



*Executive Round Table on Rules of Origin: Rules of Origin in a Fractioned World Trade*

# THE CASE OF CAMBODIA BICYCLES - CAMBODIA WTO DELEGATION

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# Scope and Objectives of this Presentation

- This presentation provides a detailed overview of the challenges and opportunities faced by the Cambodian private sector as reported by Cambodian bicycle producers.
- It shares lessons learned and best practices that preference-giving countries could adopt to:
  - (i) facilitate compliance with origin requirements;
  - (ii) mitigate the adverse effects that may arise from graduation of beneficiary status from LDCs' trade preferences by facilitating cumulation procedures; and
  - (iii) maintain regional value chains, as implicitly recommended by Paragraph 2 of the Nairobi Decision on cumulation.

# The Main Changes of the EU Reform RoO

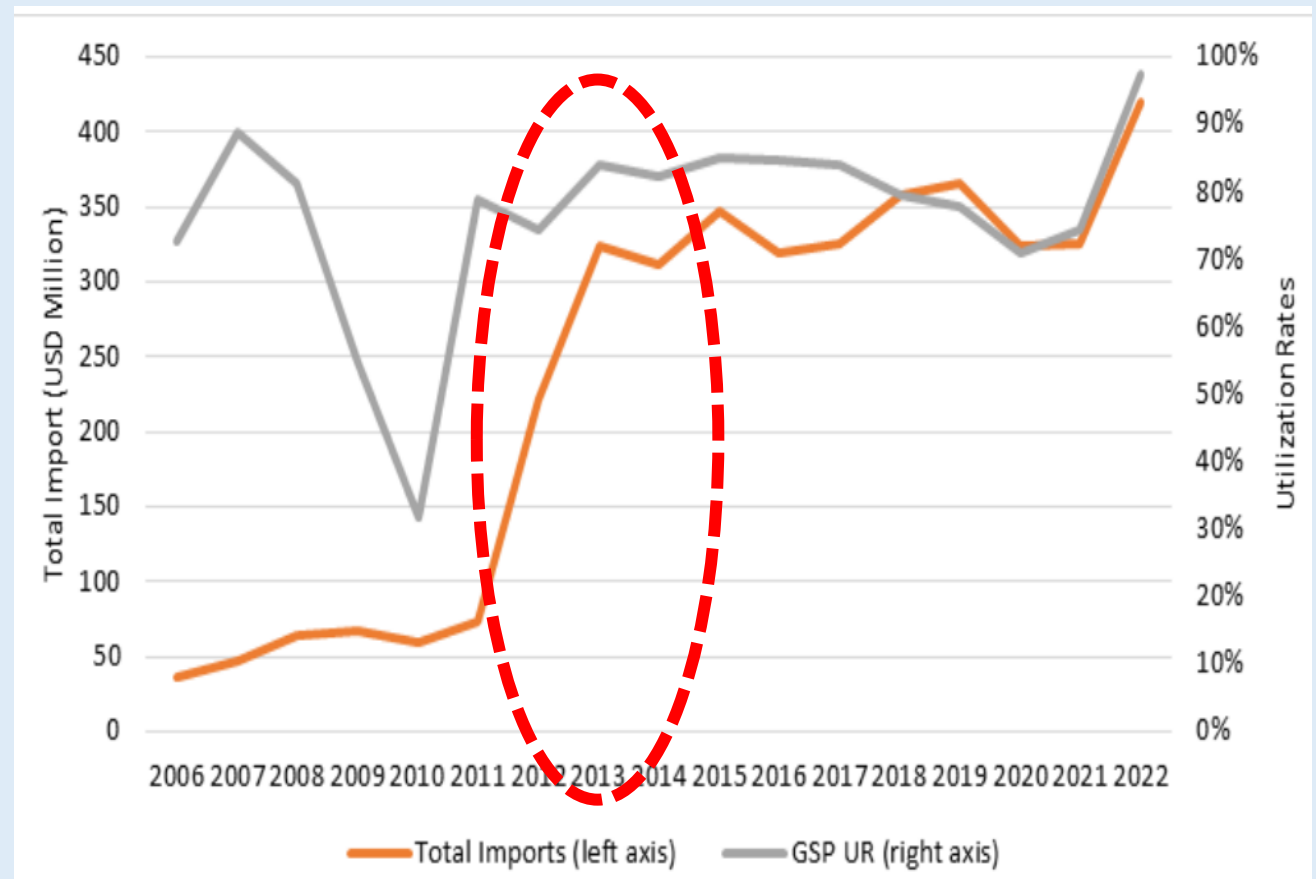
- **Raised the amount of non-originating materials from 40% to 70%;**
- **Relaxed the value-added rules** in the allocation of origin when two or more ASEAN countries are involved in manufacturing;
- These changes allowed bicycle manufacturers based in Cambodia to use ASEAN parts; and
- Producers were able to substantially benefit from these reforms scaling up the quality of bicycles to higher models.



