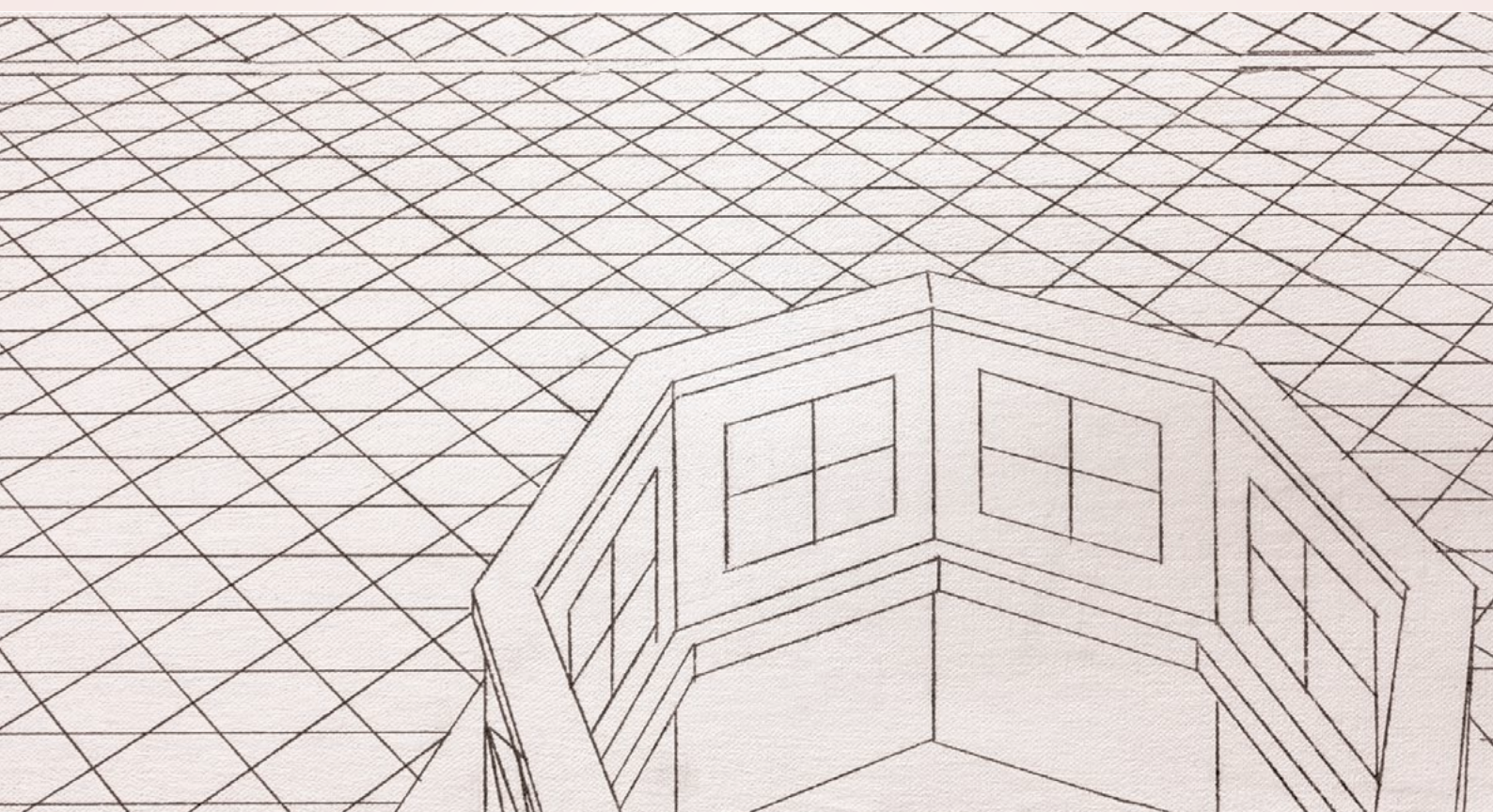


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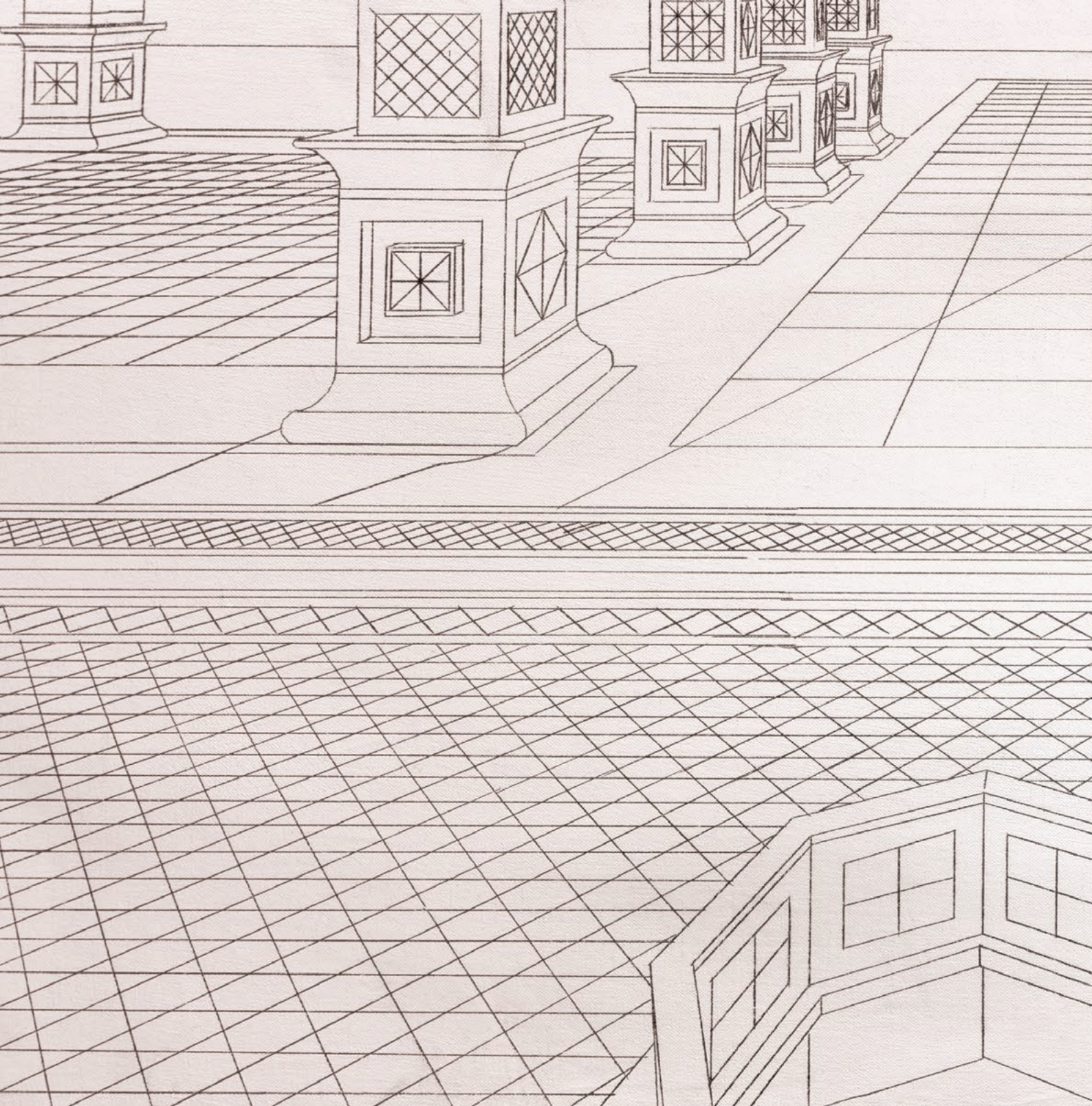
HANDBOOK
ON DUTY-FREE QUOTA-FREE MARKET ACCESS
AND RULES OF ORIGIN
FOR LEAST DEVELOPED COUNTRIES



PART I:
QUAD Countries



UNITED NATIONS



“Mazzarello - geometrie del dare, nuovo futuro” is the work of Maurizio Cancelli.

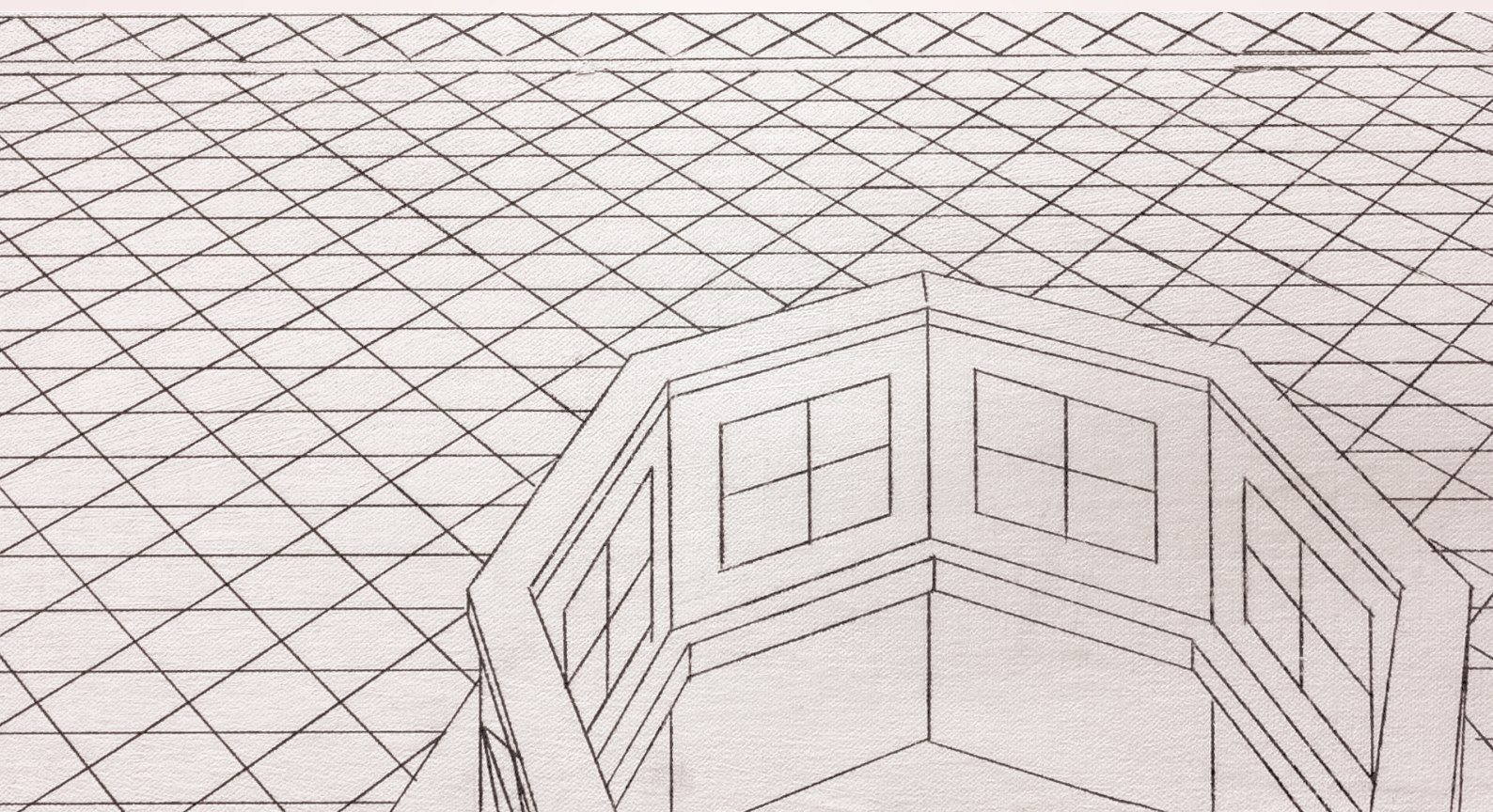
Its architectural perspective emphasizes the interactions of governments, societies and economies from around the globe under the United Nations Framework. This collaboration highlights the earth, its resources and potentials, and fosters a recognition of local communities and their right to exist in their places of origin, with their own distinction and diversity. Maurizio Cancelli started his artistic research on the right to live in one’s place of birth more than thirty years ago. His work is inspired by the mountainous terrain surrounding the village of Cancelli in the heart of Umbria, Italy.

