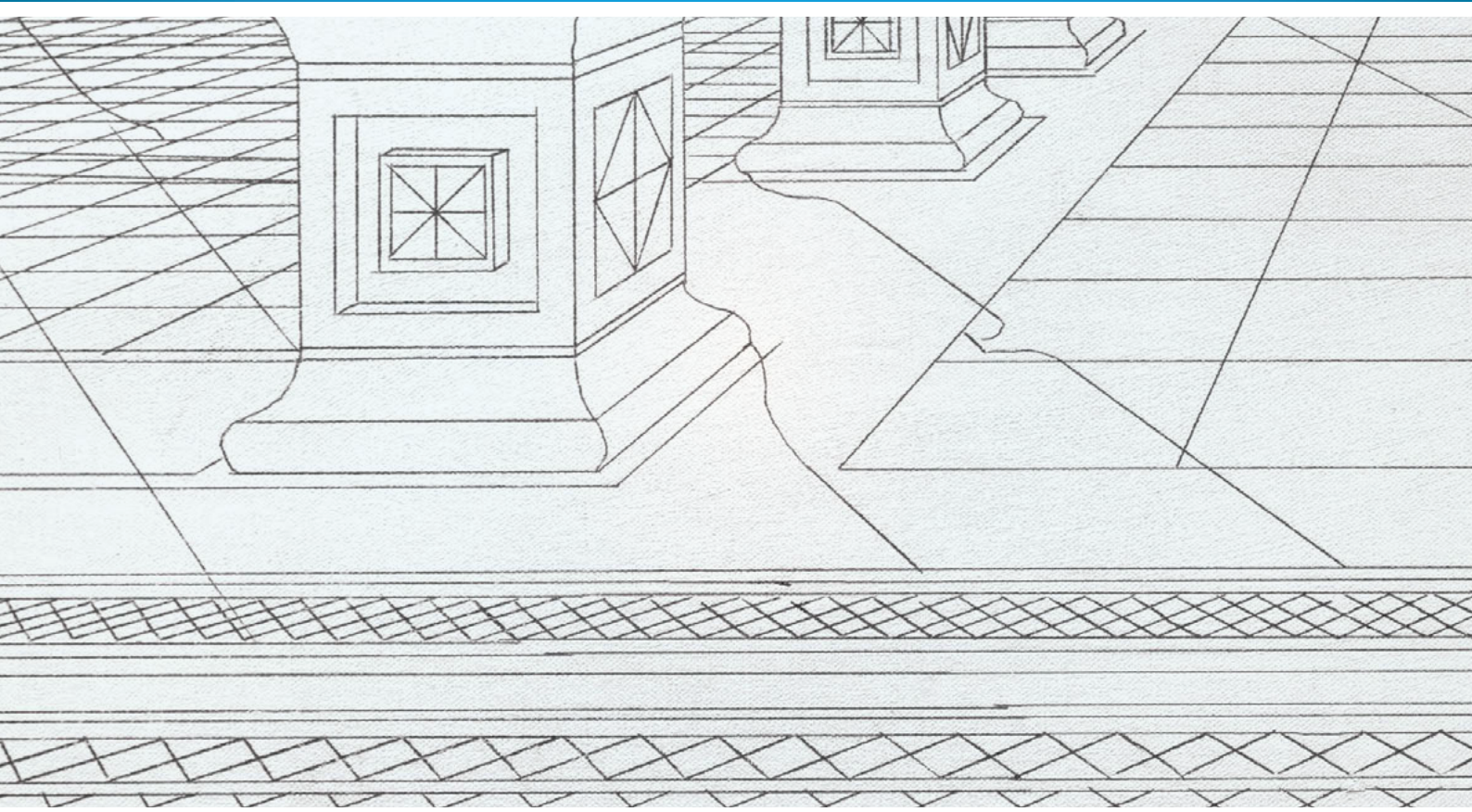
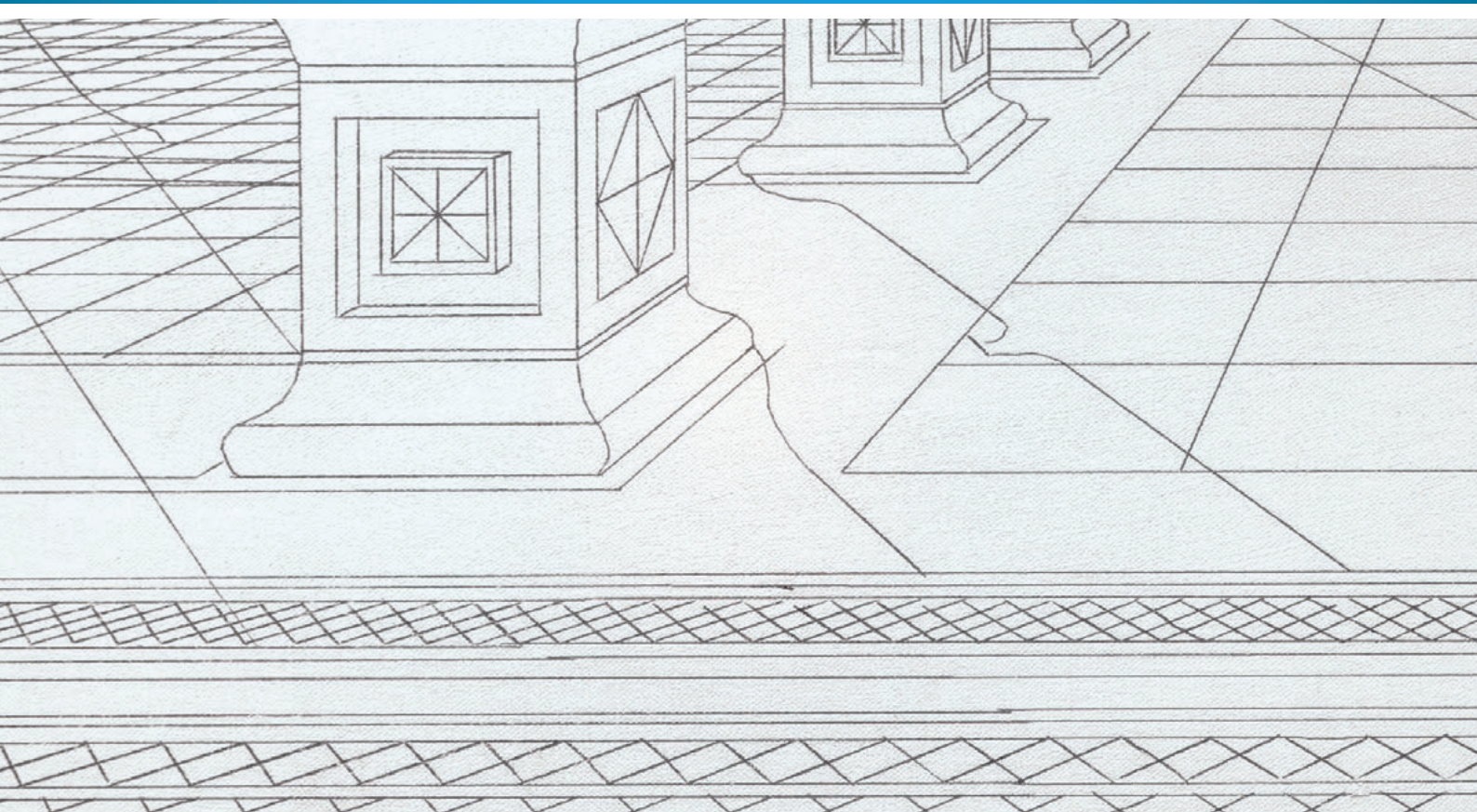


COMPENDIUM OF TECHNICAL NOTES II PREPARED FOR THE LDC WTO GROUP ON PREFERENTIAL RULES OF ORIGIN



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**United
Nations**

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List of abbreviations

AfCFTA	African Continental Free Trade Area
AGOA	African Growth and Opportunity Act
ASEAN	Association of Southeast Asian Nations
CIF	Cost Insurance Freight
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
CRO	Committee on Rules of Origin
CTH	Change of Tariff Heading
CTC	Change of Tariff Classification
CTSH	Change of Tariff Sub-Heading
DFQF	Duty-Free, Quota Free
EBA	Everything But Arms
EPA	Economic Partnership Agreement
EUI	European University Institute
FOB	Free on Board
FTA	Free Trade Agreement
GATT	General Agreement on Tariffs and Trade
GPT	General Preferential Tariff
GSP	Generalized Scheme of Preferences
HS	Harmonized System
LDC	Least Developed Country
LDCT	Least Developed Country Tariff
LLDC	Landlocked Developing Country
MFN	Most Favoured Nation
PGC	Preference Giving Country
PM	Preference Margin
PSRO	Product-Specific Rules of Origin
PTA	Preferential Trade Agreement
RCEP	Regional Comprehensive Economic Partnership Agreement
ROO	Rules of Origin
SDG	Sustainable Development Goal
SIDS	Small Island Developing States
SME	Small and Medium Enterprise
TBL	Through Bill of Lading
UNCTAD	United Nations Centre on Trade and Development
UR	Utilization Rate
VNOM	Value of Non-Originating Materials
VOM	Value of Originating Materials
WTO	World Trade Organization

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A. INTRODUCTION

A.1 Background

The mandate of United Nations Conference on Trade and Development (UNCTAD) Maafikiano contained in paragraph 38 provides as follows:¹ “(s) Assist the least developed countries in making use of existing initiatives and programs such as duty-free and quota-free schemes, preferential Rules of Origin for those countries and the least developed countries services waiver, as well as targeted assistance under initiatives such as the Enhanced Integrated Framework and Aid for Trade.”

