatment to RTA parties. In these cases, RoO arguably function more as a policy tool to safeguard domestic interests rather than to promote increased trade. Yet, this seems to be in Norway's interest (see part 2.5.3).

Third, restrictive RoO can be criticised for enabling a country to export domestic protectionism to its RTA partners. While limiting the advantages of preferential treatment to RTA partners is in the nature of RTAs according to Article XXIV of GATT, the case of Norway shows that the ambition of liberalisation can disguise protectionist intentions. Here again, the RoO for agricultural products is a case in point, also because it is not clear if strict RoO are necessary to prevent imports of sensitive products to Norway (see part 4.3.2.2). Notably, defensive agricultural interests should already be secured by limiting market access concessions (both in scope

[390] Inama (2022) p. 487.
[391] Freund (2010) p. 37.
[392] EPRS (2017) p. 1.
[393] Felbermayr (2019) p. 11.

and the level of preferential tariff rates). In contrast, while PSRs for aluminium products imply possible defensive considerations (see part 4.3.2.1.2), the case for Norway's industrial products is less clear. Meanwhile, both liberal and restrictive RoO can be the result of pressure from domestic interest groups.

Overall, RPEM seems more prone to protectionist elements than non-PEM FTAs. For example, the complexity of the PSRs for textile products probably reflects the need to safeguard defensive interests for one or more PEM Parties. The same logic could explain the lower percentage levels of ad valorem rules compared with non-PEM FTAs, and generally restrictive rules for agricultural products. For example, the RPEM PSRs for sugar products in HS Chapter 17 are more restrictive than the PEM Convention,[394] due to the use of low weight rules instead of low ad valorem rules.

This incidence of more complex and less liberal rules in RPEM (and even more so in the PEM Convention) is probably linked to the fact that PEM rules are multilateral and adopted on a unanimous basis. Since each PEM member has a veto right, more restrictive rules will probably be easier to agree upon than too liberal ones. This can result in more PSRs that reflect specific defensive interests to certain RPEM Parties, in turn contributing to the "export" of domestic protectionism. This concerns to a large extent the EU, which is the most dominant political and economic actor within the PEM zone.

5.3.5 RoO as trade-diverting

Finally, related to the question of trade deflection is whether RoO leads to trade diversion. The starting point is the widespread claim from economists that RoO are distortionary.[395] Stringent PSRs can in fact increase compliance costs which in turn hinder bilateral trade flows, possibly resulting in so-called trade diversion to the RTA area.[396] The argument is that compliance with RoO can force producers to change procurement sources, leading to increased procurement costs.[397] This can lead to welfare gains (trade creation), but also welfare losses (trade diversion) if imports from more efficient countries are reduced.[398] For example, a study of the former NAFTA agreement between the US, Canada and Mexico suggests that the RoO led to a reduction of 45 per cent in imports to Mexico from third countries,[399] implying input relocation from more efficient suppliers in non-Parties to less efficient suppliers in the Parties.[400] The new

[394] European Commission (2021) p. 6.
[395] Freund (2010) p. 36.
[396] Estevadeordal (2005) p. 83.
[397] Hayakawa (2022) p. 1.
[398] WTO (2011) p. 9.
[399] Conconi (2018) p. 2338.
[400] Mikonoki (2021) p. 2304.

USMCA has further tightened the RoO.[401] In this regard, restrictive RoO can lead to trade diversion up to a certain point where compliance costs become too high (compared with costs of sourcing from non-parties).[402] Trade diversion is therefore linked to preferential utilisation.

In this regard, economist have focused on the degree to which RoO are restrictive.[403] This link to the "export" of domestic protectionism makes trade diversion relevant for RoO in Norway's RTAs (despite the lack of national research on this topic). However, it is not obvious that RoO in Norway's RTAs should be compared with RoO in agreements such as NAFTA or USMCA. Neither is Norway in the same position as the US in terms of economic strength, trade profile or policy considerations, something which expectedly should influence the level of protectionism exported to the other RTA Parties.

In fact, parts 3 and 4 do not provide indications that RoO force businesses to adjust their value chains and source input materials from domestic producers to use the RTAs. Rather, part 4.3.1 shows how Norway's exports and imports have increased with RTA partners but also globally over the last 20 years. Moreover, changing value chains should be less needed for Norwegian businesses which largely export intermediate products and have a low backward participation rate (see part 1.3.1). This implies at least that the effects of trade diversion are not necessarily as pronounced in all parts of Norway's RoO. Beyond the case of agricultural products where Norway has clear defensive interests, the risk for trade-diversion is therefore unclear.

Furthermore, Norway already applies zero customs duties as the MFN rate for almost all industrial products, thereby facilitating imports from non-parties. Additionally, increasingly liberal RoO in newer non-PEM FTAs might weaken the effects of trade diversion. The same applies to provisions such as the general tolerance rule and cumulation, which may counteract the effects of restrictive PSRs (and trade diversion) by reducing compliance costs,[404] see part 4.3.2.3. This is important for PEM RTAs.

Finally, simpler rules might also reduce the impact of restrictive RoO on trade diversion. In this regard, some critics propose that proofs of origin should not be required in an RTA unless the difference between external tariffs is significant, and that RoO should be "simple" for all products.[405] However, such ambitions seem unrealistic, cf. part 5.3.4. For one thing, proofs of origin are linked to the aim of restricting preferential treatment to RTA partners but also considerations

[401] Wandel (2019) p. 194.
[402] Inama (2022) p. 488-490.
[403] Inama (2022) p. 506-524.
[404] Estevadeordal (2005) p. 83.
[405] Felbermayr (2019) p. 11-13.

relating to verification and customs controls. For example, businesses make mistakes but also wrongfully claim preferential treatment.[406] Moreover, while simplification is indeed possible (the non-PEM FTAs being a case in point), the ambition of having simple RoO for all products seems to go head-to-head with other policy considerations. Notably, the EU and other partners might have a geopolitical ambition to increase intra-PEM trade, source materials at the expense of other non-PEM Parties and thereby promote trade-diversion. At the end of the day, RoO do not always make economic sense.

5.4 Conclusion: Liberalism, realism, and RoO

The discussion in part 5 shows that the criticism of RoO as hindering trade, is largely warranted. On one hand, the analysis supports the claim that RoO are complex and lead to increased compliance costs, partly contributing to a spaghetti bowl effect (part 5.3.1 and 5.3.2). Complexity and costs are reinforced by the lack of transparency and accessibility surrounding RoO (part 5.3.3), but also by restrictive rules that hinder trade liberalisation and protect domestic industries (part 5.3.4). The clearest example concerns RoO for agricultural products, but PEM is more generally a case in point. Restrictive rules can in turn reflect interests of specific domestic groups, implying a possible effect from lobbyism (part 5.3.3). Meanwhile, RoO seem to prevent trade deflection, which is acknowledged as the main (economic) reason for having such rules. In principle, all these factors may lead to increased costs for businesses, but also higher prices on end products.

