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**Expert Group Meeting for Least Developed Countries:**  
Way forward on the WTO Ministerial Decision on preferential rules of origin  
9 April 2014

**EX ORE TUO TE IUDICO:**

**THE VALUE OF THE WTO MINISTERIAL DECISION ON PREFERENTIAL  
RULES OF ORIGIN FOR LEAST DEVELOPED COUNTRIES (LDCs)**

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**- DRAFT PAPER -**

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- DRAFT PAPER -

**EX ORE TUO TE IUDICO<sup>1</sup> :**  
**THE VALUE OF THE WTO MINISTERIAL DECISION ON PREFERENTIAL**  
**RULES OF ORIGIN FOR LEAST DEVELOPED COUNTRIES (LDCs)<sup>2</sup>**

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**ABSTRACT**

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*Preferential rules of origin are a no man's land in the multilateral trading system that has so far failed to regulate this important customs law, differently from customs valuation and customs classification. This is one reason why the ink of the Decision on preferential rules of origin for LDCs (The Decision) was not even dry when practitioners and commentators started to wonder about the value of the Decision.*

*Most observers looked at the "big picture" and rapidly relegated the value of the Decision to the realm of the "best endeavours scenario". This is certainly true since the legal nature of the Decision and its wording do not provide clear guidelines or obligations. However, the real value of the Decision has to be contrasted with the existing background of multilateral disciplines and practices on preferential rules of origin. This paper argues that when measured against such background, the true value of the Decision may be reviewed in a new light, especially taking into account the possible work that could be carried out in the context of the Decision. In fact, the Decision contains a number of novelties and guidelines with respect to the annexes dealing with rules of origin contained in Kyoto Conventions of 1974 and 2000, and the Common Declaration with regard to preferential rules of origin of the WTO Agreement on Rules of Origin (ARO). Much of the Decision's value will thus depend on the will and the ability of WTO members, especially of preference-giving countries and LDCs, to build up a meaningful way forward that could benefit the multilateral trading system as a whole in the field of preferential rules of origin.*

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**1. From Hong Kong to Bali: the LDCs Proposals**

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Since launching the Duty free Quota (DFQF) initiative in the 1996 Singapore Ministerial Declaration<sup>3</sup> rules of origin for LDCs started to be object of debate. The LDC Ministerial Declarations of Dhaka and Livingstone contained language referred to origin<sup>4</sup> without however expressly mentioning what kind of rules of origin were needed by the LDCs. The Decision reached at the Hong Kong WTO Ministerial in 2005, as contained in Annex F of the Ministerial Declaration, states "*inter alia*" that WTO Members agreed to ensure that "*preferential rules of origin applicable to*

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<sup>1</sup> New Testament, Luke, 19, 22 In Latin this sentence means « *From your mouth I judge you* ».

<sup>2</sup> Stefano Inama, Chief, UNCTAD. The views expressed in this paper are personal and do not necessarily reflect the views of UNCTAD or any other UN institutions.

<sup>3</sup> Available at [http://www.wto.org/english/thewto\\_e/minist\\_e/min96\\_e/wtodec\\_e.html](http://www.wto.org/english/thewto_e/minist_e/min96_e/wtodec_e.html).

<sup>4</sup> For instance paragraph 12 of the Livingstone Declaration provides as follows: *Incorporation of provisions in the modalities on realistic, flexible and simplified rules of origin, certification and inspection requirements and technical and safety standards.*

*imports from LDCs are transparent and simple, and contribute to facilitating market access".*

Although useful, this language did not define what "*transparent and simple*" rules of origin might be, nor provided for or established a working group to define such concepts. In the immediate discussions following the post-Hong Kong framework, preference giving countries entrenched themselves into the fact that since preferences are unilateral, then rules of origin under the DFQF cannot be discussed or negotiated. This was an exact replica of the failure in the early '70s<sup>5</sup> to agree on a common set of rules of origin, when GSP rules of origin were discussed in the UNCTAD working-groups on rules of origin.

Such a stance, even if legally justifiable, is simply anachronistic after more than 40 years and successive rounds of negotiations that have substantially lowered the preferential margins. The fragmentation of production and the global value chains approach have defeated any argument for a vertical integration of industrial sectors, underpinning the need for strict rules of origin.

In order to initiate implementation of the above commitment on rules of origin, contained in the Honk Kong Decision of 2005, the LDCs group started as early as 2006 to work on a draft that could serve as a concrete proposal to make progress on the issue of rules of origin for DFQF.