To this end, UNCTAD has developed a research and capacity-building program on Rules of Origin for LDCs last 2006. The program entered a new phase in 2014 thanks to contribution from the Dutch Government and the partnership with the European University Institute (EUI). In its original formulation, the program’s objective was to enhance the skills and knowledge of officials from LDCs — both Geneva and Capital-based — on specific operationally critical areas of international economic law and policy.

At present the program is (1) carrying out applied research, (2) developing tools, and (3) capacity building activities to assist the WTO LDC Group and Delegates in better participating and leading the work of the WTO Committee on Rules of Origin (CRO).

- In terms of research, the program aims at identifying best practices and lessons learned on rules of origin and related administrative procedures leading to an increase in the utilization of trade preferences and understanding of the extent of differences in rules of origin across preference-giving countries;
- In terms of tools, the program has developed web-based tools available at <https://gsp.unctad.org/home> to enhance transparency in monitoring the use of trade preferences and applying trade facilitation concepts to rules of origin certification procedures; and
- In terms of capacity building activities, the program includes specific training sessions tailored to support the WTO LDC Group ahead of CRO meetings for LDC delegates, executive roundtables and advocacy actions to discuss with policymakers, firms, and civil society groundbreaking issues and innovative tools on rules of origin and their administration.

UNCTAD, with the EUI, has achieved important milestones. First, the program assisted the WTO LDC Group in negotiating and securing the WTO Bali Ministerial Decision on preferential Rules of Origin for LDCs. Second, the program focusing on the implementation of the Nairobi Decision has further enlarged the scope of the discussions in with the WTO LDC group leading the intellectual and concrete debate on the future of rules of origin in WTO and the multilateral trading system. In fact the program generated a renewed enthusiasm and a more substantial commitment of the CRO delegates and private sector to participate in WTO and regional trade initiatives to utilize trade preferences fully. Most recently, the program’s support has been instrumental in the outcome text² of the WTO Ministerial MC12, containing a new and strengthened mandate for the CRO.

A.2 About the Compendium II

This compendium contains notes, technical materials, and other supporting tools UNCTAD has prepared on request³ by the World Trade Organization Least Developed Countries (WTO LDC) Group.⁴ Specifically,

¹ See https://unctad.org/system/files/official-document/td519add2_en.pdf for further details.

² See (G/RO/95) for further details.

³ See Note Verbale of the Permanent Mission of Benin to UNCTAD Secretary-General of 1 June 2016 as LDC Coordinator; Letter of the H.E. Minister of Commerce of Cambodia as WTO LDC coordinator to UNCTAD Secretary-General of 9 September 2016 and Note Verbale from the mission of the United Republic of Tanzania as Core Group leader on the issue of Rules of Origin to UNCTAD Secretary-General of 13 December 2019.

⁴ For a complete review of the process, see Getting to Better Rules of Origin for LDCs: Using Utilisation Rates – From the World Trade Organization Ministerial Decisions in 2005, 2013, 2015 and Beyond, UNCTAD 2021.

this compendium is the second publication of the submissions of WTO LDC Group which contains the following:

1. **Ad Valorem Criterion** submitted last 30 October 2020.
2. **Rules of Origin Based on a Change of Tariff Classification** submitted last 13 October 2021.
3. **Examination of Existing Origin-Related Documentary Requirements: Paragraph 1.8 of the Bali Decision and Paragraph 3.1 of the Nairobi Decision** submitted last 22 March 2022.
4. **Preliminary Examination of Proposed New United Kingdom Rules of Origin under the United Kingdom Developing Countries Trading Scheme (DCTS)** submitted last 30 September 2022.

Each of these draft submission focuses the debate on specific methodologies in defining what constitutes a substantial transformation and related documentary evidence. These notes include comments, technical elements for consideration, best practices and suggestions to enable a constructive engagement in improving rules of origin for LDCs.

B. AD VALOREM CRITERION

B.1 Introduction

As pointed out in a previous submission by the LDC Group,⁵ almost five years have passed since adopting the Nairobi Decision on preferential rules of origin for LDCs. Some progress has been recorded in achieving better transparency through adopting a notification template and calculating utilization rates of the Duty-Free and Quota-Free (DFQF) schemes. However, there has not been parallel progress in implementing the substantive part of the Nairobi Decision, more precisely, the paragraphs concerning the substantial transformation and certification requirements. As we are now almost past the 5th anniversary of the Nairobi Decision, and we are heading for a new WTO ministerial possibly in 2021, it is paramount to make concrete progress. It is time to focus the debate in the Committee on Rules of Origin (CRO) on how to effectively implement the substantive aspects of the Nairobi Decision on preferential rules of origin for LDCs.

As previously stated, the LDC Group intends to progressively bring to the attention of the CRO the substantive aspects of rules of origin of preference granting countries that need reform by contrasting them with the relevant paragraphs of the Nairobi Decision and identifying best practices. The ultimate goal is to better utilization of DFQF schemes and the attainment of the sustainable development goals (SDGs), namely SDG 17 target 17.12:

“Ensuring that preferential rules of origin apply to imports from least developed countries are transparent and straightforward and contribute to facilitating market access.”

To focus the debate, the LDC Group will submit a series of technical notes on each of the methodologies to define substantial transformation, namely (a) ad valorem percentage criterion; (b) change of tariff classification;⁶ and (c) specific working or processing as well as cumulation and certification procedure.

This note examines the use of the ad valorem percentage by preference-giving countries without being exhaustive, contrasts existing rules with the relevant paragraphs of the Nairobi Decision, and lists some best practices and areas for improvement.

B.1.1 Substantial Transformation when Applying an ad valorem Percentage Criterion: Recalling Paragraph 1.1 of the Decision

On the ad valorem percentage criterion to determine substantial transformation, the Nairobi Decision provides that preference-granting Members shall:

“Adopt a method of calculation based on the value of non-originating materials. However, Preference-granting Members applying another method may continue to use it. It is recognized that the LDCs seek consideration of the use of the value of non-originating materials by such preference-granting Members when reviewing their preference programs.

Consider, as the preference-granting Members develop or build their rules of origin arrangements applicable to imports from LDCs, allowing the use of non-originating materials up to 75% of the final value of the product, or an equivalent threshold in case another calculation method is used, to the extent it is appropriate. The benefits of preferential treatment are limited to LDCs.

Consider the deduction of any costs associated with the transportation and insurance of inputs from other countries to LDCs (emphasis added).”

⁵ See G/RO/W/194 of 5 March 2020.

⁶ A presentation on the change of tariff classification (CTC) has already been made by the LDC Group (RD/RO/72). A submission has substantiated the presentation by the LDCs (See G/RO/W/184) that identified several examples where some preference-giving Countries have used the CTC in a non-consistent manner with the Nairobi Decision. Bilateral meetings have been held with the European Union and Japan to discuss how such inconsistencies could be resolved. The LDC Group will resume the meetings with these two Members as soon as possible and report the results to the CRO.

Accordingly, the issues to be considered are threefold:

- (a) Except for Australia, Taiwan Province of China, New Zealand, and the United States, all preference-granting Members are using a method of calculation based on the value of non-originating materials. A positive development would be the adoption by the United States and other members mentioned above of a method of calculation based on the value of non-originating materials. It has to be noted, in fact, that the United States, as well as the other preference-giving countries, consistently use a methodology based on the value of materials in all FTAs of recent generation;
- (b) With the notable exception of Canada, no other preference granting Member currently allows a percentage of non-originating materials of up to 75% of the final value of the product; and
- (c) None of the preference-granting Members allows the deduction of costs associated with transportation and insurance, and/or provisions need to be clarified on this vital issue.

In addition, there are horizontal issues that need to be considered to carry out a balanced analysis of the use of ad valorem percentage criterion by preference-granting Members, namely but not limited to:

- (1) extent of the cumulation granted under each preferential arrangement; and
- (2) the existing practices of a preference-granting country under other preferential agreements.

The quantitative (with what other countries is it possible to cumulate?) and qualitative (full or diagonal) extent of the cumulation that preference-granting countries allow under each scheme play a role in the restrictiveness or leniency of an ad valorem percentage. This holds true also for other drafting techniques such as CTC and specific working or processing. Still, it becomes particularly evident when using an ad valorem percentage criterion applied across the board, i.e., to all products. It has also been observed that modern rules of origin contained in FTAs show that the percentage criterion is mostly used in combination with a CTC and is seldom used as a standalone criterion. The maintenance of an unaltered standalone ad valorem percentage criterion from 1974 in the case of the United States onwards can hardly be considered a best practice, *especially* when there are strong indications and findings that such ad valorem percentage is not trade-creating (as the LDC Group has been indicating since 2014).⁷

Another important aspect is that some preference-granting Members have adopted more lenient rules of origin for the same products under FTAs that they have negotiated with other partners and/or they adopted existing best practices under other FTAs on how substantial transformation could be achieved by adopting less stringent requirements. This observation reveals that some preference-granting Members hesitate to engage in the necessary reforms to implement more flexible rules of origin for LDCs and adhere to the spirit of the Nairobi Decision.