# The Positive Effects of the EU Reform Concerning Rules of Origin on Cambodian Exports to the EU

The figure shows that, in 2011, the utilization rate of bicycles exported from Cambodia to the EU increased to around 80% from the rate of 33% of the previous year with a significant rise of volume of exports from 60 Millions in 2010 to 300 millions in 2013.

Grap 1: EU imports from Cambodia & GSP utilization rates: Bicycles



# The combined challenges to the Cambodian bicycle industry arising from the loss of cumulation due to graduation and erosion of market access

- In 2014, the amendment to the EU's Generalized System of Preferences (GSP) rules resulted in countries being graduated from the EU GSP, if they are either:
  - (a) graduated from beneficiary status under the EU GSP; or
  - (b) concluded Free Trade Agreements (FTAs) with the EU.
- These combined trade policy actions created collateral damage to Cambodia and ASEAN LDCs coming from the following challenges:
  1. **Loss of Cumulation:** Graduation of Malaysia from GSP beneficiary status in 2014; and
  2. **Loss of Cumulation and preference Erosion:** Graduation of Vietnam on January 2023 after entry into force of EU-Vietnam FTA on 1 August 2020.

# **1. Challenge: Loss of Cumulation due to Graduation of Malaysia from GSP Beneficiary Status in 2014**



# Seeking Remedies to the Graduation of Malaysia: The Derogations

- **Loss of cumulation with Malaysia:**

- Cambodian bicycle manufacturers sought a derogation from the European Commission to continue using gears originating in Malaysia under ASEAN cumulation;
- The request was granted for a three-year transitional period from 29 July 2014 to 31 December 2016, with a quota on the number of bicycles eligible for cumulation;
- However, it took a substantial amount of time to get the derogation, and its timing did not fit the industry production cycles;
- Gathering the necessary information for the second derogation also took time; and
- Challenges persisted in utilizing the second derogation effectively.

# Seeking Remedies to the Graduation of Malaysia: The Limitations of Derogations from a Business Perspective

*“The derogation for Malaysia took much too long to [be] put in place, we missed a whole model year with no Shimano as local content. Then when it was granted, it took a long time for the Malaysia[n] government to start to issue Form A. Frankly, we will only start [benefitting] from this model year production, which starts in May, and we just have until the end of 2016 before [the derogation from the EU GSP Regulation] expires. Brands [will not] want to change specifications halfway through a model year in 2016. So, for us, it's almost all over from May 2016.”*

Inputs from AJ Company, September 2018

## **2. Loss of Cumulation and Preference erosion Graduation of Vietnam on January 2023 after entry into force of FTA**

# Seeking Remedies to the Graduation of Vietnam:

- In spite of previous consultations held with EU, there was no option left other than requesting extended cumulation:
- The procedural steps:
  - Extended cumulation can only be granted upon request and if specific conditions are met;
  - The request must be motivated and supported by evidence;
  - Extended cumulation applies only to specific products, but the level of specificity is unclear;
  - A joint undertaking between Cambodia and Vietnam is required to comply with origin rules for the EU and between the two countries;
  - There is no deadline for the response of the EU Commission to the request for extended cumulation.

# Seeking Remedies to the Graduation of Vietnam: A Short Chronology

- The process started in late 2020 and it took two years to get to a signed joint undertaking with Vietnam;
- The formal request for extended cumulation was made in December 2022 due to the issue's complexity;
- Informal discussions have taken place since, but the EU did not give a definitive till September 2023;
- The EU informed in April 2022 that the joint undertaking needed to be updated to align with the new EU GSP and origin rules;
- Updating the joint undertaking would have required new consultations between Cambodia and Vietnam; and
- Finally, as the new EU GSP was not promulgated there was not need to update the joint undertaking.