On the other hand, RoO in Norway's RTAs are not arbitrary *per se* (cf. part 5.3.1). Less arbitrariness reduces the effect of the spaghetti bowl and indicates that the academic predictions are not necessarily applicable to all RTAs. Indeed, while theoretical contributions claim that RoO force businesses to change input sources and value chains, high exports and more liberal RoO in non-PEM FTAs imply that the effects of trade diversion are unclear for Norway (see part 5.3.5). Moreover, businesses may seek to claim preferential treatment despite of low tariffs, complexity and compliance costs, if the potential for savings is significant (see part 5.3.2). The weight of the criticism towards RoO therefore varies with the point in question – at least in the case of Norway.

On this background, it can be argued that both realism and liberalism provide explanations for why Norway's RoO are as they are. On one hand, factors such as complexity, costs, lack of transparency and accessibility as well protectionism all indicate that states such as Norway are concerned with potential negative effects of RTAs. Notably, restrictive RoO reflect a trade-limiting ambition which is rooted in states' national interests, and a fear that free trade can also hurt domestic groups. This concern explains why restrictive rules form part of RoO both in

[406] Author's interview 16 December 2022 with Susann Nilsen, senior adviser at Norwegian Customs.

RPEM and in non-PEM FTAs, and why economists criticize RoO for leading to "distortions", "costs" and trade diversion.

Moreover, since RTAs will always reflect power interests between states involved and affect how RoO end up, this should have implications for the benefits for Norway of using RPEM. In this regard, realism predicts that RPEM will to a large degree reflect EU interests and defensive considerations. Even if the interests of the EU and Norway might overlap, for example in the use of wholly obtained PSRs for sensitive agricultural products, the influence of the EU should lead to RPEM rules that are not always in Norway's interests. This can also explain why RoO in non-PEM FTAs are generally more liberal.

On the other hand, RoO in Norway's RTAs have not hindered exports in 2021 or an increase in both imports and exports over the last 20 years. The reasons for this and how they relate to the academic predictions are unclear, due to the lack of Norwegian research and available trade data on preference utilisation. However, this thesis indicates that RoO can both enable and promote trade if the rules are liberal and relatively simple in terms of compliance costs. At least for industrial products, Norway's RoO seem genuinely oriented towards liberalising trade in goods, also to the benefit of its RTA partners. In this regard, the substantial number of RTAs in force indicates that Norway and other states see the benefit of cooperating in trade through mutually beneficial rules (despite methodological challenges in isolating the effects of RoO on trade). Indeed, even if RoO will reflect offensive and defensive interests, reciprocity still forms the basis for both liberal and restrictive rules.

Finally, even if restrictive RoO can export domestic protectionism, the lobbying efforts, political considerations and involvement from domestic groups indicate that the "national interest" is not as clearly defined as realists would think. In terms of the future research agenda, this also has implications for how to obtain more knowledge on RoO.

6 Conclusions and the future research agenda

6.1 Introductory remarks

This thesis has analysed RoO in Norway's RTAs, seeking to assess to what extent the rules reflect Norway's interests. This has entailed answering three research questions, namely what characterises RoO in Norway's RTAs, what the implications are for Norway's interests, and whether the RoO promote trade. On this background, several conclusions can be made.

6.2 What characterises RoO in Norway's RTAs?

The legal analysis in part 3 shows that, while RoO for agricultural products and the provision on insufficient working or processing are largely similar, there are mostly differences between

RPEM and non-PEM RoO. In this regard, the most important finding is on one hand that non-PEM FTAs generally contain more liberal rules than RPEM, especially when it comes to PSRs for key export products. Notably, this is due to generally higher ad valorem rules and the use of any heading PSRs, which both allow for more use of non-originating materials.

On the other hand, the key advantage of RPEM (and the PEM Convention) is the possibility to use full and diagonal cumulation with 20 RTA partners including the EU. In addition to reducing the limitations of the direct transportation rule, cumulation can in principle provide businesses with more flexibility and advantages compared with using outward processing or the general tolerance rule. If sourcing patterns and value chains allow it, RPEM cumulation could also compensate for more liberal PSRs in non-PEM FTAs.

6.3 What are the implications for Norway's interests?

In terms of implications, a distinction can be made between legal and economic considerations. Regarding legal implications, the RoO have been implemented in Norwegian legislation by essentially referring back to the conditions contained in the RTAs. This leaves little room for conflict with national provisions regarding interpretation, even if the potential for interpretative conflict is somewhat higher for RPEM due to the connection to EEA law. At the same time, there is substantial room for interpretation due to the open wording of provisions in the RTAs and a lack of guidance on a national and international level. In turn, this leads to increased compliance costs for businesses, who must interpret RoO on a relatively independent basis.

Regarding economic implications, the available trade statistics and empirical evidence paint an inconclusive picture of how RoO benefit Norwegian businesses. While both RPEM and non-PEM FTAs contain restrictive RoO which contribute to safeguard Norwegian defensive interests mainly relating to the agricultural sector, the variation in rules for industrial products has different implications. On one hand, important export products such as energy products, ships, machinery and partly aluminium and seafood seem to benefit from the possibility to use more non-originating materials in non-PEM FTAs. On the other hand, it is unclear if higher ad valorem rules or any heading PSRs provides concrete benefits for exporters of other intermediate products such as organic and inorganic chemicals etc., base metals and palladium. Meanwhile, besides examples of seafood and car parts being further processed in the EU, there is little empirical evidence or research which confirms that Norwegian businesses make use of RPEM possibilities for large scale cumulation.

As a result, the impact on Norwegian value chains of more liberal PSRs and PEM cumulation needs to be further analysed on a sector and business-specific level. This will make it possible to conclude whether PEM cumulation can make up for more liberal non-PEM RoO, but also to obtain more knowledge on the importance of preferential treatment.

6.4 Do the RoO promote trade?

Finally, part 5 shows that RoO can be criticised for limiting trade. When looking at the findings of part 3 in connection with trade data and implications discussed in part 4, the case of Norway's RTAs shows that restrictive RoO can indeed function as a policy tool to protect domestic industries (especially agricultural producers), limit trade liberalisation and prevent trade deflection. Moreover, the complexity of the rules leads to significant compliance costs for businesses. In parallel, a lack of transparency and lobbyism can give more restrictive rules than necessary, contributing to trade diversion and increased compliance costs. Notably, RoO in Norway's RTAs are used to restrict imports of agricultural products, even though market access concessions are already limited.