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

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AND RULES OF ORIGIN
FOR LEAST DEVELOPED COUNTRIES



PART I:
QUAD Countries



UNITED NATIONS
New York and Geneva, 2018

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UNCTAD/ALDC/2018/5 (Part I)

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Acknowledgements

This handbook was drafted by Stefano Inama, Chief, Technical Cooperation and Enhanced Integrated Framework Section, Division for Africa, Least Developed Countries and Special Programmes, UNCTAD, with inputs from Pramila Crivelli, Nicolas Köhler, Alba Soles Sorribes, and Michaela Summerer. The work was completed under the overall supervision of Paul Akiwumi, Director, Division for Africa, Least Developed Countries and Special Programmes.

Madasamyraja Rajalingam was responsible for the layout and desktop publishing, Magali Studer designed the cover and additional support was provided by Stefanie Garry.

UNCTAD would like to thank Mr. Maurizio Cancelli for the use of his artwork.

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Abbreviations

ABI	Automated Broker Interface
ACP	African, Caribbean and Pacific Group of States
AGOA	African Growth And Opportunity Act
ASEAN	Association of Southeast Asian Nations
CARICOM	Caribbean Common Market
CBERA	Caribbean Basin Economic Recovery Act
CBP	United States Customs and Border Protection
CBSA	Canada Border Services Agency
CBTPA	Caribbean Basin Trade Partnership Act
CPA	Cotonou Partnership Agreement
CTH	Change of tariff heading
DDA	Doha Development Agenda
DFQF	Duty Free Quota Free
EBA	Everything But Arms
EC	European Community
EPA	Economic Partnership Agreement
EU	European Union
FOB	Free on board
FTA	Free Trade Agreement
GATT	General Agreement on Tariffs and Trade
GPT	General Preferential Tariff
GSP	Generalized System of Preferences
HELP	Haiti Economic Lift Program
HOPE	Haitian Hemispheric Opportunity through Partnership Encouragement Act
HS	Harmonized System
HTS	Harmonized Tariff System
HTSUS	Harmonized Tariff Schedule of the United States
LDC	Least Developed Country
LDCT	Least Developed Country Tariff
MERCOSUR	Mercado Común del Sur
MFN	Most Favoured Nation
NAFTA	North American Free Trade Agreement
NTR	Normal trade relations
REX	Registered Exporter System
RoO	Rules of Origin
SAARC	South Asian Association for Regional Cooperation
SADC	Southern African Development Community
SPI	Special Programme Indicator
TBL	Through bill of lading
TDB	Trade and Development Board
UNCTAD	United Nations Conference on Trade and Development
USITC	United States International Trade Commission
WAEMU	West African Economic and Monetary Union
WTO	World Trade Organization



I. INTRODUCTION

Least developed countries (LDCs) have been granted preferential tariff treatment in the markets of developed and developing countries under a number of schemes and arrangements, such as the Generalized System of Preferences (GSP), the trade preferences under the former African, Caribbean and Pacific Group of Countries (ACP)–European Community (EC) Cotonou Partnership Agreement, and other preferential instruments granted to selected countries and groups of countries. In spite of these existing initiatives, significant obstacles to LDCs market access remain.¹

The 1996 Singapore Ministerial Declaration refocused the attention of the trading community on the idea of unilateral preferences by launching the initiative of special trade preferences for LDCs, including provisions for taking positive measures, for example duty-free market access on an autonomous basis.

In response to the Singapore proposal, a number of initiatives were taken to provide more favourable market access conditions for LDCs:

- a. The Everything But Arms (EBA) initiative entered into effect on 5 March 2001, providing duty-free and quota-free market access to all products, excluding arms and armaments.
- b. A significant improvement in the scheme of the United States of America was recorded in 1997, when 1,783 new products originating in LDC beneficiaries were granted duty-free treatment. In May 2000, the United States promulgated the African Growth and Opportunity Act (AGOA), whereby the United States GSP scheme was amended in favour of designated sub-Saharan African countries to expand the range of products, including textiles and clothing.
- c. In September 2000, the Canadian Government enlarged the product coverage of its GSP scheme to allow 570 products originating in LDCs to enter its market duty-free. In January 2003, the scheme was greatly improved by expanding product coverage to all products, including textiles and clothing, and new rules of origin with some minor exclusion of selected agricultural products.
- d. Following a review of the GSP scheme of Japan, conducted in December 2000, the scheme was revised to provide duty-free treatment for an additional list of industrial products originating in LDC beneficiaries. Following a second review in April 2003, an additional list of agricultural products was added for LDCs, and duty-free access was granted for all products covered by the scheme for LDCs.

In spite of these initiatives the LDCs and the international trade community considered that the progress made was not yet sufficient. In fact the Hong Kong (China) Ministerial decision re-launched the idea of providing duty-free and quota-free to LDCs as follows:

We agree that developed-country Members shall, and developing-country Members declaring themselves in a position to do so should:

- a. Provide duty-free and quota-free market access on a lasting basis, for all products originating from all LDCs by 2008 or no later than the start of the implementation period in a manner that ensures stability, security and predictability.
- b. Members facing difficulties at this time to provide market access as set out above shall provide duty-free and quota-free market access for at least 97 per cent of products originating from LDCs, defined at the tariff line level, by 2008 or no later than the start of the implementation period. In addition, these Members shall take steps to progressively achieve compliance with the obligations set out above, taking into account the impact on other developing countries at similar levels of development, and, as appropriate, by incrementally building on the initial list of covered products.
- c. Developing-country Members shall be permitted to phase in their commitments and shall enjoy appropriate flexibility in coverage.