This note addresses points (a) and point (c) above, namely the ad valorem percentage calculation methodology and the issue of insurance and freight of non-originating materials. Point (b), the level of percentages, will be the subject of a separate note, given the topic's relevance. Table 1 below summarizes the current practices of the different preference-granting Members.

⁷ See "Accounting Underutilization of Trade Preference Programmes: The United States Generalized System of Preferences" by Shushanik Hakobyan Middlebury College, August 2012, and the previous submission by the LDC Group, see "Challenges Faced by LDCs in Complying with Preferential Rules of Origin under Unilateral Preference Schemes" paper presented by Uganda on behalf of the LDC Group (document G/RO/W/148 dated 28 October 2014).

Table 1 Summary of the Use of Ad Valorem Percentage by Preference-Giving Countries

Country	Percentage Level	Numerator	Denominator	Use of VNOM	Deduction of insurance & freight	Gap from the Nairobi Decision
Australia	Value added by addition (50%)	Allowable factory cost	Ex-factory cost	No	N/A	25% + IFI
Canada	Max. VNOM 60% for LDCs (80% applying cumulation)	VNOM	Ex-factory price	Yes	No	IFI
Chile	Calculation by subtraction of non-originating materials (50%)	FOB price - VNOM	FOB price	Yes	N/A	25% + IFI
China	Min. value added by subtraction 40%	Price of goods minus the price of materials originating from the beneficiary country	FOB price	Yes	No	15% + IFI
European Union (EBA)	Max. VNOM 70%*	VNOM	Ex-works price	Yes	No/unclear	5% + IFI
Eurasian Economic Union	Max. VNOM 55% ⁸	Customs value**	Ex-works price? **	Yes	No	20% + IFI
India	Min. 30% value added by subtraction	FOB price - VNOM	FOB price	Yes	No	5% + IFI
Japan	Max. VNOM 40%*	VNOM	FOB price	Yes	Unclear	35% + IFI
New Zealand	Value added by addition 50%	Cost of materials + expenditures in other items of Factory or work cost in New Zealand or LDCs	Ex-factory cost	No	N/A	25% + IFI
Norway	Max. VNOM 70%	VNOM	Ex-works price	Yes	No	5% + IFI
South Korea	Max. VNOM 60%	VNOM	FOB price	Yes	No	15% + IFI
Switzerland	Max. VNOM 70%	VNOM	Ex-works price	Yes	No	5% + IFI
Taiwan Province of China	Max. VNOM 50%	FOB price - VNOM	FOB price	No	N/A	25% + IFI
Thailand	Calculation by subtraction of non-originating materials (50%)	FOB price - VNOM	FOB Price	Yes	N/A	25% + IFI
United States (GSP & AGOA)	Min. 35%	Cost of materials produced in the preference-receiving country plus the direct cost of the processing carried out there.	The appraised value of the article at the time of entry into the United States	No	No	10% + IFI and methodology of calculation
Thailand	Calculation by subtraction of non-originating materials (50%)	FOB price - VNOM	FOB Price	Yes	N/A	25% + IFI
United States (GSP & AGOA)	Min. 35%	Cost of materials produced in the preference-receiving country plus the direct cost of the processing carried out there.	The appraised value of the article at the time of entry into the United States	No	No	10% + IFI and methodology of calculation

Note: Most used percentages, **English translation of the legal text not available, VNOM: Value of Non-Originating Materials, IFI: Issue of Freight and Insurance; N/A: Not Applicable.

⁸ See Decision No. 60 of the Council of the Eurasian Economic Commission dated 14 June 2018.

B.1.2 Discussion on non-conforming Ad Valorem Percentages Rules of Origin and Practices by Preference Granting Countries

The LDCs wish to bring to the attention of preference-granting Members a series of issues that are not in conformity with the spirit and the letter of the Nairobi decision as follows:

Use of a Methodology for the Calculation of the Ad Valorem Percentage Criterion different from a Value of Materials Methodology

As illustrated previously by the WTO LDC Group and in recent literature,⁹ there are different methodologies for the calculation of the ad valorem percentage. The methods used by Australia; New Zealand; Taiwan Province of China; and the United States uses what is commonly defined as a value-added calculation by addition, as shown below:

- (a) Value-added calculation by addition

$$\frac{\text{Direct cost of processing + value of originating material}}{\text{Appraised value (ex-factory price)}} = \dots\%$$

Paragraph 1.1 of the Nairobi decision calls for the adoption of a methodology for the calculation of the ad valorem percentage based on the value of non-originating materials that could be expressed as follows:

- (b) Value of material calculation

- i. Value added by subtraction of non-originating materials:

$$\frac{\text{Ex Works value} - \text{VNOM}}{\text{Ex Works value}} = \dots\%$$

- ii. Maximum value of non-originating materials:

$$\frac{\text{VNOM}}{\text{Ex Works value}} = \dots\%$$

Where

VNOM: Value of non-originating materials; (Ex-Works is sometimes replaced by the FOB value).

It has been recognized in various instances¹⁰ that the methodology of calculation based on “value-added calculation by addition” is not a best practice. The large majority of FTAs at present uses a value of material methodology.

In fact, the definition of direct processing costs is complicated as there is a distinction in the direct processing costs of manufacturing a finished product that could be considered as value added as follows:

- (a) Items included in the direct costs of processing operations: like labor, dyes, mold, research, inspection; and
- (b) Items not included in the direct costs of processing operations: like profit, and general overhead expenses.

A simple search in the United States customs ruling website (<https://rulings.cbp.gov/home>) reveals that there are around 375 to 800 records of rulings about the definition of direct costs of processing. This is compelling evidence of the complexities involved in defining and interpreting processing costs. The disadvantages of a value-added calculation by addition could be summarized as follows:

- Itemization of costs to the single unit of production: this requires accounting, and some discretion remains in assessing the unit costs;
- Currency fluctuations may affect the results of the calculation;

⁹ See “Convergence on the Calculation Methodology for Drafting Rules of Origin in FTAs Using the ad valorem Criterion by Stefano Inama and Pramila Crivelli, *Global Trade and Customs Journal*, Volume 14, Issue 4 © 2019. See also “The methodologies of drafting the ad valorem percentage criterion” Existing practices in African RECs and way forward in AfCFTA Note drafted by the Division for Africa, Least Developed Countries and Special Programmes of the United Nations Conference on Trade and Development (UNCTAD) in preparation of the AfCFTA 7th Technical Working Group Meeting on Rules of Origin available at https://unctad.org/system/files/officialdocument/aldc2018_AfCFTA_TWGRo07_tn_advalorem_en.pdf.

¹⁰ Ibidem, footnote 5.

- Low labor costs in LDCs may result in low values added locally (turning this into a disadvantage instead of being a factor of competitiveness for LDC producers);
- The value added-content requirement may necessitate the submission of additional evidence of manufacturing costs (this may include product specifications, bills of materials, product cost sheets, payment records, overhead allocation schedules, raw material purchases, proof of factory labor, and support for manufacturing overhead);
- Production records must establish the value of the materials used in the originating article on a lot-by-lot, batch-by-batch, shipment-by-shipment basis; and
- Documentation and records supporting originating status must be verifiable by linkage to inventory and accounting records, including summary records such as monthly production reports and accounts payable records.

Adjustments to Value of Non-originating Materials-issue of Deduction of the Cost of Insurance and Freight

In a calculation methodology based on the value of the non-originating materials as numerator, as shown in b) value of material calculation above, the computation of the value of such non-originating materials has a bearing on the outcome of the percentage calculation. This holds especially true when one considers that the cost of insurance and freight of inputs for landlocked or island LDCs may be almost equivalent to a third of the value of the shipment, if not more. The cost of insurance and freight of non-originating materials are exogenous factors depending on geographical locations and have little to do with substantial transformation.

The deduction method suggested by LDCs is based on adjustments made to the value of non-originating materials allowing for the deduction of insurance and freight costs from the customs value of non-originating materials. The deduction of insurance cost and freights from the value of non-originating materials ensures a fairer calculation and may greatly facilitate compliance with the rules of origin for landlocked (16) and island LDCs (11).

Consider the following example:¹¹ A manufacturer based in Lilongwe (Malawi) manufacture steel frames using imported steel tubes. The applicable rules of origin is a 70% allowance of non-originating materials. The manufacturer purchased steel tubes from China to manufacture the steel frames for USD 10,000. After manufacturing the steel tubes into steel frames by cuttings, soldering, galvanizing, and coating, the manufacturer sells the frames sold to a South African importer at an ex-works price of USD 16,000. It follows the value-added calculation below:

$$\frac{10,000}{16,000} = 62.5\% < 70\%$$

The frames are therefore originating.