On the other hand, the RoO have not hindered an increase in both exports and imports over time. This might be linked to the finding that the rules are less arbitrary than claimed, with several cases of consistency and similarities across agreements. This reduces the spaghetti bowl effect, not least in the PEM zone. Moreover, a low backward participation rate in global value chains and exports dominated by intermediate products should reduce the need to adjust value chains to fulfil RoO. On this background, the level of trade diversion remains unclear in the case of Norway. Indeed, there is even reason to believe that more liberal and simpler RoO as in non-PEM FTAs can both reduce compliance costs and trade diversion, but also provide opportunities to increase exports.

Overall, the discussion in part 5 shows that RoO do not consist of a uniform set of rules which are either protectionist or liberal, trade-promoting or trade-diverting. Rather, RoO are usually all at once. Norway's RoO contribute to both safeguarding Norwegian defensive interests and promoting export interests, by providing for mutually beneficial protectionism and liberalisation at the same time. The RoO are thereby used as a policy tool to serve their purpose, namely, to secure a combination of liberal RoO for trade in industrial products but restrictive rules for agricultural products. This finding has implications for the criticism directed towards RoO from the field of economics, which should acknowledge in future research that other policy considerations besides economic efficiency can also be legitimate and highly relevant when drafting optimal RoO.

6.5 To what extent do the rules reflect Norway's interest? The future research agenda

This thesis has demonstrated how Norway's interests regarding RoO are linked to rules that both promote offensive export interests and safeguard defensive agricultural interests. Remarkably, the analysis shows that the RoO in Norway's RTAs to a large extent reflect these interests. This concerns both RPEM and non-PEM rules. Notably, liberal rules in non-PEM FTAs and

the possibility for large-scale cumulation in the PEM zone both seem to provide opportunities for Norwegian businesses to further increase their exports – at least on paper.

However, analysing RoO in Norway's RTAs should only be a first step. Indeed, the thesis shows that there is a need to gather more knowledge about how RoO affect day-to-day business and trade, to better assess how RoO can promote Norway's interests. This regards both the extent to which businesses make use of the more liberal PSRs in non-PEM FTAs, but also the cumulation opportunities within the PEM zone. In this respect, obtaining business and sector specific knowledge is crucial, because it will enable researchers to get insight into how RoO affect existing value chains and patterns of production. This is especially important in the case of Norway, where the economy is characterised by a low backward participation and high forward participation. Notably, it is important to find out to what extent cumulation and possibilities for further processing within PEM are a precondition for exports from Norwegian businesses.

Furthermore, obtaining more knowledge on a business-level should in turn be combined with a thorough analysis of preference utilisation under Norway's RTAs. Better trade data will make it easier to assess how the case of Norway adds up with the criticism relating to trade diversion, but also the argument that RoO promote the export of domestic protectionism. Moreover, if the knowledge obtained from this research is made public, it can provide the basis for a public (academic) debate about the effects of RoO in Norway's RTAs. Such a debate would be beneficial to address the criticism and lack of transparency surrounding RoO, but also to discuss what the optimal rules are to promote and safeguard Norway's interests. For example, it can be questioned why restrictive RoO should be used at all as a tool to limit trade and safeguards defensive agricultural interests, when this goal is anyhow secured by limiting market access concessions (and other non-tariff barriers). Moreover, it is not clear whether the RoO in Norway's RTAs represent the interests of all Norwegian businesses, or rather some. A public debate would contribute to democratic accountability.

In the short term, Norwegian Customs could increase transparency by publishing more guidance on the interpretation of RoO, including *inter alia* administrative decisions with general relevance and Norwegian commentaries on the interpretation of PEM and non-PEM rules. Such guidelines could in turn reduce compliance costs for businesses. Any model texts and future results from business surveys should also be made public.

Meanwhile, there is no indication that a harmonisation of preferential RoO in the WTO will be feasible anytime in the foreseeable future. For Norway, the political ambition should therefore be to develop RoO that better reflect the needs of Norwegian businesses. Importantly, the RoO should to a larger extent build on research and a transparent public debate. This will also make

it possible to discuss concrete proposals for changes and improvements in the rules themselves. At the end of the day, the aim is to strike an optimal balance between the need to safeguard defensive interests, and the need to promote exports through a liberalisation of trade in goods.

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WTO. "Map of disputes between WTO Members." (2023f) https://www.wto.org/english/tratop_e/dispu_e/dispu_maps_e.htm accessed 04.01.2023.

WTO. "Regional trade agreements." (2023g) https://www.wto.org/english/tratop_e/region_e/region_e.htm accessed 05.01.2023.

WTO RTA Database. "Figures on Regional Trade Agreements notified to the GATT/WTO and in force." (15.12.2022) http://rtais.wto.org/UI/publicsummarytable.aspx accessed 05.01.2023.

International treaties and agreements

The PEM Convention and the revised PEM rules

RPEM (Council Decision (EU) 2019/2198)	Council Decision (EU) 2019/2198 of 25 November 2019 on the position to be taken on behalf of the European Union within the Joint Committee established by the Regional Convention on pan-Euro-Mediterranean preferential rules of origin as regards the amendment of the Convention. https://eur-lex.europa.eu/eli/dec/2019/2198/oj

The PEM Convention (Council Decision 2013/94/EU)	2013/94/EU: Council Decision of 26 March 2012 on the conclusion of the Regional Convention on pan-Euro-Mediterranean preferential rules of origin. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2013.054.01.0003.01.ENG
Commission Notice 2021/C 418/12	Commission notice concerning the application of the Regional Convention on pan-Euro-Mediterranean preferential rules of origin or the protocols on rules of origin providing for diagonal cumulation between the Contracting Parties to this Convention. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021XC1015(01)
Explanatory notes 2007/C 83/01	Explanatory Notes concerning the pan-Euro-Mediterranean protocols on rules of origin. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2007.083.01.0001.01.ENG
Commission Implementing Regulation (EU) 2022/2334	Commission Implementing Regulation (EU) 2022/2334 of 29 November 2022 amending Implementing Regulation (EU) 2015/2447 as regards the application of monitoring of decisions relating to binding information and introducing a flexibility in the procedures for issuing of or making out proofs of origin. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32022R2334

Norway's regional trade agreements (RTAs)