- d. Ensure that preferential rules of origin applicable to imports from LDCs are transparent and simple, and contribute to facilitating market access.

Following the 2005 Hong Kong (China) decision, progress has been made by preference-granting countries in order to achieve duty-free and quota-free market access for products originating in LDCs. For this purpose, new developments in the existing DFQF arrangements have taken place:

- a. In November 2010, the European Union adopted a regulation revising the rules of origin for products imported under the generalized system of preferences. The regulation simplified the rules of origin to facilitate their understanding and compliance. In October 2012, the European Union adopted a reformed GSP law.
- b. In April 2015, Japan applied a simplification measure for preferential rules of origin of chapter 61 of the HS.
- c. In 2013, Canada carried out a review of its GPT regime. The programme was renewed for 10 years. The number of GPT beneficiaries was reduced, and the preferential rules of origin for products exported to Canada under the LDCT scheme were amended, allowing cumulation with former GSP beneficiary countries.
- d. In June 2015, the United States GSP scheme, which had expired on 2013, was extended until 2017 and additionally, AGOA was extended until 2025. In March 2018, the GSP scheme was again retroactively extended for goods entering in the period from January 2018 to December 2020.

The 2013 Bali Ministerial declaration did not include substantial changes to the 2005 Hong Kong (China) Decision on Measures in Favour of Least Developed Countries; nevertheless it did introduce a Decision on preferential rules of origin for LDCs, setting the guidelines for preference-granting countries to build upon their individual rules of origin, in a manner that promotes the utilization of their preferential arrangements and therefore contributing to facilitating market access for LDCs.² The Nairobi declaration of 2015 on preferential provided for guidelines, a format for notification of Rules of origin and utilization rates of DFQF.³

The present handbook reviews the progress made to implement the Hong Kong (China) decision until the Nairobi WTO Ministerial of 2015 and subsequent changes that individual QUAD countries have made to their schemes till 31 December 2017. The first part focuses on the special provisions in favour of LDCs and related rules of origin, as contained in the GSP schemes of the Quad countries, namely Canada, those of the European Union Japan and the United States.

A second part of this handbook will focus on the implementation of the Hong Kong (China) Ministerial decision on duty-free and quota-free (DFQF) market access by other developed countries and developing countries.

II. HISTORICAL BACKGROUND:

The road leading to initiatives for duty-free and quota-free market access

A. Foundations

Trade preferences for LDCs have been a long-standing feature of the international trading system. The concept of the Generalized System of Preferences (GSP) was adopted in New Delhi in 1968 in the context of UNCTAD II. As stated in UNCTAD resolution 21(II):⁴

The objectives of the generalized, non-reciprocal, non-discriminatory system of preferences in favour of the developing countries, including special measures in favour of the least advanced among the developing countries, should be:

- a. To increase their export earnings;
- b. To promote their industrialization;
- c. To accelerate their rates of economic growth.

To that end, resolution 21(II) also established a special committee on preferences as a subsidiary organ of the Trade and Development Board (TDB) of UNCTAD to enable all countries concerned to participate in the necessary consultations. The Special Committee on Preferences held four sessions between November 1968 and October 1970, and its report and agreed conclusions were adopted by the TDB in October 1970.

The agreed conclusions established, inter alia, the legal nature of the commitments assumed by the preference-giving countries. Part IX, paragraph 2 of the agreed conclusions states:

...the legal status of the tariff preferences to be accorded to the beneficiary countries by each preference-giving country individually will be governed by the following considerations:

- a. The tariff preferences are temporary in nature;
- b. Their grant does not constitute a binding commitment and, in particular, it does not in any way prevent:
 - i) Their subsequent withdrawal in whole or in part; or
 - ii) The subsequent reduction of tariffs on a most-favoured-nation basis ...;
- c. Their grant is conditional upon the necessary waiver or waivers in respect of existing international obligations, in particular the General Agreement on Tariffs and Trade.⁵

In line with the agreed conclusions, the prospective preference-giving countries concerned submitted a formal application to the contracting parties to the General Agreement on Tariffs and Trade (GATT) for a waiver in accordance with article XXV (5) from their obligations under article I (most favoured nation (MFN) principle) of the General Agreement, so as to permit the implementation of a generalized system of preferences. By their decision of 25 June 1971, the contracting parties decided to waive the provisions of GATT article I for a period of 10 years to the extent necessary to permit developed contracting parties to accord preferential tariff treatment to products originating in developing countries and territories without according such treatment to like products of other contracting parties.⁶

In order to permanently insert the GSP preferences into the general body of GATT law, the contracting parties decided to adopt the 1979 Enabling Clause (Decision of 28 November 1979 on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries) as a supplementary rule, which permits them, for an indefinite period of time, to derogate from the MFN clause in order to contribute to the economic development of the developing countries.

As far as special treatment for least developed beneficiary countries, paragraph D of the Enabling Clause allows developed countries to grant special preferential tariff treatment to LDCs in the context of any general or specific measures in favour of developing countries.

Such treatment consists in the adoption of trade measures such as wider product coverage, deeper tariff cuts or exclusion from certain safeguards, which are beneficial to LDCs in view of their special economic, financial and trade needs, without, however, discriminating against other developing beneficiary countries.