This initiative was aimed at setting the stage for a sensible debate on rules of origin, between LDCs and preference-giving countries, on the basis of a legal text rather than on declarations of principles and statements. Zambia, in its capacity of WTO LDC coordinator, submitted the first full-fledged proposal to operationalize the wording<sup>6</sup> of the Hong Kong Decision.

The responses from preference giving countries to such proposal were not satisfactory, nor the level of comprehension of the LDC proposal. A series of meetings were held in 2007 with Delegations of preference-giving countries, including the US, EU and Japan. However, these meetings were not particularly productive, since the focus was on defending the "*status quo*" rather than being aimed at discussing possible ways to multilaterally achieve objectives on rules of origin for LDCs that are "*transparent and simple, and contribute to facilitating market access*".

There were also misguided perceptions that either LDCs did not know what they actually wanted, nor how to proceed<sup>7</sup>. This was despite the fact that the LDC Group

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<sup>5</sup> However, in the OECD Ad Hoc Group of the Trade Committee on Preferences, held in Paris in 1970, the preference-giving countries expressed the view that, as preferences were being granted unilaterally and non-contractually, the general principle had to be that donor countries were free to decide on the rules of origin which they thought were appropriate after hearing the views of the beneficiary countries.

<sup>6</sup> See WTO document (TN/CTD/W/29 and TN/MA/W/74 and TN/AG/GEN/18 of 6 June 2006) to the NAMA and Agriculture Committees and to the Committee on Trade and Development.

<sup>7</sup> In his introduction to the Draft NAMA Modalities (JOB(07/126) on 17 July 2007 the NAMA Chair, in paragraph 38, stated that "*On the issue of improving rules of origin for duty-free, quota-free market access, neither the proponents nor the Members more broadly have a precise idea on how to proceed*".

presented the detailed proposal on rules of origin above-mentioned, to the NAMA Committee in 2006. There was also an assumption<sup>8</sup> that the main objective of the LDCs submission was aimed at achieving harmonization of preferential rules of origin. Although desirable, the LDC Group never argued harmonizing rules of origin.

The statement of the NAMA chair of 2007, on the adoption of “*best practices*”, was in line with the position of preference-giving countries, who all believed that their particular preferential rules of origin constituted a “*best practice*”, rather than discussing or even acknowledging the mere existence of an articulated proposal of LDCs, circulating among WTO members.

It was only after protracted negotiations, that the summary of the NAMA chair contained the following statement, which finally reflected the LDC proposal: “*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*”<sup>9</sup>.

From 2008 until the Bali Decision of December 2013, the LDC proposal on rules of origin was mainly discussed in the context of a LDC package. Such package took the final form of a WTO document<sup>10</sup> presented by Nepal as Coordinator of the WTO LDC Group containing the following elements:

1. a decision on the implementation of DFQF Decision (Annex 1);
2. adoption of simple and flexible preferential rules of origin criteria, to further enhance exports from LDCs and in line with the LDC proposal (Annex 2);
3. a submission in the area of cotton, covering both trade and development assistance aspects (Annex 3);
4. a submission on the operationalization of LDCs' Services Waiver (Annex 4).

Between 2008 and 2013, the LDC proposal on rules of origin underwent other two revisions, the first one with Bangladesh as coordinator of the LDC WTO group<sup>11</sup>, and the second one with Nepal who coordinated the LDCs WTO group until the Bali WTO Ministerial<sup>9</sup>.

These two texts of the LDCs’ rules of origin proposal were to update their content in the light of:

- a) the relevant changes on rules of origin introduced by some Preference-Giving countries,
- b) to provide more narrative background and explanations to the technical choices made by the LDCs in drafting the legal text of the LDCs proposal;

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<sup>8</sup> The Chair in Draft NAMA Modalities (JOB/07/126) on 17 July 2007 paragraph 38 stated that “*I would note that harmonizing preferential rules of origin may not be the optimal solution and that there are best practices among Members that could be readily adopted to enhance the effectiveness of these programs*”.

<sup>9</sup> See WTO document TN/MA/W/103/Rev.3, 6 December 2008.

<sup>10</sup> See WTO document TNC/C/63 of 31 May 2013.

<sup>11</sup> See WTO documents TN/CTD/W/30/Rev.2; TN/MA/W/74/Rev.2; TN/AG/GEN/20/Rev.2.

- c) to further refine certain technical issues, such as recognition that in certain sectors, like textiles and clothing, product-specific rules of origin may be necessary.

Several briefings were carried out by UNCTAD with the respective LDCs WTO coordinators and LDCs delegations to discuss technical details and various options.

A major boost of confidence to the value of the LDCs proposal and recognition of the extreme need to reform the LDCs' regime for rules of origin (which were almost unchanged for the last 40 years), came from changes in the Canadian rules of origin in 2003, and the EU reform on the rules of origin which entered into force in 2011<sup>12</sup>.