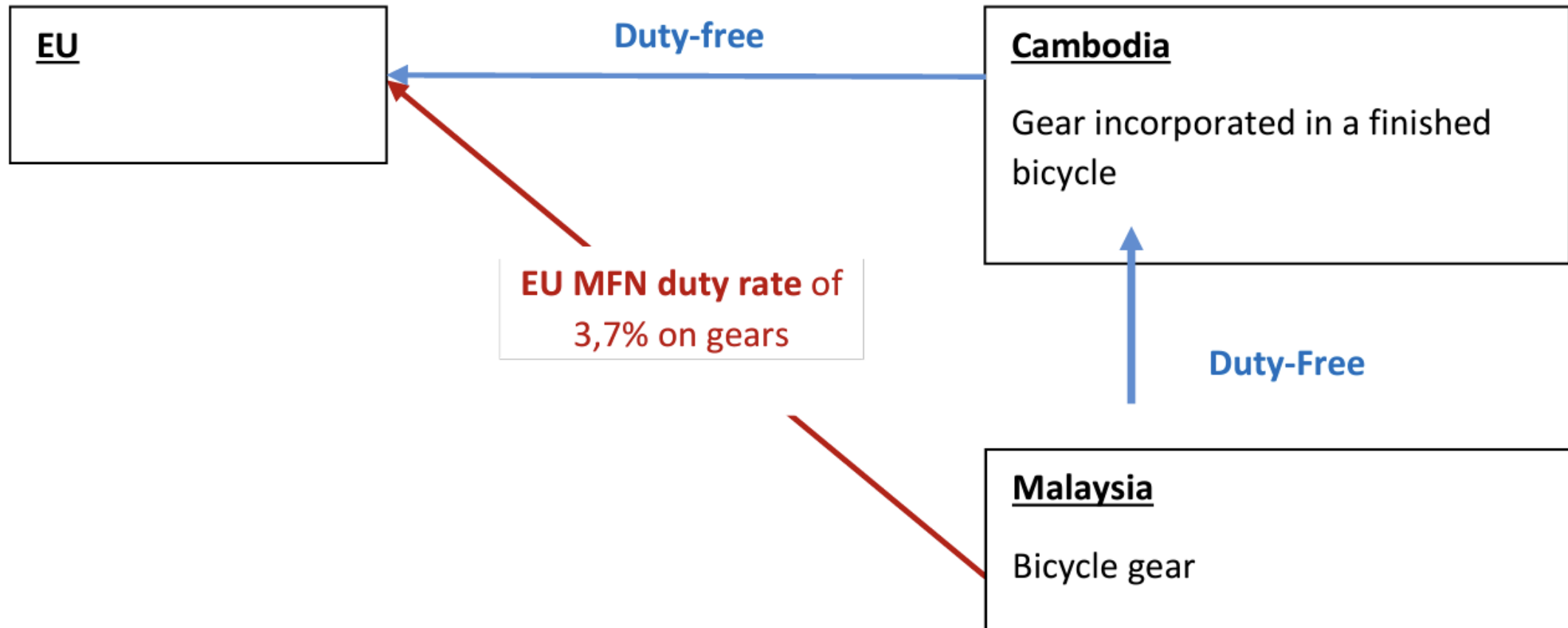
# The EU's Alleged Rationale for Excluding Materials Originating in Graduated Countries from Regional Cumulation (I)

- The focus of this submission is not the EU graduation policy itself, but rather how the policy affects inputs from graduated countries that are also part of a regional grouping;
- The previous EU GSP Regulation (No. 732/2008) maintained regional cumulation even when a member of the regional group graduated from the GSP; and
- The current EU GSP Regulation and the proposed revision for 2024-2034 decade do not include a provision equivalent to EU GSP Regulation (No. 732/2008).