During the past three decades of implementation of the GSP, its three basic principles, as spelled out in resolution 21(II), have not been fully observed from the outset, and divergence from them has grown over time. The first principle, namely generality, called for a common scheme to be applied by all preference-giving countries to all developing countries. In practice, there are wide differences among the various GSP schemes in terms of product coverage, depth of tariff cuts, safeguards and rules of origin. While a certain degree of harmonization exists in the area of product coverage, some schemes completely exclude the textiles and clothing sector. In the case of rules of origin, each GSP scheme has its own set of origin criteria and ancillary requirements.

The second principle, namely non-reciprocity, means that beneficiaries are not called upon to make corresponding concessions in exchange for being granted GSP beneficiary status. However, certain preference-giving countries attach conditions to eligibility, and some have withdrawn preferences indirectly. This action implies a certain degree of reciprocity in the form of concessions or conformity with a certain pattern of behaviour.

The third principle, namely non-discrimination, implies that all developing countries should be covered and treated equally under the schemes. In this connection, a “positive” differentiation among beneficiaries allows for special measures for LDCs, which are justified by the particular economic and development situation of such countries.

B. From the Singapore WTO Ministerial in 1997 to Hong Kong (China) in 2005

The 1996 Singapore Ministerial Declaration refocused the attention of the trading community on the idea of unilateral preferences by launching the initiative of special trade preferences for LDCs, including provisions for taking positive measures, for example, duty-free access on an autonomous basis, aimed at improving the opportunities offered by the trading system for those countries.

Following the Seattle Ministerial Conference, the proposal of granting duty-free and/or quota-free treatment for “essentially all” products was also discussed in the context of various international forums and was also included in the UNCTAD X Bangkok Plan of Action.

This proposal was further considered together with other different elements of “WTO short-term confidence-building measures” at the WTO General Council on 3 and 8 May 2000, where it was agreed that duty-free and quota-free treatment would be “consistent with domestic requirements and international agreements”. Arguably, this qualification of the offer was designed to cover the respective concerns of the Quad countries for some sensitive products such as agricultural products for the European Union, textiles and garments for the United States and fish products for Japan.

In the European Union market before the introduction of the EBA, which improved the market-access conditions of LDCs, the extremely high trade-weighted coverage (99.9 per cent) granted under the former Lomé Conventions and Cotonou Partnership Agreement appeared to provide little scope for improving market access for LDC products.

However, a closer analysis of the preferential treatment provided under the Lomé/Cotonou Agreement and former GSP trade revealed that the comprehensive product coverage and preferential rates granted to LDCs were not necessarily equivalent to duty-free access.⁷

Even if the 1998 extension in GSP coverage improved the benefits for non-ACP LDCs, market access conditions for ACP LDCs were still more favourable than the ones for non-ACP LDCs under the GSP, especially in the agriculture sector. In fact, all the sensitive agricultural concessions that were granted under Lomé/Cotonou special protocols and quotas applied solely to ACP countries and were not extended to the non-ACP LDCs by the 1998 amendment to the European Union-GSP scheme for LDCs.

The detailed list of agricultural products that were not provided duty-free access but a selected reduction of duties was contained in an annex of joint declaration attached to the former Lomé Convention. The Cotonou Partnership Agreement (CPA) was no exception to this rule, and Declaration XXII entitled “Joint Declaration concerning agricultural products referred to in article 1(2)(A) of Annex V” attached to the text of the CPA contains the details of the concession. These agriculture-specific concessions concerned practically all products covered by the Common Agricultural Policy. Some of these countries provided more favourable market access conditions to LDCs and sub-Saharan African countries (35 out of 48 LDCs are African).

In September 2000, the European Union Commission announced the adoption of the expected plan to grant unrestricted duty-free access to all LDCs products, excluding arms. The Everything But Arms (EBA) proposal was approved and entered into effect on 5 March 2001.

A first improvement to the United States GSP scheme was made in 1997 by expanding product coverage. In May 2000, the United States authorized the African Growth and Opportunity Act (AGOA) 4, whereby the basic United States GSP scheme was amended in favour of designated sub-Saharan African countries to include a larger range of products. In particular, preferential treatment has been granted to selected apparel articles subject to special provisions, rules of origin and customs requirements.

In September 2000, the Canadian Government enlarged the product coverage of its GSP scheme to allow 570 products originating in LDCs to enter its market duty free. In 2003 the Canadian Government launched the initiative to provide substantial duty-free and quota-free treatment to LDCs with favourable rules of origin.⁸

Following a review of the GSP scheme of Japan, conducted in December 2000, the scheme was revised and extended for ten years until 31 March 2011. The revised scheme introduced, as of 1 April 2001, an additional list of industrial products originating in LDC beneficiaries that are granted duty- and quota-free entry. In April 2007, Japan notified further improvements to implement the duty-free quota-free commitment.⁹ As a result of this expansion, Japan reported that 1,101 products had been added to the list of items for the DFQF to LDCs (from 7,758 to 8,859 tariff lines).

Although welcome, all these initiatives, as previous trade preferences, were not completely satisfactory since the specific interests of LDCs were not properly reflected in their design. In particular, in the light of the past experience with several preferential trade arrangements such as the GSP, LDCs argued that, in order to be meaningful and effective, duty-free and quota-free treatment should cover all products and incorporate rules of origin requirements matched with the industrial capacity of LDCs.

C. The Hong Kong (China) decision (2005)

The LDC Group has been negotiating in WTO for duty-free and quota-free market access with simple and transparent rules of origin since at least the start of the Uruguay Round of trade negotiations in 1995.¹⁰ In preparation for the Hong Kong (China) Ministerial Meeting, held in December 2005, the LDCs made a concerted effort to get an implementable decision passed by the Ministers. The decision that was obtained in Hong Kong (China) was better than had been obtained in past negotiations but still fell short of the expectations of the LDCs.