The EU reform introduced drastic changes to the EU rules of origin, in favor of both the LDCs and developing countries, as follows:

- introduced a differentiation in favor of the LDCs that are benefitting of more lenient rules of origin than Developing countries in certain sectors;
- allowed a single transformation process in textiles and clothing<sup>13</sup> - a request that the LDCs have been advocating for more than a decade;
- raised the threshold of the use of non-originating materials, in many sectors from 40% to 70 % for LDCs;
- eased the cumulation rules<sup>14</sup>.

The newly created trading opportunities and the value of the reform were immediately seized by those LDCs that were better equipped and represent the most concrete example of how a change on rules of origin can trigger market responses in terms of access to value chains, productivity and job creation in LDCs.

The figures below provide evidence that the Canadian and EU reforms rules of origin, undertaken respectively in 2003 and in 2011 have significantly impacted both utilization rates and import values, the former reacting faster.

In the case of Canada, import values exponentially increased and the utilization rate immediately reached 100%. This rise has been particularly strong for garments of HS chapter 61, knitted and crocheted, where import values rose from approximately 5 to 368 million US\$, between 2002 and 2011.

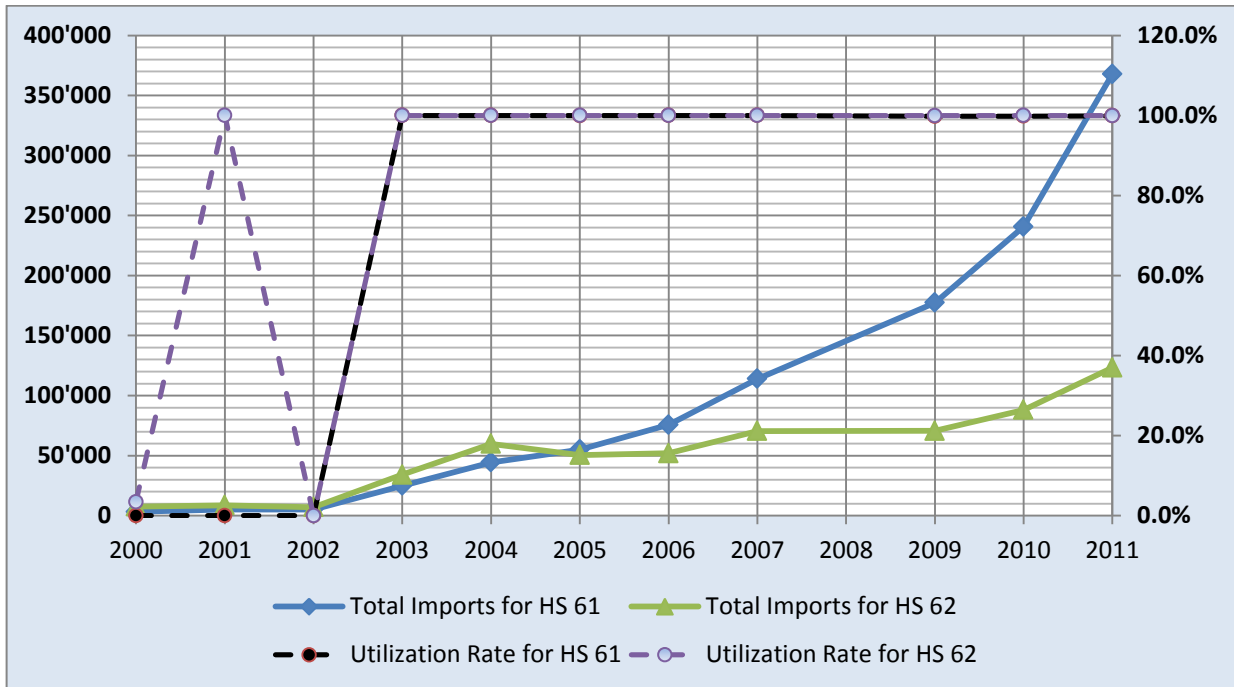
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<sup>12</sup> See Commission regulation No 1063/2010 of 18 November 2010 amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code See Inama, *Per aspera ad Astra, the reform of the EU GSP rules of origin*, Journal of World Trade, 2011.

<sup>13</sup> The EU reform was preceded by the Canada reform of their DFQF in favor of LDC and rules of origin in 2003 expanding product coverage to textiles and clothing and cumulation among all beneficiaries of the Canadian GSP schemes.

<sup>14</sup> The value of this provision was later severely diminished by the graduation of many GSP beneficiaries from cumulation in the case of the new EU GSP entered into force in 2014.