# **The EU Alleged Rationale for Excluding Materials Originating in Graduated Countries from Regional Cumulation (II)**

- European Commission officials argue that using inputs from graduated countries would undermine the purpose of graduation and violate GATT 1994;
- This argument is not entirely convincing, as it was not raised when the previous EU GSP Regulation was in force; and
- Incorporating inputs from graduated countries into a finished product should be considered as substantial transformation under the Union Customs Code (Article 55, Paragraph 4).

# Potential WTO Inconsistency of Regional Cumulation of Inputs and Materials Originating in Graduated Countries in the Absence of Equivalent Market Access between the EU and the Graduated Countries



# Comparable Situations and Best Practices Adopted by other Preference-Giving Countries

- As part of its 2013 "Economic Action", Canada reformed its General Preferential Tariff (GPT) regime; countries meeting one of the two criteria below ceased to be eligible for the Canadian GSP scheme:
  - a) whether, according to the latest World Bank income classifications, the country is classified for two consecutive years as a high-income or upper-middle-income economy; or
  - b) whether, according to the latest WTO statistics, the country has had a 1% or greater share of the world's exports for two consecutive years;
- The graduation of 72 trading partners from GPT treatment in 2015 had anticipated negative implications for remaining beneficiaries;
- Canadian importers acknowledged the potential negative impact during the review process of the Canadian GPT scheme; and
- Changes were made to Canada's LDCs trade regime to maintain duty-free treatment for LDC exports, even if they included inputs from countries no longer eligible for GPT.

# **Summary: The Combined Challenges Arising from 1. Loss of Cumulation and 2. Erosion of Market Access**

- In the timespan of a few years starting from 2014 the unfolding of EU trade policy has caused significant collateral damage to Cambodian bicycle producers:
  1. Loss of cumulation with ASEAN partners;
  2. Erosion of preferential market access due to EU-ASEAN FTAs; and
  3. Potential double jeopardy since ASEAN countries that signed an FTA with EU may cumulate among themselves but not Cambodia.
- Is this balanced and reasonable?

# Summary: Progressing to the new EU GSP 2024-2034

- The developments in the process leading to the approval of EU GSP for the decade 2024-2034 show progress to better understand the implications of the EU combined policy actions on Cambodia and ASEAN LDC.
- The current EU GSP Proposal does not seem to contain any provision to remedy the existing imbalance.
  - Article 4 of the EU GSP Proposal, which deals with the eligibility criteria for the standard EU GSP, does not provide any solution;
  - A new Article 33 in the EU GSP proposal does not (a) clarify the procedure for submitting a request, (b) specify the format to be used for the joint undertaking, (c) provide a timeline for the European Commission to assess and respond to the request for extended cumulation; and
  - Yet it contains guidelines that are complied with the Cambodia bicycles producers.

# The Systemic Nature of the Issue Raised by Cambodia

- The Cambodian bicycle industry's situation regarding cumulation is not unique or isolated;
- The Cotonou Agreement between the EU and ACP countries provided full regional cumulation;
- The Cotonou Agreement has been gradually replaced by Economic Partnership Agreements (EPAs) between individual ACP countries and the EU;
- As a result, ACP countries must re-apply for regional cumulation under their respective FTAs with the EU; and
- This is not an easy process as the procedure is similarly to the one of extended cumulation experience by Cambodia.

### **3. Main Conclusions & Recommendations**



# Main Conclusions

- The EU reform concerning rules of origin, with the exclusion from the cumulation of the inputs originating in graduated countries, backtracked the outstanding results of its reform for no apparent and valid reason;
- The issue is not limited to ASEAN LDCs but may also a systemic issue affects other ACP countries.

# Recommendations (I)

- We recommends redressing the collateral damage that has resulted from graduation, which has profoundly affected the private sector of LDCs.
- The EU GSP Proposal should re-introduce the possibility for a country to cumulate inputs originating in a graduated country that is part of the same regional grouping;
- The EU GSP Proposal should impart predictability and transparency for the procedures to submit a request for extended cumulation such as:
  - *Include a deadline of 90 working days on the EU to decide on a request for extended cumulation. Once the deadline is passed, the request should be deemed to be accepted for a minimum period of five years; problems.*

## Recommendations (II)

- Other preference giving countries should take note of this experience and introduce best practices in their legislation to take into account the encountered problems.



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**THANK YOU!**

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