EEA Agreement	Agreement on the European Economic Area (2 May 1992). https://www.efta.int/Legal-Text/EEA-Agreement-1327
EFTA Convention	Convention establishing the European Free Trade Association (21 June 2001). https://www.efta.int/Legal-Text/EFTA-Convention-1152
EFTA-Albania	Free Trade Agreement between the Republic of Albania and

	the EFTA States (17 December 2009) https://www.efta.int/free-trade/Free-Trade-Agreement/Albania
EFTA-Bosnia and Herzegovina	Free Trade Agreement between the EFTA States and Bosnia and Herzegovina (24 June 2013). https://www.efta.int/free-trade/free-trade-agreements/bosnia-and-herzegovina
EFTA-Canada	Free Trade Agreement between Canada and the States of the European Free Trade Association (Iceland, Liechtenstein, Norway, Switzerland) (26 January 2008). https://www.efta.int/free-trade/Free-Trade-Agreement/Canada
EFTA-Central American States	Free Trade Agreement between the EFTA States and the Central American States (24 June 2013). https://www.efta.int/free-trade/Free-Trade-Agreement/Central-American-States
EFTA-Chile	Free Trade Agreement between the EFTA States and the Republic of Chile (26 June 2003). https://www.efta.int/free-trade/free-trade-agreements/chile
EFTA-Colombia	Free Trade Agreement between the Republic of Colombia and the EFTA States (25 November 2008). https://www.efta.int/free-trade/free-trade-agreements/colombia
EFTA-Ecuador	Comprehensive economic partnership agreement between the EFTA states and the Republic of Ecuador (25 June 2018). https://www.efta.int/free-trade/Free-Trade-Agreement/Ecuador
EFTA-Egypt	Free Trade Agreement between the Arab Republic of Egypt and the EFTA States (27 January 2007). https://www.efta.int/free-trade/Free-Trade-Agreement/Egypt

EFTA-Georgia	Free Trade Agreement between the EFTA States and Georgia (27 June 2016). https://www.efta.int/free-trade/free-trade-agreements/georgia
EFTA-GCC	Free Trade Agreement between the EFTA States and the Member States of the Co-operation Council for the Arab States of the Gulf (GCC) (22 June 2009). https://www.efta.int/free-trade/free-trade-agreements/gcc
EFTA-Hong Kong, China	Free Trade Agreement between the EFTA States and Hong Kong, China (21 June 2011). https://www.efta.int/free-trade/free-trade-agreements/hong-kong
EFTA-Indonesia	Free Trade Agreement between the Republic of Indonesia and the EFTA States (16 December 2018). https://www.efta.int/free-trade/Free-Trade-Agreement/Indonesia
EFTA-Israel	Free Trade Agreement between the EFTA States and Israel (17 September 1992). https://www.efta.int/free-trade/free-trade-agreements/israel
EFTA-Jordan	Free Trade Agreement between the EFTA States and the Hashemite Kingdom of Jordan (21 June 2001). https://www.efta.int/free-trade/free-trade-agreements/jordan
EFTA-Korea, Republic of	Free Trade Agreement between the EFTA States and the Republic of Korea (15 December 2005). https://www.efta.int/free-trade/free-trade-agreements/korea
EFTA-Lebanon	Free Trade Agreement between the EFTA States and the Republic of Lebanon (24 June 2004). https://www.efta.int/free-trade/free-trade-agreements/lebanon
EFTA-Mexico	Free Trade Agreement between the EFTA States and the United Mexican States (27 November 2000).

	https://www.efta.int/free-trade/free-trade-agreements/mexico
EFTA-Montenegro	Free Trade Agreement between the EFTA States and Montenegro (14 November 2011). https://www.efta.int/free-trade/free-trade-agreements/montenegro
EFTA-Morocco	Free Trade Agreement between the EFTA States and the Kingdom of Morocco (19 June 1997). https://www.efta.int/free-trade/free-trade-agreements/morocco
EFTA-North Macedonia	Free Trade Agreement between the EFTA States and the Republic of Macedonia (19 June 2000). https://www.efta.int/free-trade/free-trade-agreements/north-macedonia
EFTA-Palestine	Interim Agreement between the EFTA States and the PLO for the benefit of the Palestinian Authority (30 November 1998). https://www.efta.int/free-trade/free-trade-agreements/palestinian-authority
EFTA-Peru	Free Trade Agreement between the Republic of Peru and the EFTA States (24 June 2010). https://www.efta.int/free-trade/free-trade-agreements/peru
EFTA-Philippines	Free Trade Agreement between the EFTA States and the Philippines (28 April 2016). https://www.efta.int/free-trade/Free-Trade-Agreement/Philippines
EFTA-SACU (South African Customs Union)	Free Trade Agreement between the EFTA States and the SACU States (26 June 2006). https://www.efta.int/free-trade/free-trade-agreements/sacu
EFTA-Serbia	Free Trade Agreement between the EFTA States and the Republic of Serbia (17 December 2009).

	https://www.efta.int/free-trade/Free-Trade-Agreement/Serbia
EFTA-Singapore	Free Trade Agreement between the EFTA States and Singapore (26 June 2002). https://www.efta.int/free-trade/free-trade-agreements/singapore
EFTA-Tunisia	Free Trade Agreement between the States of the European Free Trade Association and the Republic of Tunisia (17 December 2004). https://www.efta.int/free-trade/free-trade-agreements/tunisia
EFTA-Turkey	Free Trade Agreement between the EFTA States and the Republic of Turkey (10 December 1991). https://www.efta.int/free-trade/Free-Trade-Agreement/Turkey
EFTA-Ukraine	Free Trade Agreement between the EFTA States and Ukraine (24 June 2010). https://www.efta.int/free-trade/free-trade-agreements/ukraine
Norway-EU	Agreement between Norway and the European Economic Community (14 May 1973). https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:21973A0514(01)
Norway-Faroe Islands	Avtale mellom Norge og Færøyene / Danmark om frihandel med tilhørende protokoller (28 August 1992) https://lovdata.no/dokument/TRAKTAT/traktat/1992-08-28-1?q=f%C3%A6r%C3%B8yene+avtale
Norway- Greenland	Avtale mellom Norge og Danmark om handelen mellom Norge og Grønland (21 December 1984). https://www.toll.no/globalassets/00-upload/avtaler/frihandelsavtaler/gronland/gronland_avtale.pdf

Norway, Iceland and Liechtenstein-United Kingdom	Free trade agreement between Iceland, the Principality of Liechtenstein and the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland (8 July 2021). https://www.efta.int/free-trade/free-trade-agreements/uk