**Figure 1**  
**Cambodia: Articles of Apparel and Clothing Accessories, Canada imports and utilization rates**  
**- Import Values (000 US\$) -**



Despite a shorter time frame, similar observations can be made with regard to the recent EU trade reform<sup>15</sup>. Once again, both utilization rates and import values for garments (HS chapters 61-62), have been positively affected.

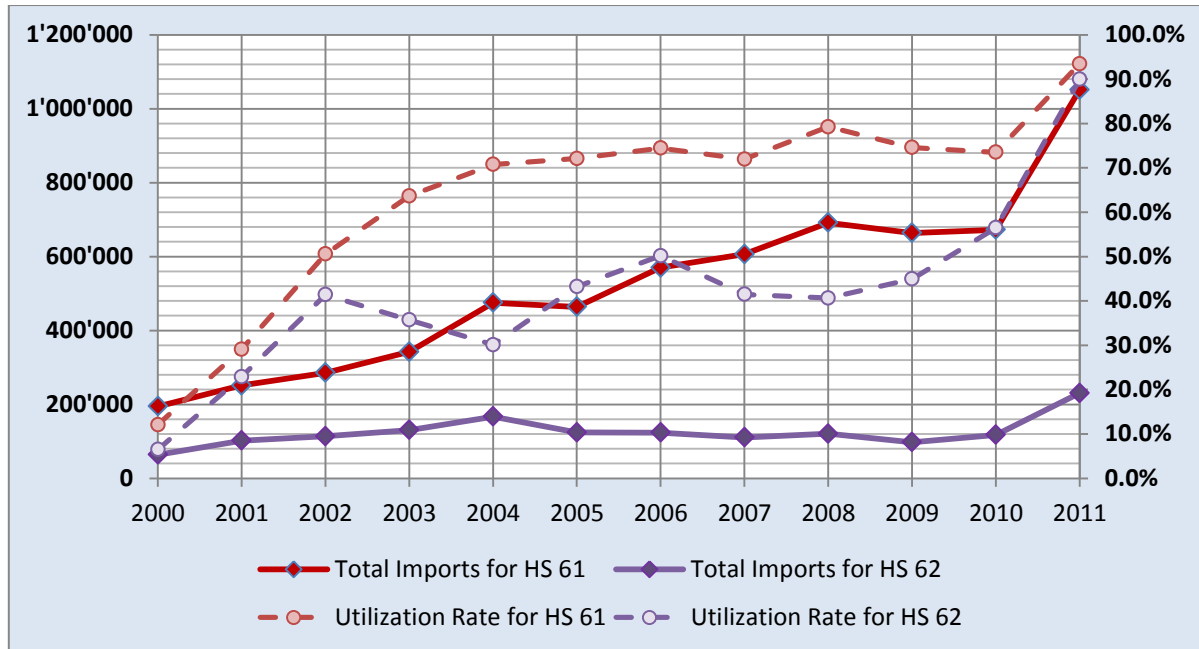
The impact is particularly striking in HS chapter 62, not knitted and crocheted garments, where the utilization rate raised from 56% to 90%, between the end of 2010 and the end of 2011 representing the first year of entry into force of the EU reform.

Simultaneously, Cambodian exports to the EU market, for same HS chapter, raised from 117 to 230 million US\$ (+96%).

The increase in garments utilization, of chapter 61, knitted or crocheted, has been of approximately 20%, but the increase in the value of exports was significant: 379 million US\$ (+56%).

<sup>15</sup> Efforts are currently underway to obtain most recent figures.

**Figure 2**  
**Cambodia: Articles of Apparel and Clothing Accessories EU imports and utilization rates**  
**- Import Values (000 US\$) -**



The reform on rules of origin introduced in 2010 by the EU, has produced an impact beyond the traditional garment sector. In fact, the EU reform substantially liberalized the rules of origin not only for clothing but also in a variety of other sectors, allowing up to 70% of non-originating materials for bicycles and easing ASEAN cumulation.