However, if the value of non-originating material is based on a CIF basis, the cost of insurance and freight from China to Lilongwe, an average of USD 1,250 for ocean freight and USD 3,600 for inland¹² Transport has to be added to the cost of purchasing the container of steel tubes. Thus, the calculation will be as follows:

$$\frac{10,000 + 3,600 + 1,250}{16,000} \times 100\% = \frac{14,850}{16,000} \times 100\% = 92.8\% > 70\%$$

In this case, the frames largely exceed the threshold of 70%.

¹¹ Example from "The methodologies of drafting the ad valorem percentage criterion" Existing practices in African RECs and way forward in AfCFTA Note drafted by the Division for Africa, Least Developed Countries and Special Programmes of the United Nations Conference on Trade and Development (UNCTAD) in preparation of the AfCFTA 7th Technical Working Group Meeting on Rules of Origin available at https://unctad.org/system/files/officialdocument/aldc2018_AfCFTA_TWGRo07_tn_advalorem_en.pdf.

¹² UNCTAD estimates based on field visits.

Table 2 Example of the Relevance of Freight and Insurance

	Without Freight and Insurance	With Freight and Insurance
(a) Foreign Materials	10,000	10,000
(b) Ocean Freight	1,250	1,250
(c) Inland Freight	3,600	3,600
(d) Ex-Works Price	16,000	16,000
(e) Value Added Calculation	$\frac{a}{b} = \frac{10,000}{16,000} = 62.5\% < 70\%$	$\frac{a+b+c}{d} = \frac{10,000 + 3,600 + 1,250}{16,000} \times 100\% = \frac{14,850}{16,000} \times 100\% = 92.8\% > 70\%$
Rule Satisfied?	YES	NO

As can be seen from this illustration, the exorbitant transport and insurance costs are crippling any effort to comply with the ad valorem percentage requirement.

B.1.3 Initial Expectations of the LDCs on the Implementation of the Nairobi Decision on ad Valorem Percentage

As a result, LDCs expect the following best practices to be implemented by preference-granting Members:

- Whenever it is used, the calculation method should be based on the value of materials methodology and the value of non-originating materials out of the ex-works price or FOB.¹³
- Australia, Taiwan Province of China, New Zealand and the United States are called to introduce the necessary reforms in their rules of origin to adhere to such best practices.
- All preference-granting Members using this calculation method should allow for the deduction of insurance and freight costs from the value of non-originating materials.

¹³ It is noted that in some sectors, other methodologies such as CTC and Specific working or processing may be used as current practices in FTAs have shown better to reflect the processing stages of the global value chains.

C. RULES OF ORIGIN BASED ON A CHANGE OF TARIFF CLASSIFICATION

C.1 Introduction

It is recalled the LDC Group submitted a previous submission on the change of tariff classification in May 2019.¹⁴ The submission recalled that Paragraph 1.2 of the Nairobi Decision provides as follows:

“When applying a change of tariff classification criterion to determine substantial transformation, preference-granting Members shall:

- a) As a general principle, allow for a simple change of tariff heading or tariff sub-heading.*
- b) Eliminate all exclusions or restrictions to change tariff classification rules, except where the preference-granting Member deems that such exclusions or restrictions are needed to ensure that a substantial transformation occurs.*
- c) Where appropriate, introduce a tolerance allowance so inputs from the same heading or sub-heading may be used.”*

According to such a paragraph, the general principle for applying a CTC is a change of tariff heading (CTH) or a change of tariff subheading (CTSH).

The second subparagraph (b) calls for the elimination of all exclusions or restrictions on such general principle of applying CTH or CTSH as general rule “except where the preference-granting Member deems that such exclusions or restrictions are needed, including to ensure that a substantial transformation occurs.”

In addition, Paragraph 1.4 covers situations where combinations of two requirements must be complied with to obtain originating status.

“To the extent possible, preference-granting members shall avoid requirements that impose a combination of two or more criteria for the same product. Suppose a preference-granting Member still requires maintaining a combination of two or more criteria for the same product. In that case, that preference-granting Member remains open to considering relaxing such requirements for that specific product upon due request by an LDC.”

The former submission contained an extensive analysis, concerning both the European Union, Japan, Norway, and Switzerland that use a combination of CTC with other requirements extensively. The result of the analysis carried out in the above-mentioned submission concluded as follows:

The issues to be considered to bring into conformity with the Paragraphs 1.2 and 1.4 of the Nairobi Decision regarding the current use of the CTC criterion by the CTC group are threefold:

- a) The exceptions to the general rules of CTH and CTSH are the norm rather than the exception for the CTC group. For instance, the rules of origin of Japan provide for CTH as a general rule. However, there are 26 pages of exceptions to such general rule covering most of the H.S. chapters and, at the time, entire H.S. chapters.*
- b) The exceptions to the general rules are far stricter than the general rules going beyond any conceivable requirement for substantial transformation, and are not justifiable as such.*
- c) In some cases, the same preference-granting Members have adopted more lenient rules of origin for the same products under FTAs that they have negotiated with other partners and/or there are existing best practices under other FTAs on how substantial transformation could be achieved adopting less stringent requirements.*

Following the submission and the debate at the CRO meeting of May 2019, it was agreed that further consultations were necessary at a bilateral level.

¹⁴ See document G/RO/W/184 of 7 May 2019.

Such bilateral consultation took place with Japan in 2019. However, at present, it has to be noted that conclusive responses to the detailed queries raised in the submission and reiterated by the LDC Group during the bilateral consultations with Japan have yet to be addressed.

Table 3 of this submission takes the point from where it has been left, bringing it forward with additional issues.

The LDCs acknowledge that utilization rates under the Japan GSP are relatively high, ranging above 80% in the last decade. At the same time, the trade volume in imports from LDCs have remained unaltered when external shocks are considered. Table 3 shows that while utilization rates may be relatively high at a general level, there are consistent pockets of underutilization of the Japan trade preferences that may be generated by stringent product-specific rules of origin and/or related administrative requirements like documentary evidence of direct consignment.

In addition, utilization rates are one of the benchmarks that may be used in assessing the adequacy rules of origin to LDC but only some of them. As stated in an earlier submission by the LDC Group¹⁵ Rules of origin for LDCs should be development-oriented, contributing to creating trading and investment opportunities in LDCs to build productive capacities and insertion in value chains. Examples of such possibilities are contained in the above-mentioned LDC submission.

In some cases, it has been noted that there are product-specific rules of origin requirements on chapters of the harmonized system where Japan shows MFN free of duty. It would be appreciated to understand better the need to maintain such rules of origin requirements when MFN rate of duty adopted by Japan is free.

It is the understanding of the LDC Group that Japan may be considering the revision of Japanese rules of origin under the periodical review of the Japan GSP scheme in 2021. This submission is hoped to be considered a valuable input for such a review. The table is by no means exhaustive and complete, and the LDC Group is, in fact, refining the data and the analysis. In addition, this submission should be read in conjunction with the previous analysis contained in document G/RO/W/184 of 7 May 2019, where detailed examples of product-specific rules of origin of Japan that were found not in conformity with the Nairobi Decision were provided with exhaustive comments. The table has been assembled to resume a constructive debate based on both submissions.

It also has to be noted that in the case of African LDCs there are, at the moment, no parallel or overlapping trade preferences besides the GSP. In the case of ASEAN LDCs, the ASEAN-Japan FTA provides alternative preferences that may be available to ASEAN LDCs. However, the preliminary analysis in the table shows that utilization rates under such FTA are relatively low and that rules of origin are stringent.

The tables outline several examples where Japan is invited to introduce reforms to bring GSP rules of origin in conformity with the relevant paragraphs of the Nairobi Decision.

As outlined in the recent submission by the LDC Group,¹⁶ more than five years have now passed since the adoption of the Nairobi Decision on preferential rules of origin for LDCs. Some progress has been recorded in achieving better transparency through adopting a notification template and the notification of the utilization rates of the Duty-Free and Quota-Free schemes. However, no parallel progress in implementing the substantive part of the Nairobi Decision was observed, particularly in the paragraphs concerning the substantial transformation and certification requirements.

As we are approaching the next WTO Ministerial Conference, it is paramount to show that concrete progress has been made that could be adequately reflected in the outcome of the forthcoming Ministerial. Thus, it is now time to focus the debate in the Committee on Rules of Origin (CRO) on how to effectively implement the substantive aspects of the Nairobi Decision on preferential rules of origin for LDCs.

We hope that the submission may mark the start of a constructive engagement in improving rules of origin for LDCs by all preference-granting Members.

¹⁵ Challenges faced by LDCs in complying with preferential rules of origin under unilateral preference schemes, paper presented by Uganda on behalf of the LDC Group. Document G/RO/W/148 of 28 October 2014.

¹⁶ See document G/RO/W/194 of 5 March 2020: 5th Anniversary of the Nairobi Ministerial Decision: Review of Implementation, Identification of Gaps, and the Way Forward – Communication from the LDC Group.