Other agreements and decisions relating to Norway's RTAs

Agreement in the form of exchange of letters	Agreement in the form of an exchange of letters between the European Economic Community and the Kingdom of Norway concerning certain arrangements in agriculture (2 May 1992). https://eur-lex.europa.eu/eli/agree_international/1993/239(5)/oj
Explanatory notes to EFTA-Korea	EFTA-Korea. Rules of Origin and Customs Procedure. Explanatory Notes to Annex I (3 May 2017). https://www.efta.int/sites/default/files/documents/legal-texts/free-trade-relations/republic-of-korea/annexes-roujd/EFTA-Korea_Explanatory_Notes_to_Annex_I_and_Appendices.pdf
Explanatory notes to EFTA-Mexico	Explanatory Notes to Annex I to the Free Trade Agreement between the EFTA States and Mexico (referred to in Article 37 of Annex I to the Agreement) (1 May 2009). https://www.efta.int/media/documents/legal-texts/free-trade-relations/mexico/Record%20of%20Understanding%20Annexes%20and%20Protocols/Annex%20I%20-%20Explanatory%20Notes.pdf
Joint Committee decision no. 2 of 2006 of the EFTA-Chile Joint Committee	Endorsement of explanatory notes regarding the interpretation, application and administration of Annex I (31 January 2006). https://www.efta.int/free-trade/free-trade-agreements/media/documents/legal-texts/free-trade-relations/chile/Joint%20Committee%20Decisions/Decisions%20not%20amending%20the%20Agreement/CL-2-

	06%20-%20Decision%20No%202-06%20-%20Explanatory%20Notes%20Annex%20I.pdf
Joint Committee Decision no. 1 of 2013 of the EFTA-Chile Joint Committee	Amendments to Appendices 1 and 2 to Annex I concerning the definition of the concept of "originating products" and arrangements for administrative co-operation, Introductory Notes to the list in Appendix 2, and list of working and processing to be carried out on nonoriginating materials in order that the product manufactured can obtain originating status (31 December 2013). https://www.efta.int/sites/default/files/images/EFTA-Chile%20JC%20Decision%20No%201%20of%202013%20-%20Amending%20Appendices%201%20and%202%20to%20Annex%20I.pdf
Joint Committee decision no. 1 of 2021 of the EFTA-Serbia Joint Committee	Amending Protocol B to the Free Trade Agreement between the EFTA States and the Republic of Serbia concerning the Definition of the Concept of "Originating Products" and Methods of Administrative Cooperation (28 May 2021). https://www.efta.int/sites/default/files/documents/legal-texts/free-trade-relations/serbia/jcd/EFTA-Serbia-JCD-1-of-2021.PDF

Other RTAs

CPTPP	The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) (8 March 2018). https://www.dfat.gov.au/sites/default/files/tpp-11-treaty-text.pdf
FTA between the UK and the EU	Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part (30 December 2020). https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:22021A0430(01)

USMCA	The United States-Mexico-Canada Agreement (USMCA) (30 November 2018). https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between

Other international treaties and agreements

GATT 1994	*General Agreement on Tariffs and Trade 1994* (Marrakesh, 15 April 1994). https://www.wto.org/english/docs_e/legal_e/06-gatt_e.htm
OECD Model Tax Convention on Income and on Capital	*Model Tax Convention on Income and on Capital: Condensed Version 2017* (Paris, 21 November 2017). https://read.oecd-ilibrary.org/taxation/model-tax-convention-on-income-and-on-capital-condensed-version-2017_mtc_cond-2017-en#page1
Revised Kyoto Convention	*International Convention on the Simplification and Harmonization of Customs Procedures* (as amended) (Brussels, 17 April 2008). https://www.wcoomd.org/Topics/Facilitation/Instrument%20and%20Tools/Conventions/pf_revised_kyoto_conv/Kyoto_New
UNCLOS	*United Nations Convention on the Law of the Sea* (Montego Bay, 10 December 1982). https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf
VCLT	*Vienna Convention on the Law of Treaties* (Vienna, 23 May 1969). https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf
WCO HS Convention	*The International Convention on the Harmonized Commodity Description and Coding System (HS Convention)* (Brussels, 14 June 1983).

	https://www.wcoomd.org/-/media/wco/public/global/pdf/topics/nomenclature/instruments-and-tools/hs-convention/hs-convention_en.pdf?la=en
WTO Agreement on Agriculture	*The WTO Agreement on Agriculture* (Marrakesh, 15 December 1993). https://www.wto.org/english/docs_e/legal_e/14-ag_01_e.htm
WTO Agreement on Rules of origin	*The WTO Agreement on Rules of Origin* (Marrakesh, 15 December 1993). https://www.wto.org/english/docs_e/legal_e/22-roo_e.htm
WTO Trade Facilitation Agreement	*The WTO Trade Facilitation Agreement* (Bali, 7 December 2013) https://www.wto.org/english/docs_e/legal_e/tfa-nov14_e.htm

Norwegian legislation

Acts

1967	Lov 10. februar 1967 om behandlingsmåten i forvaltningssaker (forvaltningsloven)
1992	Lov 27. November 1992 nr. 109 om gjennomføring i norsk rett av hoveddelen i avtale om Det europeiske økonomiske samarbeidsområde (EØS) m.v. (EØS-loven)
1996	Lov 29. November 1996 nr. 72 om petroleumsvirksomhet (petroleumsloven).
1999	Lov 26 mars 1999 nr. 15 (deltakerloven)
2005	Lov 17. juni 2005 nr. 70 om akvakultur (akvakulturloven)
2019	Lov 21. juni 2019 nr. 32 (statistikkloven)

2022	Lov 11. mars 2022 nr. 8 om tollavgift (tollavgiftsloven)
2022	Lov 11. mars 2022 nr. 9 om inn- og utførsel av varer (vareførselsloven)

Regulations

2005	Forskrift 22. desember 2005 nr. 1723 om administrative nedsettelser av tollavgiftssatser for landbruksvarer
2007	Forskrift 1. juni 2007 nr. 580 om nedsettelse av tollavgiftssatser for landbruksvarer som gjeninnføres etter bearbeiding i utlandet (UB-forskriften)
2012	Forskrift 20. desember 2012 nr. 1424 (RÅK-forskriften)
2022	Forskrift 27. oktober 2022 nr. 1901 om vareførsel (vareførselsforskriften)
2022	Forskrift 27. oktober 2022 nr. 1938 om tollavgift (tollavgiftsforskriften)
2022	Forskrift 21. desember 2022 nr. 2429 om klassifisering av varer (tolltariffen)

Preparatory works

Prop. 132 S (2009-2010)	*Samtykke til ratifikasjon av en frihandelsavtale mellom EFTA-statene og Samarbeidsrådet for de arabiske statene i Gulfen (GCC) og en avtale om handel med landbruksvarer mellom Kongeriket Norge og Samarbeidsrådet for de arabiske statene i Gulfen (GCC), begge av 22. juni 2009.* https://www.regjeringen.no/contentassets/8eded15ef69e4aabbfa549da250d3a9f/no/pdfs/prp200920100132000dddpdfs.pdf