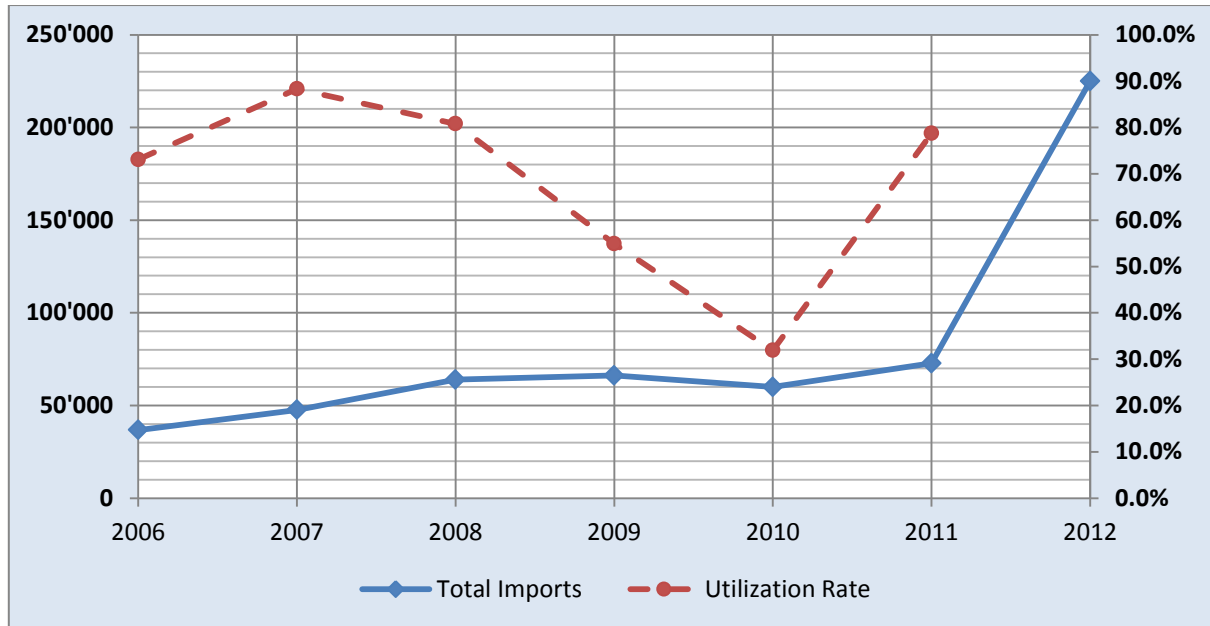
Figure 3 further shows that the utilization rate of bicycles exported to EU has increased in 2011 to approximately 80 % from a 33% rate of previous year.

Moreover, between 2010 and 2011, import values significantly increased from 60 to 73 million US\$ (+21%) and reached approximately 221 million US\$ in 2012.

As a result, the value of EU imports from Cambodia, receiving preferential treatment, has been multiplied by a factor of three, raising from 19 to 57 million US\$, with an 80% utilization rate.



**Figure 3**  
**Cambodia: Bicycles, EU imports and utilization rate**  
 - Import Values (000 US\$) -



In the case of bicycles, it has to be mentioned that following changes introduced in the EU GSP schemes of 2014, Singapore and Malaysia inputs (mainly gears), cannot be used by Cambodia for ASEAN cumulation purposes. Similar changes in Canadian GSP rules of origin raised concerns and caused significant difficulties for the majority of bicycle industries based in Cambodia.

The Royal Government of Cambodia has requested derogation to the EU Commission to continue to consider the ASEAN inputs from Malaysia and Singapore to be eligible for cumulation for a transitional period. Such a request is currently under examination.

Once again, this is a clear demonstration of how changes in rules of origin have real effects on trade and business in LDCs.

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## **2. Technical Key-Elements of the LDCs Proposal**

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The LDC proposal, as last presented in the LDC package submitted by Nepal as WTO LDC coordinator<sup>16</sup>, is based on best practices on rules of origin used by main preference giving countries in recent years. It especially takes into account the progress made by Canada and the EU in revising<sup>17</sup> their rules of origin. Thus the LDC proposal is fully aligned with the best practices adopted by preference giving

<sup>16</sup> See WTO document TNC/C/63 of 31May 2013.

<sup>17</sup> Albeit there are ongoing revisions of the Canadian and EU GSP schemes in 2014 that have reduced some of the benefits, especially on cumulation.

countries and respects the expressed desire contained in Annex F of the Ministerial Declaration to: *"ensure that preferential rules of origin applicable to imports from LDCs are transparent and simple, and contribute to facilitating market access"*.

The core of the proposal is based on three main concepts:

1. value-of-materials criteria formulated according the most recent best practices taking into account the cost of transportation which is a crucial factor for LDCs and especially LDC that are landlocked or islands countries;
2. a level of threshold for the calculation of value-of-materials, that is matching the global value chains realities and the industrial capacities of LDCs;
3. product-specific rules of origin (PSROs) in the area of clothing since this is one of most exported product from LDCs and for technical reasons; other product-specific rules of origin of export interests to LDCs rules may be envisaged.

## 2.1 THE METHOD OF CALCULATION

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The LDCs favor the adoption of an across the board percentage criterion based on a value of materials calculation.