Table 3 Utilization of the GSP Scheme of Japan by HS Heading (2019)
Ranked in descending order according to the value of imports received under MFN (USD thousands)

H.S. Code	Description	Value of Imports (USD thousands)						U.R. (%)			Rules of Origin		Comments on GSP rules of origin	Technical Elements	Suggested Best RoO Practice
		Total	Dutiable	GSP Covered	GSP	Regional EPA	MFN	GSP	EPA	GSP	ASEAN – Japan				
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	
0303	Fish, frozen	60,073	60,073	60,073	998	0	59,075	1.66	0	Manufactured from products other than those of Chapter 3	CC	This rule practically requires that all products of chapter 3 are wholly obtained and practically disregards that the filling of fish is a substantial transformation	Further investigation has to be carried out on the reason for low utilisation. In any case, it may be observed that filling fish should be considered as a substantial transformation.	There is a need to discuss the reasons for such low utilisation further and reform the actual Rules of origin accordingly.	
4202	Trunks; suit, camera	235,402	235,402	235,402	184,413	6,695	44,294	78.34	2.84	Manufactured from products of the different tariff headings (excluding heading 42.05) of the products	CC	Heading 4205 classifies other articles of leather or composition leather, including parts. The exclusion of this heading means that the assembly of parts of leather into a finished article of leather is not origin conferring	Excluding non-originating parts from the assembly process may be an overly stringent rule, even taking into account the tolerance rule	Manufacture from materials of any heading, except that of the product or manufacture in which the value of all the materials used does not exceed 70% of the ex-works price of the product (European Union rules of origin for LDCs).	
0307	Molluscs	138,527	138,527	137,711	118,908	794	18,825	85.84	0.57	Manufactured from products other than those of Chapter 3	CC	This PSRO practically requires that all products of chapter 3 are wholly obtained and practically disregards several working or processing operations that may be carried out within the chapter, such as making flours or pellets of molluscs.	Further investigation has to be carried out on why a high value of trade receives MFN treatment. Direct shipment requirement, in any case, making flours and smoke molluscs within the same chapter should be considered a substantial transformation.	There is a need to discuss further the reasons explaining almost 19 million imports receiving MFN treatment and reform the actual Rules of origin accordingly	
6109	T-shirts, singlets (KOC)	340,900	340,900	340,900	319,808	3,624	17,468	93.81	1.06	Manufactured from woven fabrics, felt, nonwovens, KOC fabrics or face of Chapter 50 to 56 or 58 to 60	CC, s.t., where NOM of heading 50.07, 51.11 through 51.13, 52.08 through 52.12, 53.09 through 53.11, 54.07 through 54.08, 55.12 through 55.16 or chapter 60 are used, each of the NOM is KOC entirely in one or more of the Parties.	Despite the high utilisation rates, significant amounts of trade still receive MFN treatment.	The PSRO requires manufacturing from woven fabrics. The garments may have been assembled from parts of garments in the same chapter. To be further investigated	There is a need to discuss further the reasons for the large value of imports receiving MFN treatment that may be due to the PSRO or related administrative requirements such as documentary evidence of direct shipment requirement	
6110	Jerseys, pullovers	479,410	479,410	479,410	461,101	2,532	15,777	96.18	0.53	Manufactured from products other than those of Chapter 3	CC, s.t., where NOM of heading 50.07, 51.11 through 51.13, 52.08 through 52.12, 53.09 through 53.11, 54.07 through 54.08, 55.12 through 55.16 or chapter 60 are used, each of the NOM is KOC entirely in one or more of the Parties.	Despite the high utilisation rates, significant amounts of trade still receive MFN treatment.	The PSRO requires manufacturing from woven fabrics. The garments may have been assembled from parts of garments in the same chapter. To be further investigated	There is a need to discuss further the reasons for the large value of imports receiving MFN treatment that may be due to the PSRO or related administrative requirements such as documentary evidence of direct shipment requirement	

H.S. Code	Description	Value of Imports (USD thousands)						U.R. (%)			Rules of Origin		Comments on GSP rules of origin	Technical Elements	Suggested Best PoO Practice
		Total	Dutiable	GSP Covered	GSP	Regional EPA	MFN	GSP	EPA	GSP	ASEAN – Japan				
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	
6307	Other made-up articles incl: dress patterns	23,962	23,962	23,962	5,912	10,697	7,353	24,67	44,64	Manufactured from chemical products, from products of heading 47.01 to 47.06, or 50.01, or from natural textile fibres (excluding raw silk), man-made staple fibres or textile fibre waste	CC, s.t., where NOM of heading 50.07, 51.11 through 51.13, 52.08 through 52.12, 53.09 through 53.11, 54.07 through 54.08, 55.12 through 55.16 or chapter 60 are used, each of the NOM is woven, or KoC entirely in one or more of the Parties.	The rule is requiring a double transformation requirement: the making up of fabrics and the making of the textile articles from fabrics	Double transformation requirements are obsolete and do not respect real value chains' commercially meaningful	Making up from fabric or manufacture in which the value of all the non-originating materials used does not exceed 70 of the ex-works price of the product	
6306	Tarpaulins, awnings and sunblinds	7,226	7,226	7,226	0	437	6,789	0	6,05						
6406	Footwear: parts of footwear	7,560	7,560	0	0	1,037	6,523	-	13,72	Manufactured from products of different tariff heading (excluding heading 64.06) of the products	CC	It is clear that this PSRO is overly stringent for parts of shoes as already contained in the former submission. ¹⁸	Assembly of parts of shoes into shoes is a substantial transformation	Manufacture from materials of any heading, except from assemblies of uppers affixed to inner soles or other sole components of heading 6406 (European Union rules of origin for LDCs)	
6403	Footwear: with outer soles	211,056	211,056	211,056	164,668	40,248	6,140	78,02	19,07	Manufactured from products of heading 64.06) of the products	CC, s.t., where NOM of heading 50.07, 51.11 through 51.13, 52.08 through 52.12, 53.09 through 53.11, 54.07 through 54.08, 55.12 through 55.16 or chapter 60 are used, each of the NOM is woven entirely in one or more of the Parties.	For footwear products: the utilisation rate could be improved.			
6203	Suits (Men/Boys)	560,990	560,990	560,990	554,362	958	5,670	98,82	0,17	Manufactured from woven fabrics: felt, nonwovens, KoC fabrics or lace of Chapter 50 to 56 or 58 to 60		In spite of the high utilisation rates, there are still more than USD 5 million of trade receiving MFN treatment.	The PSRO requires manufacturing from woven fabrics. The garments may have been assembled from parts of garments in the same chapter. To be further investigated	There is a need to discuss further the possible reasons for the amount of trade receiving MFN treatment that may be due to the PSRO or related administrative requirements such as documentary evidence of direct shipment requirement	

Note: KoC: Knitted or Crocheted.

H.S. Code	Description	Value of Imports (USD thousands)						U.R. (%)		Rules of Origin		Comments on GSP rules of origin	Technical Elements	Suggested Best RoO Practice
		Total	Dutiable	GSP Covered	GSP	Regional EPA	MFN	GSP	EPA	GSP	ASEAN – Japan			
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)
6402	Footwear	79,950	79,950	0	0	64,196	15,754	-	80.30	Manufactured from products of different tariff headings (excluding heading 64.06) of the products	CC	It is clear that this PSRO is overly stringent, as already contained in the former submission. ¹⁷	Assembly of parts of shoes into shoes is a substantial transformation	Manufacture from materials of any heading, except from assemblies of uppers affixed to inner soles or other sole components of heading 6406 (European Union rules of origin for LDCs)
4203	Articles of apparel and clothing accessories, leather	13,999	13,999	0	0	0	13,999	-	0	Manufactured from products of the different tariff headings (excluding heading 42.05) of the products	CC	Heading 4205 classifies other articles of leather or composition leather, including parts. The exclusion of these headings means that the assembly of parts of leather into a finished article of leather is not origin conferring.	Assembly article of leather from parts should be considered a substantial transformation	CTH
6201	Overcoats, carcoats	196,613	196,613	196,613	184,315	2	12,296	93.75	0	Manufactured from woven fabrics; felt, nonwovens, KoC fabrics or lace of Chapter 50 to 56 or 58	CC, s.t., where NOM of heading 50.07, 51.11 through 51.13, 52.08 through 52.12, 53.09 through 53.11, 54.07 through 54.08, 55.12 through 55.16 or chapter 60 are used, each of the NOM is woven entirely in one or more of the Parties.	In spite of the high utilisation rates, there are still significant amounts of trade receiving MFN treatment.	The PSRO requires manufacturing from woven fabrics. The garments may have been assembled from parts of garments in the same chapter. To be further investigated	There is a need to discuss further the possible reasons for the amount of trade receiving MFN treatment that may be due to the PSRO or related administrative requirements such as documentary evidence of direct shipment requirement
6202	Coats (Women)	168,549	168,549	168,549	156,700	207	11,642	92.97	0.12					
6204	Suits (Women/ Girls)	514,001	514,001	514,001	491,393	12,005	10,603	95.60	2.34					
0304	Fish filets and other fish meat	19,947	19,947	19,947	10,230	0	9,717	51.29	0	Manufactured from products other than those of Chapter 3	CC	This rule practically requires that all products of Chapter 3 are wholly obtained and practically disregard several working or processing operation that may be carried out within the chapter, such as filleting, making flours or pellets out of crustaceans.	Filleting of fish should be considered a substantial transformation. Further investigation must be carried out on the reason for relatively low utilisation. In any case, it may be observed that making flour and smoke crustaceans should be considered a substantial transformation	There is a need to discuss the reasons for relatively low utilisation further and reform the actual Rules of origin accordingly
0306	Crustaceans	68,983	68,983	68,983	60,868	106	8,009	88.24	0.15					

D. EXAMINATION OF EXISTING ORIGIN-RELATED DOCUMENTARY REQUIREMENTS: PARAGRAPH 1.8 OF THE BALI DECISION AND PARAGRAPH 3.1 OF THE NAIROBI DECISION¹⁹

D.1 Introduction

As pointed out in a previous submission by the LDC Group, more than six years have passed since the adoption of the Nairobi Ministerial Decision on preferential rules of origin for LDCs. Some progress has been recorded in achieving better transparency through the adoption of a notification template and the notification of data for calculating utilization rates of the Duty-Free and Quota-Free schemes.

