



# Some initial reflections on the value of Bali Decision on rules of origin

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## We start with ...

# The Hong Kong Declaration

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



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

- To start implementation of the DFQF commitment LDCs tabled a first proposal for discussion in 2006
- The proposal was discussed in 2007 and 2008 with some preferences giving Countries and with the NAMA Chair.
- A revised proposal was submitted in 2011
- A second revised proposal was submitted in 2013
- A draft Decision was submitted in July 2013
- A second round of discussion in October 2013 to finalize the text of the Decision



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## The progress made in the NAMA text, 2008

- The Draft NAMA Modalities 2008 :

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



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## New Developments since 2011

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



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## The LDCs Proposal 2011-2013

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



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## Last phase of the negotiations July-October 2013

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



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## What is the value of a Decision?

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





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## The strong points of the Decision

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



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## The weak points of the Decision

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



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## Work ahead (1)

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



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## Work ahead (2)

- Prepare for CRO committees to bring forwards the implementation of the decision
- Prepare a text for Nairobi WTO Ministerial
- Link the work on the Decision to other WTO negotiating contexts,
- Most prominently the Trade facilitation Agreement
- Link with DFQF implementation
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