The Hong Kong (China) Ministerial Decision on duty-free and quota-free market access is contained in Annex F: Special and Differential Treatment, which states:

We agree that developed-country Members shall, and developing-country Members declaring themselves in a position to do so should:

- (a) (i) *Provide duty-free and quota-free market access on a lasting basis, for all products originating from all LDCs by 2008 or no later than the start of the implementation period in a manner that ensures stability, security and predictability.*
- (ii) *Members facing difficulties at this time to provide market access as set out above shall provide duty-free and quota-free market access for at least 97 per cent of products originating from LDCs, defined at the tariff line level, by 2008 or no later than the start of the implementation period. In addition, these Members shall take steps to progressively achieve compliance with the obligations set out above, taking into account the impact on other developing countries at similar levels of development, and, as appropriate, by incrementally building on the initial list of covered products.*
- (iii) *Developing-country Members shall be permitted to phase in their commitments and shall enjoy appropriate flexibility in coverage.*
- (b) *Ensure that preferential rules of origin applicable to imports from LDCs are transparent and simple, and contribute to facilitating market access.*

Members shall notify the implementation of the schemes adopted under this decision every year to the Committee on Trade and Development. The Committee on Trade and Development shall annually review the steps taken to provide duty-free and quota-free market access to the LDCs and report to the General Council for appropriate action.

We urge all donors and relevant international institutions to increase financial and technical support aimed at the diversification of LDC economies, while providing additional financial and technical assistance through appropriate delivery mechanisms to meet their implementation obligations, including fulfilling SPS and TBT requirements, and to assist them in managing their adjustment processes, including those necessary to face the results of MFN multilateral trade liberalization.”

However, progress on preparing modalities for the implementation of the decision on duty-free and quota-free market access made at Hong Kong (China) has been slow. The last position is given in the Revised Draft Modalities of the Agriculture and Non-Agricultural Market Access (NAMA) Chairs contained and TN/AG/W/4/Rev.4 of 6 December 2008 TN and in TN/MA/W/103/Rev.3/Add.1 of 21 April 2011, respectively. These latest texts of the NAMA and Agricultural Revised Draft Modalities addressing market access for LDCs recorded in the case of NAMA some limited improvements with respect to the original Hong Kong (China) decision. In particular, the NAMA text was articulated as follows:

We reaffirm the need to help LDCs secure beneficial and meaningful integration into the multilateral trading system. In this regard, we recall the Decision on Measures in Favour of Least Developed Countries contained in decision 36 of Annex F of the Hong Kong (China) Ministerial Declaration (the “Decision”), and agree that Members shall:

- (a) Fully implement the Decision;*
- (b) 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 programmes;*
- (c) Progressively achieve compliance with the Decision referred to above, taking into account the impact on other developing countries at similar levels of development; and*
- (d) Permit developing country Members to phase in their commitments and enjoy appropriate flexibility in coverage.*

Accordingly, developed country Members shall inform WTO Members, by a date to be agreed, of the products that will be covered under the commitment to provide duty-free and quota-free market access for at least 97 per cent of products originating from LDCs defined at the tariff line level. The agreement on the date by which this information shall be provided shall be concluded prior to the date of the Special Session of the Ministerial Conference to be held to take decisions regarding the adoption and implementation of the results of the negotiations in all areas of the DDA (the “Single Undertaking”).

As part of the review foreseen in the Decision, the Committee on Trade and Development shall monitor progress made in its implementation, including in respect of preferential rules of origin. The details of the monitoring procedure shall be defined and agreed by the Negotiating Group on Market Access by the time of the submission of final schedules. Under the monitoring procedure, Members shall annually notify the Committee on Trade and Development (a) the implementation of duty-free and quota-free programmes, including the steps taken and possible timeframes established to progressively achieve full compliance with the Decision and (b) the corresponding rules of origin. The first notification under this monitoring procedure shall be made at the start of the implementation of the results of the Doha Development Agenda. The Committee on Trade and Development shall review such notifications and shall report annually to the General Council for appropriate action.”¹¹

D. From the Hong Kong (China) 2005 WTO Ministerial to Buenos Aires 2017

Following the Hong Kong (China) decision, and with a view to continue integrating LDCs into the multilateral trading system and promoting growth and sustainable development, the decision on duty-free and quota-free market access for LDCs obtained at the Bali Ministerial of 2013 encourages developed and developing-country members to enhance their existing DFQF coverage for products originating from LDCs to increase their market access.¹² The decision also called on members to notify their DFQF schemes to the transparency mechanism for preferential trade arrangements and the Committee on Trade and Development to review the steps taken to provide DFQF market access to LDCs. The decision states as follows:

Developed-country Members that do not yet provide duty-free and quota-free market access for at least 97% of products originating from LDCs, defined at the tariff line level, shall seek to improve their existing duty-free and quota-free coverage for such products, so as to provide increasingly greater market access to LDCs, prior to the next Ministerial Conference;

Developing-country Members, declaring themselves in a position to do so, shall seek to provide duty-free and quota-free market access for products originating from LDCs, or shall seek to improve their existing duty-free and quota-free coverage for such products, so as to provide increasingly greater market access to LDCs, prior to the next Ministerial Conference;

Members shall notify duty-free and quota-free schemes for LDCs and any other relevant changes pursuant to the Transparency Mechanism for Preferential Trade Arrangements;

The Committee on Trade and Development shall continue to annually review the steps taken to provide duty-free and quota-free market access to the LDCs, and report to the General Council for appropriate action;

To aid in its review, the Secretariat shall, in close coordination with Members, prepare a report on Members' duty-free and quota-free market access for LDCs at the tariff line level based on their notifications;

The General Council is instructed to report, including any recommendations, on the implementation of this Decision to the next Ministerial Conference

Since the adoption of the 2005 Hong Kong (China) Decision on Measures in Favour of Least Developed Countries, progress towards the provision of duty-free and quota-free market access on a lasting basis for all products originating from all LDCs has been made. The majority of developed Members and a number of developing-country Members already grant either full or nearly full (to a significant degree in the case of developing countries), DFQF market access to LDC products.