However, progress in implementing the substantive part of the Nairobi Decision, and more precisely, the paragraphs concerning substantial transformation and certification requirements, could be accelerated by establishing a constructive dialogue in the Committee on Rules of Origin (CRO). In this sense, it is of paramount importance to focus the debate in the CRO on how to effectively identify and share best practices and lessons learned that could serve to implement the substantive aspects of the Nairobi Ministerial Decision.

As previously stated, the LDC Group has progressively brought to the attention of the CRO the substantive aspects of rules of origin of preference granting Members that need reform by contrasting them with the relevant paragraphs of the Nairobi Decision and possible best practices. The ultimate goal is to achieve better utilization of the Duty-Free Quota Free (DFQF) and the attainment of the Sustainable Development Goals (SDG), namely SDG 17 target 17.12: “Ensuring that preferential rules of origin applicable to imports from least developed countries are transparent and simple and contribute to facilitating market access”.

In order to focus the debate, the LDC Group is submitting this technical note on the elements related to documentary requirements and certification to analyses whether:

- a) Existing documentary requirements are simple and transparent;
- b) Members are allowing for self-certification of origin;
- c) Members are providing technical assistance to LDCs on mutual cooperation and risk assessment on rules of origin administration as well as other; and
- d) Issues related to documentary requirements and proofs of origin.

Issues related to documentary evidence and proof of origin are contained in the 2013 Bali Ministerial Decision listing the requirements and direction to be undertaken by preference-granting Members towards simple and transparent documentary requirements – proof of non-manipulation, certification of origin, self-certification and customs cooperation and monitoring – and have been reiterated in the Nairobi Ministerial Decision which provides concrete actions for preference-granting Members to implement simpler and more transparent documentary requirements.

This note, without being exhaustive, examines the use of simple and transparent documentary requirements on product origin by preference-granting Members, contrasting them with the relevant paragraphs of the Nairobi Decision and lists some best practices and areas of improvement of the existing rules of origin. This note intends to promote a discussion about possible best practices related to proofs of origin and the identification of possible trade simplification and trade-facilitation measures in this area, in line with the spirit of the Ministerial Decisions.

¹⁹ The following submission, dated 22 March 2022, is being circulated at the request of Tanzania on behalf of the LDC Group.

D.2 Recalling the Text of the Ministerial Decisions on Documentary Requirements and Certification

Preferential Rules of Origin for Least-Developed Countries, Ministerial Decision of 7 December 2013 (Bali), Paragraph 1.8 of the Decision: For the documentary requirements to be “simple and transparent and contribute to facilitating market access” the Bali Decision provides that preference-granting Members may undertake the following actions:

The documentary requirements should be simple and transparent. For instance, a requirement to provide “proof of non-manipulation” or any other prescribed form for a “certification of origin” for products shipped from LDCs across other Members may be avoided. Additionally, regarding “certification of rules of origin,” whenever possible, “self-certification” may be recognized. Finally, mutual customs cooperation and monitoring could be used to complement compliance and risk-management measures.

Preferential Rules of Origin for Least Developed Countries, Ministerial Decision of 19 December 2015 (Nairobi), Paragraph 3 on Documentary Requirements: For preferential rules of origin applicable to imports from LDCs under non-reciprocal preferential trade arrangements, the documentary requirements should be “simple and transparent and contribute to facilitating market access”. As such, the Nairobi Decision provides that preference-granting Members shall:

“To reduce the administrative burden related to documentary and procedural requirements related to origin, Preference-granting Members shall:

- a) As a general principle, refrain from requiring a certificate of non-manipulation for products originating in an LDC but shipped across other countries unless there are concerns regarding transshipment, manipulation, or fraudulent documentation; and*
- b) Consider other measures to further streamline customs procedures, such as minimizing documentation requirements for small consignments or allowing for self-certification. Situation and questions regarding the application of origin documentary requirements that are “simple and transparent and contribute to facilitating market access.”*

Paragraph 3 of the Nairobi Decision calls for improvements in current practices concerning the proof of evidence, non-manipulation requirements, and small consignments and self-certification provisions. Preference-granting Members currently have different requirements on such issues. Similarly, there are different practices that preference-granting Members have adopted in the treatment of small consignments and self-certification.

The following questions may be discussed: What are the most trade-facilitating options for self-certification and small consignments? Is it possible to envisage best practices in these areas?

D.3 QUAD Administrative Requirements and C.O. Issuance

The European Union has introduced the REX system:²⁰ General provisions on the statement of origin are set out in Article 92 of the European Union Customs Code.²¹

Canada allows exporters self-certification²² and requires a certificate of origin only for textile and apparel goods (other goods require either an Exporter’s Statement of Origin or a Form A Certificate of Origin).

For the United States’ GSP, a certificate of origin is not required,²³ but when the article is not wholly the growth, product, or manufacture of a single beneficiary country, the exporter of the merchandise or other appropriate party knowing the relevant facts shall be prepared to submit a declaration setting forth all pertinent detailed information concerning the production or manufacture of the merchandise.²⁴

²⁰ Document G/RO/LDC/N/EU/1.

²¹ Article 92 – General provisions on the statement on origin (Article 64(1) of the Code): (<https://eurlex.europa.eu/legalcontent/EN/TXT/PDF/?uri=CELEX:32015R2447&from=EN>).

²² Document G/RO/LDC/N/CAN/2.

²³ Documents G/RO/LDC/N/USA/1; and G/RO/LDC/N/USA/.

²⁴ See 19 CFR 10.173 (<https://www.ecfr.gov/>).

For AGOA,²⁵ a certificate of origin usually is not required, but when the article is not wholly the growth, product, or manufacture of a single beneficiary country, the exporter of the merchandise or other appropriate party knowing the relevant facts shall be prepared to submit a declaration setting forth all pertinent detailed information concerning the production or manufacture of the merchandise. However, a certificate of origin is required for textile and apparel goods.²⁶

Table 4 Are WTO members using documentary requirements that are simple and transparent?

Country/group of Countries	Administrative requirements	C.O.	Comments/additional requirements
European Community (EBA)	<ul style="list-style-type: none"> Acceptance by LDC of the establishment of REX system and its administration by LDC authorities 	<ul style="list-style-type: none"> Statement by registered exporters (REX) 	<ul style="list-style-type: none"> System of registered exporters who issue statements of origin progressively established since 2017.
Japan	<ul style="list-style-type: none"> Names of certifying authorities to be communicated to Japan Notification of stamps used 	<ul style="list-style-type: none"> Certificate of origin Form A is required, but Form A is not requested for some products. 	<ul style="list-style-type: none"> Cumulation and donor country content requires additional forms
Canada	<ul style="list-style-type: none"> Self-certification admitted with the use of Form A or Canada CO Special certificate for textile and clothing products 	<ul style="list-style-type: none"> Form A - Special entries on criteria and percentage requirement, no need for an official stamp Self-declaration Entry with percentage required 	<ul style="list-style-type: none"> For textile and clothing Special certification B255 Entry the specific RoO criteria
United States GSP	<ul style="list-style-type: none"> No certificate of origin required 	<ul style="list-style-type: none"> No CO used: importer-based declaration 	
United States – AGOA	<ul style="list-style-type: none"> Same as above 	<ul style="list-style-type: none"> Same as above 	<ul style="list-style-type: none"> Special visa requirements apply for textiles and clothing.

D.4 QUAD and Other Preference-Granting Members' Certification Requirements

Regarding self-certification, the European Union, Norway, and Switzerland introduced the REX system,²⁷ which allowed for self-certification for registered exporters only.

Japan²⁸ allowed self-certification for some products up to JPY 200,000 (approximately USD 1,600) but still requires the presentation of a "Form A".

Canada authorizes self-certification by the exporter, while United States practices show that the importer typically makes the entry. In some cases, an exporter statement is required under GSP, and specific certificates of origin are requested in the case of AGOA for apparel and garments. Exporter or producer signs the certificate.

Table 5 QUAD: Are WTO Members Providing for Self-certification of Origin?