Prop. 111 S (2016-2017) *Samtykke til ratifikasjon av en frihandelsavtale mellom EFTA-statene og Filippinene av 28. april 2016*. https://www.regjeringen.no/contentassets/d8f7000f00924a07956208513c8195c8/no/pdfs/prp201620170111000dddpdfs.pdf

Prop. 93 S (2018-2019) *Samtykke til ratifikasjon av frihandelsavtale mellom EFTA-statene og Ecuador av 25. juni 2018*. https://www.regjeringen.no/contentassets/c1b5629c72a046fdada35213a4318ddf/no/pdfs/prp201820190093000dddpdfs.pdf

NOU 2019:21 *Framtidens fiskerikontroll*. https://www.regjeringen.no/contentassets/0199619f9aea4e2db646f27d5045bd26/no/pdfs/nou201920190021000dddpdfs.pdf

Prop. 200 S (2020-2021) *Endringer i statsbudsjettet 2021 under Landbruks- og matdepartementet (Jordbruksoppgjøret 2021 m.m.)*. https://www.regjeringen.no/contentassets/1449d20a1346450cb388eb30c7d2b3c0/no/pdfs/prp202020210200000dddpdfs.pdf

Prop. 210 S (2020-2021) *Samtykke til inngåelse av frihandelsavtale mellom Island, Liechtenstein, Norge og Storbritannia*. https://www.regjeringen.no/contentassets/3022d0715d85448a9cccb1de4049fa9e/no/pdfs/prp202020210210000dddpdfs.pdf

Prop. 237 L (2020-2021) *Lov om inn- og utførsel av varer (vareførselsloven) og lov om tollavgift (tollavgiftsloven).* *https://www.regjeringen.no/contentassets/0cbbdd257c2e48f4a88710908b6c35dc/no/pdfs/prp202020210237000dddpdfs.pdf*

Norwegian case law

RG-2005-1555

Appendix 1 – List of abbreviations

CDA	Customs Duty Act
CDR	Customs Duty Regulations
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
CTH	Change in tariff heading
CTSH	Change in tariff subheading
EFTA	European Free Trade Association
EU	European Union
FTA	Free Trade Agreement
GATT	General Agreement on Tariffs and Trade
GCC	Gulf Cooperation Council
GDP	Gross Domestic Product
HS	Harmonized System
MFN	Most Favoured Nation
MGA	Movement of Goods Act
MGR	Movement of Goods Regulations
NAFTA	North America Free Trade Agreement
NOK	Norwegian Krone
OECD	Organisation for Economic Co-operation and Development
PAP	Processed Agricultural Product
PEM*	Regional Convention on pan-Euro-Mediterranean preferential rules of origin
PSR	Product-specific rule
PTA	Preferential Tariff Arrangement
RoO	Rules of origin
RPEM	Revised Regional Convention on pan-Euro-Mediterranean preferential rules of origin
RTA	Regional Trade Agreement
SACU	South African Customs Union
UK	United Kingdom
USD	United States Dollar
WCO	World Customs Organization
WTO	World Trade Organization

* In the thesis, the term "PEM" refers to both RPEM and the PEM Convention, see part 1.4.

Appendix 2 – Tables

Table 1 – Overview of Norway's RTAs per 1 January 2023

RTA	Signed	Entry into force[1]	PEM	RPEM
EEA Agreement	2.5.1992	1.1.1994	X	X
EFTA Convention	4.1.1960 and 21.6.2001 (revised Convention)	3.5.1960 and 1.6.2002 (revised Convention)	X	X
EFTA-Albania	17.12.2009	1.11.2010	X	X
EFTA-Bosnia and Herzegovina	24.6.2013	1.1.2015	X	*Awaiting notifications*
EFTA-Canada	26.1.2008	1.7.2009		
EFTA-Central American States[2]	24.6.2013	19.8.2014		
EFTA-Chile	26.6.2003	1.12.2004		
EFTA-Colombia	25.11.2008	1.7.2011		
EFTA-Ecuador	25.6.2018	1.11.2020		
EFTA-Egypt	27.1.2007	1.8.2007	X	
EFTA-Georgia	27.6.2016	1.9.2017	X	
EFTA-GCC (Gulf Cooperation Council)[3]	22.6.2009	1.7.2014		
EFTA-Hong Kong, China	21.6.2011	1.10.2012		
EFTA-Indonesia	16.12.2018	1.11.2021		
EFTA-Israel	17.9.1992	1.1.1993	X	
EFTA-Jordan	21.6.2001	1.9.2002	X	
EFTA-Korea, Republic of	15.12.2005	1.9.2006		
EFTA-Lebanon	24.6.2004	1.1.2007	X	
EFTA-Mexico	27.11.2000	1.7.2001		
EFTA-Montenegro	14.11.2011	1.9.2012	X	X
EFTA-Morocco	19.6.1997	1.12.1999	X	
EFTA-North Macedonia	19.6.2000	1.5.2002	X	X
EFTA-Palestine	30.11.1998	1.7.1999	X	
EFTA-Peru	24.6.2010	1.7.2011		
EFTA-Philippines	28.4.2016	1.6.2018		

EFTA-SACU (South African Customs Union)[4]	26.6.2006	1.5.2008		
EFTA-Serbia	17.12.2009	1.10.2010	X	X
EFTA-Singapore	26.6.2002	1.1.2003		
EFTA-Tunisia	17.12.2004	1.6.2005	X	
EFTA-Turkey	25.6.2018 (modernised)	1.10.2021	X	*Awaiting signature and notifications*
EFTA-Ukraine	24.6.2010	1.6.2012	X	
Norway-EU	14.5.1973	1.7.1973	X	X
Norway-Faroe Islands	28.8.1992	1.7.1993	X	*Awaiting notifications*
Norway-Greenland[5]	21.12.1984	1.5.1985	X	X
Norway, Iceland and Liechtenstein-United Kingdom	8.7.2021	1.12.2021		
Total: 35			Total PEM: 20	Total RPEM: 8

Sources: WTO RTA database, toll.no, and lovdata.no in the case of Norway-Greenland.

[1] The dates refer to when the RTAs entered into force according to the notification to the WTO.

[2] The Central American States consist of Costa Rica and Panama.

[3] The GCC States consist of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates (UAE).

[4] SACU consists of Botswana, Namibia, Lesotho, Eswatini and South Africa.

[5] Greenland is not a contracting Party to the PEM Convention, see part 2.4.2.