In 2006, President Bush of the United States signed the Africa Investment Incentive Act amending AGOA (AGOA IV). In addition to extending the third-country fabric provision for five years until 2012 and textile and apparel provisions until 2015, the legislation, expanded the duty-free treatment for textiles or textile articles in one or more lesser-developed beneficiary countries. Furthermore, the scheme was subsequently extended in December 2009 to December 2010 and in October 2011 until July 2013.

On 18 January 2007, the Office of the United States Trade Representative (USTR) issued a request for comments from the public on the 2005 WTO Ministerial decision on duty-free and quota-free market access for the least developed countries.

While specific limitations do still apply, currently all least developed countries are eligible for the United States GSP scheme except Bangladesh, the Lao People's Democratic Republic and Sudan, that fail to meet eligibility requirements. In June 2015, President Obama signed the Trade Preferences Extension Act. Title II of the Act authorizes GSP through 31 December 2017 and makes the programme retroactive to 31 July 2013, when it had expired.¹³ Retroactively extending duty reductions of this interim period were in place until 31 December 2017.

In addition to the GSP extension, also the AGOA Extension and Enhancement Act was signed in 2015. The legislation amended the African Growth and Opportunity Act to extend until 2025 the duty-free treatment of the products of beneficiary sub-Saharan African countries.¹⁴ Furthermore, such extension applies to the preferential treatment of certain apparel articles (crossreference chapter for details). Additionally, the rules of origin for duty-free treatment of articles of beneficiary sub-Saharan African countries have been revised, extending cumulation with former beneficiary countries of AGOA and including direct costs of processing operations in order to achieve the required minimum local value content.

The only least developed country in the region covered by the Caribbean Basin Initiative, Haiti, is since 2006 particularly favoured by the United States trade regulations. Granting specific regulations for textile and apparel products, the Haitian Hemispheric Opportunity Through Partnership Encouragement Act (HOPE) of 2006, the HOPE II Act of 2008 and the Haiti Economic List Program Act (HELP) of 2010 focus on the island state.¹⁵ These regulations provide duty-free preferences for mainly apparel products and other light-manufactured products, under the conditionality to comply with international labour standards and Haitian labour law. In 2015, the Trade Preferences Extension Act extended Haiti's preferential treatment until 30 September 2025.¹⁶

Among the Least Developed Countries, Nepal is, in addition to Haiti, granted specific preferential treatment. While benefitting of the GSP regulation, it was in response to the 2015 earthquake that the United States adopted a Waiver Decision for Nepal, the “Trade Facilitation and Trade Enforcement Act of 2015.”¹⁷ Following up on this Act, a Preferential Trade Agreement was formulated and entered into force on December 15, 2016. Preferences for currently 77 articles under the HS-8 scheme are granted until December 31, 2025.

Japan revised its preferential treatment on 1 April 2007 aiming to meet the 97 per cent benchmark of the 2005 Hong Kong (China) decision. The duty-free and quota-free coverage was increased from about 86 per cent to 98 per cent from the total tariff lines (at the nine-digit level).¹⁸ The number of agricultural and fishery products as well as industrial products covered by duty-free quota-free treatment increased from 497 to 1,523 and from 4,185 to 4,244, respectively. The effective period of the GSP scheme was likewise extended on 1 April 2011 until 31 March 2021.¹⁹ In April 2015, Japan applied a simplification measure for preferential rules of origin allowing the use of non-originating fabrics to make garments of Chapter 61.

Furthermore, the European Union reformed its preferential rules of origin. The new regulation on European Union GSP rules of origin, which came into force on 1 January 2011, introduced a liberalization of its preferential rules of origin. The regulation relaxed and simplified the rules and procedures, taking into account the specificities of different sectors of production and including special provisions for LDCs. The European Union’s modification of its preferential rules of origin:

- a. Introduced a differentiation in favour of the LDCs that are benefitting from more lenient rules of origin than developing countries in many sectors;
- b. Allowed a single transformation process in textiles and clothing – a request that the LDCs have been advocating for more than a decade;²⁰
- c. Raised the threshold of the use of non-originating materials, in many sectors from 40% to 70% for LDCs;
- d. Eased the cumulation rules.²¹

In 2012, the European Union GSP regulation was reformed. The modified GSP regulation, which was applied on 1 January 2014, focused preferences exclusively on the countries that most need them.

Canada revised its GPT programme in 2013, which was renewed for 10 years. Additionally, the GPT benefits were withdrawn from 72 higher-income and trade-competitive countries, the least developed country tariff rules and origin regulations were made simpler and clearer for traders and the most-favoured-nation tariffs on imported raw cane sugar were amended. The amendments on the rules of origin regulations under Canada’s LDCT programme allowed LDC exports eligible for duty-free treatment upon importation to Canada to incorporate inputs from countries no longer eligible for the GPT. The measure aimed at ensuring that the countries benefitting from this arrangement were not affected by changes to GPT country eligibility.²²

E. The Bali (2013) and Nairobi (2015) preferential decisions on RoO²³

The Hong Kong (China) Ministerial Decision, in paragraph (b) of the Decision on Measures in Favour of Least-Developed Countries calls preference-granting countries to formulate transparent and simple rules of origin for LDCs imports aimed at facilitating market access.²⁴ The Decision declares as follows: “Developed country Members shall, and developing country Members declaring themselves in a position to do so should: b) Ensure that preferential rules of origin applicable to imports from LDCs are transparent and simple, and contribute to facilitating market access.”

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

This initiative was aimed at setting the stage for a sensible debate on rules of origin between LDCs and preference-giving countries on the basis of a legal text, rather than on declarations of principles and statements. Zambia, in its capacity as WTO LDC coordinator, submitted the first fully fledged proposal to operationalize the wording of the Hong Kong (China) Decision.²⁵ The text provided for a narrative explaining the reasons and background for the LDC proposal, and a draft legal text to make it operational.