Lessons learned in preferential rules of origin and in the NAFTA net cost calculations amply demonstrated that the formulation of a percentage criterion calculation as value added or *"domestic content"* are complex. Such a calculation method entails detailed rules to define what are allowable and non-allowable costs in the numerator.

These elements may be familiar to accountants only. As prices, costs and quantities change in the calculation of the productions costs of a finished good, recalculation will be necessary to ensure compliance. While some of these tasks may form part of the normal accounting procedures required for commercial purposes, some may not. Therefore, in such cases, additional professional expertise may be required.

The calculation of the numerator in a value-added calculation is complex as it entails the following aspects:

- (i) a distinction of costs which could be computed as local value-added;
- (ii) itemization of such cost to the single unit-of-production; as a consequence, it often requires accounting, and discretion may be used in assessing unit costs; additionally, currency fluctuations in beneficiary countries may affect the value of the calculation;
- (iii) low labor costs in LDCs may result in low value-added and instead of being a factor of competitiveness it might turn out to be a penalizing factor for producers based in LDCs.

The value of materials calculation proposed to avoid such complex calculations are progressively being adopted worldwide (expressed in some administrations as a RVC, e.g. regional value content and in others as maximum allowance of non-originating materials). The LDCs see no reason why an adopted best-practice should not be applied to the implementation of DFQF rules of origin.

## 2.2 THE ISSUE OF TRANSPORT COST IN THE CALCULATION OF THE “AD VALOREM” “PERCENTAGE CRITERION

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LDCs, especially LDC landlocked and islands countries are facing enormous disadvantages on transportation costs whenever using imported inputs in manufacturing of finished products. Even the most generous percentages may not be complied with, if the cost of transportation is not adequately addressed in the percentage calculation. Moreover the inclusion of transportation costs is an exogenous variable not related to the actual amount of local processing operations carried out in LDCs.

Thus, the special situation of the LDCs should be recognized by provisions drawing from most recent best practices adopted in some preferential trading arrangements and taking into account differences among preference-giving countries in the adoption of the Customs Valuation Agreement.

The LDC proposal contains provisions for the inclusion of in-land transport for the domestic content calculation and the exclusion of freight and insurance for calculations of the maximum allowance of foreign materials when a maximum content of non-originating is used.

## 2.3 THE LEVEL OF THRESHOLDS IN THE VALUE ADDED CALCULATION

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The level of thresholds in percentage calculation should be in line with global value chains permitting, on one hand, LDCs producers to source their inputs from the most competitive supplies respecting global value chains, and, on the other hand, ensuring that LDC producers are carrying out sufficient working or processing operations that are bringing economic benefits to their country.

Higher and unrealistic thresholds are causing low-utilization of trade preferences and do not generate the economic activities that trade preferences are supposed to start – up. The recent reform of the EU rules of origin raised the amount of allowance of the use of non-originating from 40% to an actual 70% in many sectors and represents a lesson learned which should be followed by other preference-giving countries. On the basis of the above mentioned best-practices and lessons learned, the LDCs are suggesting a level of the percentage of 15% for the value of originating materials formula and 25% for the value of non-originating materials formula<sup>18</sup>.

## 2.4 PRODUCT SPECIFIC RULES FOR SPECIFIC SECTORS

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The LDC group is aware that across the board percentage criterion may not be, from a technical point of view, the most suitable methodology for specific sectors of goods. Thus, product-specific rules of origin may be adopted for textiles and clothing that are categories of products of high export interest for LDCs countries.

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<sup>18</sup> Formula using the method based on value of non-originating materials:  $LVC = (EW - VNM) / EW * 100$ , where LVC is the LDC value content, expressed as a percentage; EW is the ex-works price; VNM is the value of non-originating materials that are acquired and used by the producer in the production of the good (VNM does not include the value of a material that is self-produced).

The LDC proposal has drawn from the recent EU GSP proposed rules for chapters 61 and 62 allowing the use of imported fabrics to make originating garments in LDCs with some additional flexibility for certain products.

The introduction of product-specific rules of origin in the LDC proposal has been made to bring clarity and transparency in one sector of particular export interest. One should keep in mind the desire to limit, to the full extent possible, the proliferation of tariff line by tariff line rules of origin.

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### **3. Designing a Possible Way Forward for the Decision on Preferential Rules of Origin for LDCs**

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Before entering into the discussion of the value of the Decision and the way forward, it is necessary to examine the Decision's context and background to better understand its potential and open the discussion on a way forward.

