

**Expert Group meeting for Least Developed Countries  
on the preparation for the  
World Trade Organization Ministerial Conference,  
Bali, Indonesia**

*11 November 2013*

**Rules of Origin under DFQF on the road to Bali**

by

**INAMA Stefano**  
UNCTAD

The views expressed are those of the author and do not necessarily reflect the views of UNCTAD

# Rules of Origin under DFQF on the road to Bali

Stefano Inama

# We start with ...

## The Hong Kong Declaration

- *Ensure that preferential Rules of Origin applicable to imports from LDCs are transparent and simple, and contribute to facilitating market access.*
- This wording does not provide for the establishment of any working group or modalities to make sure this commitment is implemented

# Putting flesh on the bones : *The LDC proposals on rules of origin (2006-2013)*

- To activate implementation of the DFQF commitment LDCs tabled a first proposal for discussion in 2006
- The proposal was discussed in 2007 and 2008 with some preferences giving Countries and with the NAMA Chair.
- A revised proposal was submitted in 2011
- A revised proposal was submitted in 2013
- A draft declaration was submitted in July 2013
- A preliminary text of a declaration has been circulated among WTO Members

# The progress made in the NAMA text, 2008

- The Draft NAMA Modalities 2008 :
- Ensure that preferential rules of origin applicable to imports from LDCs will be transparent, simple and contribute to facilitating market access in respect of non-agricultural products. *In this connection, we urge Members to use the model provided in document TN/MA/W/74, as appropriate, in the design of the Rules of Origin for their autonomous preference programs.*

# New Developments since 2011

- The EU has implemented its reform heralding a new era on Rules of Origin for LDCs
- The New EU RoO create a differentiation among LDCs and other Developing Countries
- New thresholds : up to 70 % of non-originating materials - previously 40 %, normal DC 50%)
- Clothing rules: *one single* stage transformation
- Better cumulation
- Registered exporters declarations in 2017

# The LDCs Proposal 2011-2013

- A revised LDCs Proposal was elaborated in 2011 with Bangladesh being the LDCs WTO Coordinator and recently with Nepal a new Proposal(2013)
- The Proposal developed a complete new narrative to the 2006 Proposal but the legal part was just refined from the 2006 Proposal
- The narrative focused on changes in RoO since 2006, the EU reform and Canada Rules of Origin.
- It provided a thorough explanation of the underlying rationale of the Proposal

# Latest developments July-October 2013

- A text based proposal with binding rules was considered too ambitious
- Thus LDCs are aiming at a Declaration containing guidelines to Preference giving Countries when they are drafting Rules of Origin under DFQF.
- Issue of Non -binding guidelines
- Issue of wording used in the Declaration



# What is the value of a Decision?

- A Decision is not binding, nor justiciable
- However in the vacuum left by the Agreement on Rules of Origin on preferential Rules of Origin it still has a meaning
- Kyoto Conventions also are not binding,,nor justiciable, yet have provided guidelines for decades
- Much depend on the language of the declaration

# The strong points of the Draft Decision

- The recognition that LDCs have «*limited production capacity*»
- *The recognition that the level of value addition threshold should be as low as possible.....*
- *It is noted that the LDCs seek consideration of allowing foreign inputs to a maximum of 75% of value.*
- The mentioning of the exclusion/inclusion of costs related to freight and insurance
- The recognition that certification of non manipulation should be avoided and self certification may be recognized

# The weak points of the Draft Decision

- Overall the language could be improved and better technically defined.
- RoO are a highly technical subject, the more the language is not precise, the less the value of the Declaration
- Examples: There is no definition of value added, nor there is a reference to a calculation methodology.
- The LDCs proposals made strong reference to a value of materials calculation rather than value added
- Most preference Giving countries do not use value added criteria anymore, except one.
- The costs of freight and insurance is referred to methods using a foreign inputs, not to methods using value added

# Suggestions for improvements

- Bear in mind that the value of the Decision may go beyond the DFQF
- The wording can be improved to impart better clarity
- There should be a reference to value of materials calculations over value added and possibly the example of calculation method proposed by the LDCs
- The allowances of cost of freight and insurance should refer to all *ad valorem* percentage method of calculation
- *Foreign inputs* may be replaced by non-originating materials and *value added* by *value of materials*
- Shorten the wording on cumulation as it does not add anything to what is already provided by preference giving countries.