Table 2 – Exports from Norway in 2021 – selected HS codes

HS code	Description	Value of exports (NOK)
03	Fish etc.	115 155 957 837
15.04	Fats and oils and their fractions, of fish or marine mammals, whether or not refined, but not chemically modified.	1 762 190 794
16.03-16.05	Extracts and juices of meat, fish or crustaceans, molluscs or other aquatic invertebrates (16.03); Prepared or preserved fish; caviar and caviar substitutes prepared from fish eggs (16.04); Crustaceans, molluscs and other aquatic invertebrates, prepared or preserved (16.05)	644 209 336
2301.20	Flours, meals and pellets, of fish or of crustaceans, molluscs or other aquatic invertebrates	1 560 886 182
27	Mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes	926 423 785 262
28	Inorganic chemicals (etc.)	6 618 711 649
2804.69	Silicon (other than containing by weight not less than 99,99 % of silicon)	4 573 104 627
29	Organic chemicals	12 765 818 347
2924.29	Cyclic amides (including cyclic carbamates) and their derivatives; salts thereof: Other (than subheadings 2924.21-2924.25)	11 464 719 095
31	Fertilisers	297 269 935
71.10	Platinum	5 847 225 356
7110.21	Palladium: Unwrought or in powder form	4 392 247 924
72-83 (Section XV)	Base metals and articles of base metal (including aluminium)	91 009 455 948
72.02	Ferro-alloys	7 060 264 277
7202.30	Ferro-silico-manganese	3 207 521 756
75.02	Nickel and articles thereof	14 190 598 314
7502.10	Unwrought nickel: Nickel, not alloyed	14 190 598 314
76	Aluminium and articles thereof	45 556 013 580
76.01	Unwrought aluminium	35 412 183 084
76.06	Aluminium plates, sheets and strip, thicker than 0.2 mm	5 425 180 746
79.01	Unwrought zinc	4 637 169 301
7901.11	Zinc, not alloyed: Containing by weight 99.99 % or more of zinc	3 943 080 186
84 and 85 (Section XVI)	Machinery and mechanical appliances; electrical equipment; parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles	63 967 580 307

85.44	Insulated electric conductors	5 026 563 809
84.11	Turbo-jets, turbo-propellers and other gas turbines	4 115 760 076
89	Ships, boats and floating structures	17 938 253 192
1-97	All exports	1 388 889 229 146

Source: SSB Statistikkbanken Table 11009. Descriptions based on the Norwegian Customs Tariffs of 2021.

Table 3 – Norway's trade in goods in 2001 and 2021 with RTA partners and in total (PEM countries in blue)

	Countries	2001 (value in million NOK)	2021 (value in million NOK)	Change in per-centage
Imports	All countries	296111	852071	188 %
	EU[1]	194630	459572	136 %
	Albania	3	54	1700 %
	Bosnia-Hercego-vina	7	324	4529 %
	Canada	8466	23889	182 %
	Chile	534	2056	285 %
	Colombia	396	1761	345 %
	Costa Rica and Panama	663	927	40 %
	Ecuador	39	252	546 %
	Egypt	98	299	205 %
	Philippines	298	563	89 %
	Faroe Islands	297	346	16 %
	Georgia	0	44	N/A
	Greenland	113	264	134 %
	GCC	204	1661	714 %
	Hong Kong	974	1307	34 %
	Indonesia	805	2068	157 %
	Iceland	1001	1816	81 %
	Israel	560	1178	110 %
	Jordan	0	67	N/A
	Korea	4135	8775	112 %
	Lebanon	14	45	221 %
	Liechtenstein	66	104	58 %
	Montenegro	-	7	N/A
	Morocco	270	1358	403 %
	Mexico	379	6329	1570 %
	North Macedonia	6	116	1833 %
	Palestine (2013-)	-	7	N/A
	Peru	329	2577	683 %
	SACU	1235	3251	163 %
	Serbia (2007-)	-	488	N/A
	Singapore	1837	4162	127 %
	Switzerland	3770	8343	121 %
	Tunisia	107	473	342 %

	Turkey	1039	11596	1016 %
	Ukraine	268	662	147 %
	United Kingdom	23312	39456	69 %
	Simple average PEM			691 %
	Simple average non-PEM			341 %
Exports	All countries	532262	1388889	161 %
	EU[1]	402932	827993	105 %
	Albania	39	35	-10 %
	Bosnia-Hercego-vina	20	32	60 %
	Canada	21762	8404	-61 %
	Chile	273	1157	324 %
	Colombia	104	268	158 %
	Costa Rica and Panama	929	422	-55 %
	Ecuador	53	82	55 %
	Egypt	238	2218	832 %
	Philippines	278	618	122 %
	Faroe Islands	890	1092	23 %
	GCC	1150	5254	357 %
	Georgia	5	83	1560 %
	Greenland	410	46	-89 %
	Hong Kong	1600	2301	44 %
	Iceland	1307	6310	383 %
	Indonesia	225	1733	670 %
	Israel	627	2076	231 %
	Jordan	31	82	165 %
	Korea	3282	21708	561 %
	Lebanon	102	43	-58 %
	Liechtenstein	16	5	-69 %
	Montenegro	-	11	N/A
	Morocco	206	456	121 %
	Mexico	985	1711	74 %
	North Macedonia	10	9	-10 %
	Palestine (2013-)	1	0	-100 %
	Peru	27	171	533 %
	SACU	383	807	111 %

	Serbia (2007-)	.	488	N/A
	Singapore	2680	3644	36 %
	Switzerland	1941	3625	87 %
	Tunisia	42	59	40 %
	Turkey	1886	14168	651 %
	Ukraine	980	2742	180 %
	United Kingdom	104032	284942	174 %
	Simple average PEM			216 %
	Simple average non-PEM			207 %

Source: SSB Statistikkbanken Table 08804. Author's calculation of percentages.

[1] The United Kingdom formally left the EU on 31 January 2020, while the number of EU members increased from 15 in 2001 to 27 in 2021.

Table 4 – Norway's trade in goods in 2001 and 2021 with countries that Norway is negotiating an RTA (as of 1 January 2023)

	Countries	2001 (value in million NOK)	2021 (value in million NOK)	Change in percentage
Imports	All countries	296111	852071	188 %
	Argentina	329	278	-16 %
	Brazil	2288	13463	488 %
	China	8930	112688	1162 %
	Kosovo	-	8	N/A
	India	871	6473	643 %
	Malaysia	1180	3540	200 %
	Moldova	2	68	3300 %
	Paraguay	4	5	25 %
	Thailand	947	7041	644 %
	Uruguay	149	359	141 %
	Vietnam	399	8270	1973 %
	Simple average			778 %
Exports	All countries	532262	1388889	161 %
	Argentina	76	510	571 %
	Brazil	1564	6186	296 %
	China	5951	80141	1247 %
	Kosovo	-	17	N/A
	India	434	11876	2636 %
	Malaysia	507	1509	198 %
	Moldova	12	32	167 %
	Paraguay	9	6	-33 %
	Thailand	732	3696	405 %
	Uruguay	46	143	211 %
	Vietnam	54	2427	4394 %
	Simple average			917 %

Source: SSB Statistikkbanken Table 08804. Author's calculation of percentages.