Country/group of Countries	Administrative requirements	C.O.
European Community (EBA), Norway Switzerland	<ul style="list-style-type: none"> Self-certification allowed (REX) Self-certification by any exporter allowed up to the shipment of €6,000 	Yes, the introduction of a new system (REX) since 2017
Japan	<ul style="list-style-type: none"> Form A required. No documentary evidence for several products Self-declaration up to JPY 200,000 (approximately USD 1,600) 	Partially
Canada	<ul style="list-style-type: none"> Self-certification is allowed with specifications of the rules of origin criteria used 	Yes
United States	<ul style="list-style-type: none"> The declaration is made by the importer on the basis, when requested of a statement of origin by an exporter 	Yes
AGOA	<ul style="list-style-type: none"> Same as above 	Yes

²⁵ Document G/RO/LDC/N/USA/3.

²⁶ See 19 CFR 10.214 (<https://www.ecfr.gov/>).

²⁷ Document G/RO/M/77.

²⁸ Document G/RO/LDC/N/JPN/1.

Table 6 Non-QUAD: Are WTO Members Providing for Self-certification of Origin?

Members	Administrative Requirements	Meets the benchmarks of the Ministerial Decision
China	<ul style="list-style-type: none"> Self-certification is not available as C.O. stamped by certifying authorities is required No small consignment provision 	No
Taiwan Province of China	<ul style="list-style-type: none"> Self-certification is not available as C.O. stamped by certifying authorities is required No small consignment provision 	No
Chile	<ul style="list-style-type: none"> Self-certification is not available as C.O. stamped by certifying authorities is required No small consignment provision 	No
India	<ul style="list-style-type: none"> Self-certification is not available as C.O. stamped by certifying authorities is required No small consignment provision 	No
South Korea	<ul style="list-style-type: none"> Self-certification is not available as C.O. stamped by certifying authorities is required No small consignment provision 	No
Russian Federation	<ul style="list-style-type: none"> Form A required No CO for small consignments (max. USD 5,000) 	No
Thailand	<ul style="list-style-type: none"> Form DFQF required No small consignment provision 	No

Self-certification is not provided under the schemes of China, Taiwan Province of China, Chile, India, the Republic of Korea, Russian Federation, and Thailand.

More specifically for China,²⁹ the Certificate of Origin shall: (1) be issued by the bodies authorized by the beneficiary country before exportation, at the time of exportation or within five days after exportation of the goods; (2) be completed in English; (3) contain security features, such as stamps of issuing bodies conforming to the specimen notified by the beneficiary country to China Customs; (4) contain a unique certificate number; (5) state the basis on which the goods are deemed to qualify as originating goods; (6) be valid for one year from the date of issuance; (7) be signed or stamped by customs or related port competent authorities of the beneficiary country in column 15 at the time of exportation; and (8) cover one or more goods under one consignment.

While the Declaration of Origin shall: (1) be completed in Chinese; (2) be printed, then completed and correctly signed by the importer; (3) be valid for one year from the date of issuance; and (4) cover one or more goods under one consignment.

For Taiwan Province of China,³⁰ the Article 11 of Regulations Governing the Determination of Country of Origin of Imported Goods.³¹ Informs that the Certificate of Origin shall be issued and certified by the government of the exporting country or the agency or institute authorized by the government of the exporting country.³²

For Direct shipment, a good imported from a least-developed country applying for the preferential tariff rate shall be accompanied by a C.O., and its transportation shall satisfy one of the following requirements:

- 1) It was shipped directly from the exporting country to the Taiwan Province of China; or
- 2) It has been shipped through a third country for transit or temporary storage, provided it did not undergo operations other than unloading or reloading in the country of transit.

The Certificate of Origin referred to in subparagraph one shall be issued and certified by the exporting country's government. The format of the certificate shall be established and announced by the Ministry of Finance. The exporters from LDCs could present a self-proof documentary of direct shipment to Customs.

For Chile,³³ Article 11 of Decree No. 1432 indicates that "For the originating goods to qualify for the preferential tariff treatment, importers shall submit a certificate of origin to the National Customs Service, containing at the very

²⁹ Document G/RO/LDC/N/CHN/1.

³⁰ Document G/RO/LDC/N/TPKM/1/Rev.1.

³¹ <https://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=G0350047>.

³² <https://eweb.customs.gov.tw/cp.aspx?n=0546649C8F2D44B4>.

³³ Document G/RO/LDC/N/CHL/1/Rev.1.

least the information specified in the Annex to this Decree”.³⁴ LDCs wishing to benefit from preferential treatment under the DFQF scheme must first submit the name and official seal of the certifying authority, as well as the name(s) of officer(s) authorized to issue Certificates of Origin.³⁵

For India,³⁶ issuance of certificate of origin is required. The beneficiary country is to notify the Government Agency for issuance of certificate of origin. The procedures applied for certificate of origin can be visualized in the notification³⁷ No. 29/2015 - Customs (N.T.). Any exporter or producer seeking a grant of a certificate of origin under these rules shall apply to the issuing authority of the exporting beneficiary country as per format (Annex B) to these rules and follow the prescribed form of certificate of origin (Annex C).

For the Republic of Korea,³⁸ the paragraph 4, Article 5 of Rules on Preferential Tariff for Least Developed Countries (Presidential Decree No. 27759)³⁹ Informs that those who wish to receive preferential tariffs should submit a Certificate of Origin (Annex III) issued by the government of the exporting country or an authority designated by the government of the exporting country.

For the Russian Federation,⁴⁰ rules of origin for developing LDCs, were adopted by Decision No. 60 of the Council of the Eurasian Economic Commission dated 14 June 2018 (Section V. Special cases, section VI. Direct consignment and direct purchase and section VII. Documentary proof of origin).⁴¹

There is a need for prior notification of the customs authority of the importing country about unassembled or disassembled goods. To confirm the origin of goods from beneficiary countries, the carrier shall submit a combined declaration and certificate of origin (Form “A”), adopted under the Generalized System of Preferences. The certificate shall be submitted to the customs authorities in a hard copy in Russian or English languages.

The certificate is not required to confirm the origin of small consignments where the customs value is at most the amount of USD 5,000 or the equivalent amount. In this case, the exporter can declare the country of origin in commercial or other shipping documents. In case of reasonable doubt about the authenticity of declared information, the customs authority may be required to provide the certificate of origin.

For Thailand,⁴² a Certificate of Origin (Form DFQF) is required. The original Certificate of Origin (Form DFQF) shall be forwarded from the exporting DFQF beneficiary country to the importer in the Kingdom of Thailand for submission to the customs authority of Thailand. The duplicate Certificate of Origin (Form DFQF) shall be retained by the issuing authority of the exporting DFQF beneficiary country. The triplicate Certificate of Origin (Form DFQF) shall be retained by the producer or exporter of the exporting DFQF beneficiary country.

D.5 Conclusions

During the period under review, the European Union, Norway, and Switzerland have adopted self-certification by establishing the REX procedure. Under the Canadian GSP, the United States GSP and AGOA self-certification are also adopted by importers/exporters in most cases. Japan also authorizes self-certification in some instances.

All remaining preference-giving Members should introduce self-certification as an option or for certain goods and simplify related certification procedures.

The LDC Group will elaborate on this document at the next CRO to allow a more informed debate on origin certification requirements.

³⁴ <https://www.leychile.cl/Navegar?idNorma=1059781>.

³⁵ <http://www.aduana.cl/ley-20-690-eliminacion-arancelespma/aduana/2014-03-07/092144.html>.

³⁶ Document G/RO/LDC/N/IND/1.

³⁷ <https://www.cbic.gov.in/resources/htdocs-cbec/customs/cs-act/notifications/notfns-2015/cs-nt2015/csnt29-2015.pdf>.

³⁸ Document G/RO/LDC/N/KOR/1.

³⁹ National Law Information Center. Rules on Preferential Tariff for Least-Developed Countries (Presidential Decree No. 27759) Attached Sheet: National Law Information Center (see Annex).

⁴⁰ Document G/RO/LDC/N/RUS/2.

⁴¹ Agreement on Rules of Origin for Developing and Least Developed Countries.

⁴² Document G/RO/LDC/N/THA/1.

E. PRELIMINARY EXAMINATION OF PROPOSED NEW UNITED KINGDOM RULES OF ORIGIN UNDER THE UNITED KINGDOM DEVELOPING COUNTRIES TRADING SCHEME (DCTS)

E.1 Introduction

As pointed out in the CRO decision G/RO/95 on preferential rules of origin and the implementation of the Nairobi Ministerial Decision on preferential rules of origin adopted on 14 April 2022

“Members underscore the importance of identifying and addressing as appropriate specific challenges that least-developed countries (LDCs) face, in complying with preferential rules of origin and origin requirements to effectively use trade preferences.”

It also stated that “Towards that end, the Committee on Rules of Origin (CRO) should continue its efforts to facilitate the implementation of the Nairobi Ministerial Decision on preferential rules of origin for LDCs (WT/L/917/Add.1) to ensure that preferential rules of origin applicable to imports from LDCs are transparent and simple and contribute to facilitating market access.”

It is concluded that “the work of the CRO could include identifying and agreeing upon best practices by all Members on preferential rules of origin and related administrative requirements and further analyzing existing origin requirements and the utilization of trade preferences. The CRO should report its work to the General Council ahead of the Thirteenth Ministerial Conference”.

Accordingly, and pursuant to this new mandate, the LDC Group will continue analyzing and identifying best practices and lessons learned on rules of origin and related administrative procedures leading to an increase in LDC’s utilization of trade preferences and understanding of the extent of differences in rules of origin across preference-giving countries.