The multilateral trading system has so far provided limited discipline to rules of origin, especially preferential rules of origin. This is in contrast with other similar basic customs laws such as customs valuation and customs classification, where multilateral instruments provide effective disciplines since decades, namely the WTO Customs valuation agreement and the International Convention on Harmonized Commodity Description and Coding System for customs classification.

The WTO Agreement on Rules of Origin (ARO) was originally conceived to partially fill-in the existing gap. However its scope and coverage is limited to non-preferential rules of origin and even in such area, after 18 years, it has not been possible to conclude the Harmonization Work Program on non-preferential rules of origin.

The existing multilateral instruments to discipline preferential rules of origin are limited to the two annexes of Kyoto Conventions of 1974 and 2000 and the Common Declaration with regard on preferential rules of origin contained in the ARO. In spite of being mere guidelines contained in a Convention's Annexes, the content and recommendations contained in annexes to Kyoto Conventions have been the unique source of inspiration for the myriad of trade officials and negotiators who were facing the daunting task of drafting preferential rules of origin. This latter consideration applies in the context of unilateral or contractual rules of origin in FTAs.

Retrospectively, more detailed non-binding guidelines would have certainly assisted the multilateral trading system in drafting effective and predictable preferential rules of origin, especially in South-South trade agreements without necessarily tying negotiators' hands. Rules of origin are a very technical subject where it is possible to make substantial progress in drafting techniques, while leaving intact the policy space to negotiators and policy makers to determine their content.

The Common Declaration on rules of origin contained in ARO, generated less practical and concrete effects as compared to the Kyoto Conventions. This is probably

due to the fact that much of its content did not contain any technical novelty on drafting rules of origin with respect to previous Kyoto conventions and the existing preferential rules of origin of WTO members. Where the Declaration provided for, and largely anticipated, some provisions of the Trade Facilitation agreement, namely on paragraphs (d) to (g)<sup>19</sup> on binding advance ruling information, judicial review, publication and confidentiality, there is not much trace of follow-up debates in the records of the Committee on Rules of Origin (CRO) to make operational these paragraphs.

Bearing the above mentioned precedents in mind, it may be reasonably argued that much of the value of the Decision depends not from its binding or non-binding nature but rather on its novelty in providing guidance on the technical ways of drafting rules of origin and the way forward that WTO members may wish to provide to its content.

When the Decision is assessed within such a perspective, it then provides a number of avenues for a possible way forward. In fact, there are a number of issues and novelties in the wording of the Decision where the multilateral trading system may gain considerable clarity and transparency on drafting preferential rules of origin for the LDCs.

Looking at the Decision it may be observed that it considers in its paragraphs (namely 1.3 and 1.4 *ad valorem* percentage, 1.5 change of tariff classification and 1.6 specific working or manufacturing operations<sup>20</sup>), the three traditional methodologies on drafting rules of origin and adds to each one of those elements in comparison to the Kyoto Conventions and the Common Declaration on preferential rules of origin.

For instance, an issue where the international community may stand to gain is a clarification on the different methodologies that may be used to calculate the *ad valorem* percentage mentioned in the Decision.

*Ad valorem* percentages may be calculated by 1) adding local cost of materials, cost of labor and other incidentals incurred during the production of a finished good as a

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<sup>19</sup> See Paragraph (d) and following paragraphs of the Common Declaration: *(d) upon request of an exporter, importer or any person with a justifiable cause, assessments of the preferential origin they would accord to a good are issued as soon as possible but no later than 150 days after a request for such an assessment provided that all necessary elements have been submitted. Requests for such assessments shall be accepted before trade in the good concerned begins and may be accepted at any later point in time. Such assessments shall remain valid for three years provided that the facts and conditions, including the preferential rules of origin, under which they have been made, remain comparable. Provided that the parties concerned are informed in advance, such assessments will no longer be valid when a decision contrary to the assessment is made in a review as referred to in subparagraph (f). Such assessments shall be made publicly available subject to the provisions of subparagraph (g); (e) when introducing changes to their preferential rules of origin or new preferential rules of origin, they shall not apply such changes retroactively as defined in, and without prejudice to, their laws or regulations; (f) any administrative action which they take in relation to the determination of preferential origin is reviewable promptly by judicial, arbitral or administrative tribunals or procedures, independent of the authority issuing the determination, which can effect the modification or reversal of the determination; (g) all information that is by nature confidential or that is provided on a confidential basis for the purpose of the application of preferential rules of origin is treated as strictly confidential by the authorities concerned, which shall not disclose it without the specific permission of the person or government providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings.*

<sup>20</sup> This is another important difference in relation to Kyoto convention 2000 where the methodology based on working and processing operations was no longer included as possible recommended practice in drafting rules of origin.

percentage of the ex-works price<sup>21</sup>, 2) calculating the *ad valorem* percentage by subtracting the value of non-originating materials from the ex-work price of the finished 3) by determining a threshold on the use of originating or non-originating materials as a percentage of ex works price of a finished product. There are a number of lessons learned in using these different calculation methodologies that could be shared since they have been used for decades by different administrations.