Table 5 – Imports to Norway in 2021 – selected HS codes

HS code	Description	Value of imports (NOK)
03	Fish and crustaceans, molluscs and other aquatic invertebrates	4 064 981 745
03.01	Live fish	27 744 784
03.02	Fish, fresh or chilled, excluding fish fillets and other fish meat of heading 03.04	1 909 342 198
15.04	Fats and oils and their fractions, of fish or marine mammals, whether or not refined, but not chemically modified.	3 949 326 335
2301.20	Flours, meals and pellets, of fish or of crustaceans, molluscs or other aquatic invertebrates	2 825 492 067
27	Mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes	47 064 902 927
2804.69	Silicon (other than containing by weight not less than 99,99 % of silicon)	583 376 049
2924.29	Cyclic amides (including cyclic carbamates) and their derivatives; salts thereof: Other (than subheadings 29.24.21-29.24.25)	525 095 066
31	Fertilisers	1 132 196 755
71.10	Platinum, unwrought or in semi-manufactured forms, or in powder form	358 853 722
72.02	Ferro-alloys	264 668 759
75.02	Unwrought nickel	21 906 540
76.01	Unwrought aluminium	6 176 514 172
76.06	Aluminium plates, sheets and strip, of a thickness exceeding 0.2 mm	645 884 374
79.01	Unwrought zinc	6 265 868
84 and 85	Machinery	185 661 758 020
89	Ships, boats and floating structures	18 143 575 385
All HS		852 070 983 157

Source: SSB Statistikkbanken Table 11009. Description based on the Norwegian Customs Tariff of 2021.

Table 6 – Top 20 imported agricultural products[1] in HS Chapters 1-24 to Norway in 2021 by value

Rank	HS code	Description[2]	MFN[3] duty rate	Value of imports (NOK)
1	23.09.9040	Preparations of a kind used in animal feeding (…): Fish feed; fish soluble: For other fish	3.57 NOK/kg	5 976 689 740
2	15.14.1110	Rape, colza or mustard oil and fractions thereof (…) For feed purpose	4.88 NOK/kg	4 184 132 606
3	24.03.9991	(…): Chewing tobacco and snuff	0	3 017 150 420
4	22.04.2109	Wine (…) in containers of less than 2 L	0	2 960 900 116
5	11.09.0010	Wheat gluten, whether or not dried: For feed purpose	8.51 NOK/kg	2 792 812 421
6	12.01.9090	Soya beans, whether or not broken: Other than seed: other than for feed purpose	0	2 613 232 853
7	24.02.2000	(…) Cigarettes containing tobacco	0	2 072 714 698
8	22.02.1000	(…) Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured	0	1 920 430 010
9	21.06.9098	Food preparations not mentioned elsewhere in 21.06, not for feed purpose	PAP[4]	1 435 254 597
10	15.14.1990	Rape, colza or mustard oil and fractions (…): Low erucic acid rape or colza oil and its fractions: Other than crude oil: Other than for feed purpose	14.4 %	1 378 977 649
11	15.14.1190	Rape, colza or mustard oil and fractions (…): Low erucic acid rape or colza oil and its fractions: Crude oil: Other than for feed purpose	0	1 149 102 879
12	09.01.1100	(…) Coffee not roasted or decaffeinated	0	1 114 774 294
13	19.05.9091	Bread and bread products (…) other than pizza, sweet biscuits etc. and toast etc.	PAP	1 048 055 073
14	22.04.2209	Wine (…) in containers of more than 2 L	0	1 024 249 450
15	23.02.5010	Bran, sharps and other residues (…) of leguminous plants, for feed purpose	2,59 NOK/kg	986 929 015
16	18.06.9010	Chocolate and other food preparations containing cocoa: Other than in blocks, slabs or bars: Including sugar confectionary containing cocoa	PAP	887 930 926

17	21.03.9099	Sauces and preparations etc. not mentioned elsewhere in 21.03	PAP	882 169 394
18	17.04.9099	Sugar confectionery (including white chocolate), not containing cocoa, not mentioned elsewhere in 17.04	PAP	879 605 515
19	10.01.9900	Wheat and meslin not mentioned elsewhere in 10.01 (incl. for fish feed)	2.13/kg	843531444
20	22.04.1009	Sparkling wine of more than 2.5 % alcohol	0	726 899 512
		Total		18 963 857 309
	HS 1-24[1]	All agricultural products		83 692 866 783
	HS 1-97	All imports		852 070 983 157

Source: SSB Statistikkbanken Table 11009. Descriptions and MFN rates based on the Norwegian Customs Tariff 2021.

[1] Excluding seafood products in HS 03, 15.04, 15.16.1012, 15.16.1020, 16.03-16.05, 23.01.

[2] Simplified by the author.

[3] See part 1.2.

[4] PAP = Processed agricultural product (see part 2.5.3). The maximum duty rates for PAP products in Table 6 range between 6,71 NOK/kg and 31.71 NOK/kg.

Appendix 3 – Overview of Annexes/Appendices in non-PEM FTAs

Non-PEM FTAs	Articles on rules of origin	Introductory notes to PSRs	Product-specific rules (PSRs)
EFTA-Canada	Annex C	N/A[1]	Appendix I
EFTA-Central American States	Annex I	N/A	Appendix I
EFTA-Chile	Annex I	Appendix 1	Appendix 2
EFTA-Colombia	Annex V	Appendix 1	Appendix 2
EFTA-Ecuador	Annex I	N/A	Appendix 1
EFTA-GCC	Annex IV	Appendix 1	Appendix 2
EFTA-Hong Kong, China	Annex IV	N/A	Appendix 1
EFTA-Indonesia	Annex I	N/A	Appendix 1
EFTA-Korea, Republic of	Annex I	Appendix 1	Appendix 2
EFTA-Mexico	Annex I	Appendix 1	Appendix 2
EFTA-Peru	Annex V	Appendix 1	Appendix 2
EFTA-Philippines	Annex I	N/A	Appendix 1
EFTA-SACU (South African Customs Union)	Annex V	Appendix 1	Appendix 2
EFTA-Singapore	Annex I	Appendix 1	Appendix 2
Norway, Iceland and Liechtenstein-United Kingdom	Annex I	Appendix 1	Appendix 2

[1] N/A = the introductory notes are contained in the same appendix as the PSRs.