The LDC Group has noted that the United Kingdom government has posted a series of documents available on the website gov.uk concerning a reform of their rules of origin. Hence, the LDCs have taken the opportunity to share with WTO members a series of preliminary comments that would be deepened and further elaborated in the new future and subsequent submission.

E.2 Preliminary Observations on the Reform of RoO in the Context of the United Kingdom Developing Countries Trading Scheme (DCTS)

The LDC Group has noted that the United Kingdom of Great Britain and Northern Ireland Government launched the new United Kingdom Developing Countries Trading Scheme (DCTS) on 16 August 2022 to replace the European Union Generalized System of Preferences (GSP) following the exit from the European market and Customs Union.

The information is available on the gov.uk website including an excel website containing briefs and product-specific rules of origin. While this information is widely appreciated, the WTO LDC Group would be most grateful to receive the United Kingdom draft legislation to carry out the necessary analysis. Until then, this submission should be considered a preliminary comment to enhance dialogue and transparency according to the Text in MC12.

The LDC Group notes that the new United Kingdom DCTS applies to 65 countries, aiming at providing lower tariffs and simpler rules of origin requirements for exporting to the United Kingdom, such as:⁴³

- Continuing to offer duty-free and quota-free access to its members in all products (except arms and ammunition);
- Simplifying and liberalizing product-specific rules of origin (PSROs); and
- Extending cumulation.

⁴³ Section 4. Rules of origin on the Policy paper: Developing Countries Trading Scheme: government policy response.

The LDC Group notes that the new rules of origin for LDCs react favorably on certain requests advanced by the WTO LDCs as contained in the Nairobi decision.

The new United Kingdom rules of origin for LDCs appear to allow up to 75 percent of non-originating content in the PSROs at the highest HS2 level to half of all H.S. chapters (48).⁴⁴ This new threshold represents a five percent increase from the previous allowed value of non-originating materials, usually at 70 percent. In this regard, the LDC WTO group would be interested in getting better clarity on the methodology used to calculate the 75 percent of non-originating content, in particular, whether the request of LDC to exclude the cost of insurance and freight from the value of non-originating content has been taken into account. It is not clear whether the cost of insurance and freight is reduced by the value of non-originating material. On this issue, the LDC WTO group would like to recall the Nairobi Decision⁴⁵ Which provides that preference-granting Members shall:

“Adopt a method of calculation based on the value of non-originating materials. However, Preference-granting Members applying another method may continue to use it. It is recognised that the LDCs seek consideration of the use of the value of non-originating materials by such Preference-granting Members when reviewing their preference programmes.

Consider, as the Preference-granting Members develop or build their Rules of Origin arrangements applicable to imports from LDCs, allowing the use of non-originating materials up to 75 per cent of the final value of the product or an equivalent threshold in case another calculation method is used, to the extent it is appropriate. The benefits of preferential treatment are limited to LDCs. Consider deducting any costs associated with the transportation and insurance of inputs from other countries to LDCs.”

In this area, LDCs’ expectations of best practices to be implemented by preference-granting countries are related to the adjustments to the value of non-originating materials and the deduction of the cost of insurance and freight.⁴⁶ from the values of non-originating materials.

Allowing the deduction of the cost of insurance and freight from the value of non-originating materials avoids unbalances in the outcome of the percentage calculation. Suffice to consider that

*“the cost of insurance and freight of inputs to an LLDCs or SIDS may be almost equivalent to one-third of the value of the shipment, if not more”.*⁴⁷

The deduction of the cost of insurance and freights from the value of non-originating materials ensures a fair comparison given the geographical circumstances of those countries and “may greatly facilitate compliance with the Rules of Origin for LLDCs (16 LDCs) and SIDS (11 LDCs)”.⁴⁸

According to the United Kingdom information on the website, most PSROs allow for alternative rules (‘or’), providing businesses alternatives to meet United Kingdom requirements in case one of the rules is difficult to meet or measure.

The WTO LDC notes the adoption of the CTSH as an alternative to the non-originating that appears to be conducive to lenient PSRO. However, the LDC WTO group will provide further comments once the full United Kingdom legislation is shared with the LDCs Group, and a detailed assessment will be carried out.

⁴⁴ A further three chapters allow 75% non-originating content in all exceptions at a HS4 level.

⁴⁵ WT/MIN(15)/47 WT/L/917/Add.1 mentions, “When applying an ad valorem percentage criterion to determine substantial transformation, Preference-granting Members shall:

(a) Adopt a method of calculation based on the value of non-originating materials. However, Preference-granting Members applying another method may continue to use it. It is recognised that the LDCs seek consideration of use of value of non-originating materials by such Preference-granting Members when reviewing their preference programmes;

(b) Consider, as the Preference-granting Members develop or build on their rules of origin arrangements applicable to imports from LDCs, allowing the use of non-originating materials up to 75% of the final value of the product, or an equivalent threshold in case another calculation method is used, to the extent it is appropriate, and the benefits of preferential treatment are limited to LDCs;

(c) Consider the deduction of any costs associated with the transportation and insurance of inputs from other countries to LDCs.”

⁴⁶ Compendium of technical notes prepared for the LDC WTO Group on preferential rules of origin D.3.3. Discussion on non-conforming ad-valorem percentages Rules of Origin and practices by preference granting countries (p. 58) given that “Cost of insurance and freight of non-originating materials are exogenous factors depending on geographical locations and have little to do with substantial transformation.”

⁴⁷ Compendium of technical notes prepared for the LDC WTO Group on preferential rules of origin (page 58).

⁴⁸ Compendium of technical notes prepared for the LDC WTO Group §on preferential rules of origin D.3.3. Discussion on non-conforming ad-valorem percentages Rules of Origin and practices by preference granting countries (p. 58).

Chapter	Description	Previous PSR	New PSR
31	Fertilisers	Manufacture from materials of any heading except that of the good. However, materials of the same heading as the good may be used, provided that their total value does not exceed 20% of the ex-works price of the good or manufacture in which the value of all the materials used does not exceed 70% of the ex-works price of the good.	Change of tariff sub-heading (CTSH) or maximum non-originating content of 75% (EXW).

Source: Section 4.1 Product specific rules (PSRs) Policy paper: Developing Countries Trading Scheme: government policy response.

The WTO LDC group notes that the overall aim of the United Kingdom, as shown on the website, is to provide simplified PSROs with a single set of rules applicable to the whole chapter (80 chapters), limiting exceptions rules and variations depending on the type of product to facilitate businesses to meet the Rules of Origin required to qualify for preferential tariffs.

According to briefs on the website,

*“The government consider removing all processing rules and replacing them with a change of tariff classification and value-added rules, as endorsed by LDCs”.*⁴⁹

On this specific issue, the LDC WTO group would like to clarify that it has never endorsed removing all working and processing rules. On the contrary, the WTO LDC Group believes and has supported in the past the adoption of working or processing rules, especially in the textile and clothing sectors (as in the case of the European Union reform in 2011) since those are easier to understand and more business friendly. Working or processing product-specific rules of origin may be explored in other sectors.

The WTO LDC Group notes the statement made on the gov.uk website that “allows inputs originated from the United Kingdom to count as originated in the beneficiary country, in the European Union, in any other DCTS beneficiary, and the United Kingdom’s Economic Partnership Agreements”.⁵⁰ These changes in the cumulation rules enable more flexibility for exporters in LDCs to utilize inputs from a broader range of countries without losing preferential access. Thus, enhancing the ability of beneficiary countries to integrate into regional value chains.

The WTO LDC Group notes that expanding the cumulation possibilities facilitates compliance with origin requirements by LDC producers. Its enlargement in scope is, in principle, positive development under United Kingdom DCTS.

However, it remains unclear from the information provided on the website a) which type of cumulation is provided; b) what geographical coverage is available for regional groupings; c) what are the possibilities for LDCs to cumulate with United Kingdom FTA partners, and d) what are the procedural requirements. The LDC group is interested in exploring whether cumulation would be made available for new mega-regionals such as the African Continental Free Trade Area (AfCFTA) and/or RCEP or CP-TPP.

Considering the AfCFTA as a cumulative zone would be a beneficial and bold commitment from the United Kingdom to the continent trade development, making a significant difference in spurring regional and continental value chains.

Finally, the LDC WTO group would be interested in better understanding the development of the new rules of origin concerning the non-alteration rules, third-country invoicing, and related administration of rules of origin requirements.

E.3 Conclusions

The WTO LDC Group welcomes the review of the United Kingdom GSP rules of origin and the innovative spirit that animated the United Kingdom government in having a fresh look at their legislation using inspiration from the WTO Nairobi Decision on Preferential Rules for LDCs.

The WTO LDC Group takes this opportunity to renew the call to other WTO members to follow such an example and engage in fruitful deliberations according to the new mandate provided by the MC 12.

⁴⁹ The new policy, 4.1 Product specific rules (PSRs) section of the Policy paper: Developing Countries Trading Scheme: government policy response.

⁵⁰ 4.2 Cumulation Section of the Policy paper: Developing Countries Trading Scheme: government policy response.