A novelty in the Decision is represented by the mentioning of the costs of freight and insurance in relation with the *ad valorem* percentage calculation. This is an interesting concept where further reflection may be carried out keeping in mind the above-mentioned differences in the calculation of the *ad valorem* percentage and the practices of WTO Members under the Customs Valuation agreement.

Another interesting point in the Decision is the following: *“in the case of rules based on the change of tariff classification criterion, a substantial or sufficient transformation should generally allow the use of non-originating inputs as long as an article of a different heading or sub-heading was created from those inputs in an LDC.”*

However, it is notorious that the HS is not being designed for rules of origin purposes and that an across the board criterion of change of tariff classification may not reflect genuine substantial transformation in LDCs in all cases. It may be beneficial to further discuss and, if possible, identify the product sectors where other methodologies may be more appropriate to draft clear and simple rules of origin reflecting substantial or sufficient transformation.

Paragraph 1.6 contains a number of useful statements where it refers to the *“limited production capacity of LDCs”*. This statement could be related to the need of rules of origin for LDCs to facilitate their insertion into global value chains rather than induce them into import substitution of competitive available inputs for building their limited manufacturing capacity. In addition the recognition that the use of rules of origin based on a working or processing operation *“for chemical products has made such rules more transparent and easy to comply with”* provide a glaring example of what could be achieved by the international community if there is a sharing of the lessons learned.

Paragraph 1.7 on cumulation recognizes the different practices on cumulation and discusses the different options that may be envisaged. In this area it may be useful to discuss the effective use made by LDCs of cumulation under different arrangements to identify where cumulation may be best effective and where it has not generated the expected benefits.

Paragraph 1.8 Section (b) of the Decision contains two important statements related to documentary requirements. Too often the issue of documentary evidence required to

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<sup>21</sup> It has to be noted that there are different incoterms and practices used by WTO members like ex-factory price ,ex-factory costs, FOB price, adjusted value etc. etc.

benefit from tariff preferences is overlooked when dealing with rules of origin. This is an area where multilateral guidelines and lessons learned are almost non-existent<sup>22</sup>.

Two ground- breaking statements are contained in this part of the Decision:

- 1) *“non-manipulation or any other prescribed form for a certification of origin for products shipped from LDCs across other Members may be avoided”* - this apparent minor statement contains a significant trade facilitation proposal taking into account that such non-manipulation form is still a requirement under many non-reciprocal preferential arrangements for LDCs; this is especially important when considering that a large part of LDCs are either landlocked or island countries and transshipment through other WTO members is either a geographical or a commercial reality;
- 2) *“with regard to certification of rules of origin, whenever possible, self-certification may be recognized”* - costs related to the certification requirements, mainly deriving from issuance of a certificate of origin by the certifying authorities in LDCs may be significant for the private sector. Yet, certifying authorities may still need to monitor and manage self-certification by exporters. This is an area where there are significant gains to be had from sharing experiences and establishing links and synergies with the related provision of the Trade Facilitation Agreement.

Finally, part C paragraph 1.10 of the Decision, contains an important and decisive novelty as it provides the Committee of Rules of Origin with a new mandate to *“annually review the developments in preferential rules of origin applicable to imports from LDCs, in accordance with these guidelines, and report to the General Council.”*

It would have been good if this mandate to the CRO, included the wording used in paragraph 1.9 of the Decision referring to the scope of the Notifications to be made to the Transparency Mechanism for Preferential Trade Arrangements (PTAs). In fact this paragraph provides that: *“the objectives of notification are to enhance transparency, make the rules better understood, and promote an exchange of experiences as well as mainstreaming of best practices”*.

Such wording, repeated in the context of the new mandate of the CRO, could have contributed to create a comfort zone to WTO members in addressing the way forward of the Decision in the forthcoming meetings of the CRO.

It is hoped that the CRO meetings adopt such a pragmatic approach in the review of the developments of preferential rules of origin applicable to LDCs. It has to be borne in mind that while leaving intact the *“policy space”* of preference giving countries, the multilateral trading system would gain from *“develop or build on their individual rules of origin arrangements applicable to imports from LDCs in accordance with the following guidelines”*. This could be first lesson learned from the Decision.

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<sup>22</sup> Some initial work was carried in the WCO Technical committee on rules of origin CTCRO.