The responses from preference-giving countries to the proposal were not satisfactory, nor was the level of comprehension of the LDC proposal. A series of meetings were held in 2007 with delegations of preference-giving

countries, including Japan, the United States and members of the European Union. However, these meetings were not particularly productive, since the focus of the preference-giving countries was on defending the status quo rather than being aimed at discussing possible ways to multilaterally achieve the objectives of rules of origin for LDCs that are “transparent and simple, and contribute to facilitating market access”.

From 2008 until the Bali Decision of December 2013, the LDC proposal on rules of origin was mainly discussed in the context of an LDC package. The package took the final form of a WTO document²⁶ presented by the delegation from Nepal as coordinator of the WTO LDC group. During that period, the LDC proposal on rules of origin underwent two revisions, the first one with Bangladesh as coordinator of the LDC WTO group, the second with Nepal, until the Bali WTO Ministerial took place.²⁷

On 31 May 2013, the rules of origin proposal was inserted in the so-called LDC package circulated among WTO members. During the summer of 2013, it became clear that preference-giving countries were not prepared to discuss a technical legal text on rules of origin as contained in the LDC proposal. Thus, in a little more than one month since they had presented the LDC package with a full legal text on rules of origin, the LDCs were persuaded to formulate their request in the form of a two-to-three-page decision that was first put on the table in mid-July 2013.

In July, a text was initially tabled by Nepal as LDC coordinator in the form of a decision containing a series of binding guidelines on percentage criterion, level of percentages and use of the change of tariff classification (CTC) method, together with other detailed provisions excerpted from the legal text of the LDC proposal. However, migration from the legal text contained in the LDC package to the draft decision was not simple. An initial suggested text containing a number of binding guidelines and a clear drafting was lost in the crucial phases of the negotiations. In fact, the second draft text of the July decision made reference to a value added calculation rather than to a value-of-materials calculation that was the essence of the LDCs’ original proposal since 2007.

In September, a new version of the draft decision was presented at a WTO meeting. This version raised concerns among the delegations during the meeting over some of the specificities – percentage threshold, cumulation, use of “must” and “shall” and so forth. However, most delegations said that they could work on the basis of the proposed draft text and hoped to find a deliverable for Bali. The preference-giving countries continued to oppose any binding language or specific benchmarks contained in the draft decision with the final draft agreed by 23 October, well ahead of the Bali Ministerial.

The Bali Ministerial Conference introduced a decision on preferential rules of origin for least-developed countries.²⁸ The decision recognized that the formulation of rules of origin, taking into account LDCs capacities and with lower costs of compliance, would enable them to maximize the utilization of market-access opportunities provided by preference-granting countries. Therefore, a set of non-binding guidelines were established from which preferential-granting countries may build upon their individual rules of origin applicable to imports from LDCs with a view of contributing in facilitating their market access. The decision states:

[...] Considering that duty-free and quota-free market access for LDCs can be effectively utilized if accompanied by simple and transparent rules of origin;

Recognizing that simple and transparent rules of origin may take into account the capacities and levels of development of LDCs;

Recognizing that the purpose of rules of origin for preference programmes benefiting LDCs is to ensure that only preference-receiving LDCs and not others benefit from the market access opportunities that have been afforded to them under such arrangements;

Recognizing that lower costs of compliance with rules of origin requirements will encourage LDC exporters to avail of market access opportunities provided to them;

Recognizing that the objectives of transparent and simple rules of origin that contribute to facilitating market access of LDC products can be achieved in a variety of ways, and that no one method is preferred to another;

Decides as follows:

1.1. With a view to facilitating market access for LDCs provided under non-reciprocal preferential trade arrangements for LDCs, Members should endeavour to develop or build on their individual rules of origin

arrangements applicable to imports from LDCs in accordance with the following guidelines. These guidelines do not stipulate a single set of rules of origin criteria. Rather, they provide elements upon which Members may wish to draw for preferential rules of origin applicable to imports from LDCs under such arrangements.

The guidelines set out a number of elements providing guidance to preference-granting members on the formulation of their preferential rules of origin. Such elements include:

- a. Substantial transformation:
 - i) Ad valorem percentage: in the case that the rules of origin are based on the ad valorem percentage, the level of value addition should be kept as low as possible. A maximum value of non-originating materials of 75% is proposed in order for a good to qualify for benefits under LDC preferential treatment (paragraph 1.3 of the decision)
 - ii) Methods of calculation: the different methodologies of calculation of value added should be as simple as possible (paragraph 1.4 of the decision).
 - iii) Change of tariff classification: in the case of rules based on change of tariff classification, a change of tariff heading or subheading should be considered a substantial or sufficient transformation; nevertheless, it is suggested that product-specific rules with different requirements may be more appropriate (paragraph 1.5 of the decision).
 - iv) Specific manufacturing or processing operation: proposes that in the case of rules based on specific manufacturing or processing operation, the rules take into account the LDCs productive capacity (paragraph 1.6 of the decision).
- b. Cumulation: it should be considered a feature of non-reciprocal preferential trade arrangements. The decision proposes allowance of bilateral cumulation, cumulation with other LDCs, among GSP beneficiaries of a preference-granting country and/or among developing country Members forming part of a regional group as defined by the preference-granting country (paragraph 1.7 of the decision).
- c. Documentary requirements: proposes simple and transparent documentary evidence requirements regarding compliance with the rules of origin and avoidance of the requirement to provide proof of non-manipulation or any other prescribed form for a certification of origin and proposes recognition of self-certification (paragraph 1.8 of the decision).
- d. Notification: requires notification of preferential rules of origin for LDCs in order to enhance transparency, make them better understood and promote an exchange of experiences (Paragraph 1.9 of the Decision).

In the course of 2014 The LDCs initiated a process to revive the work on rules of origin for LDC around the Bali Decision that culminated with a final decisions adopted at the tenth WTO Ministerial Conference. Overall, the Nairobi decision expands the Bali decision, as it provides more detailed and binding directions. Nevertheless, in regard to the initial decision submitted by the LDC group in September, the provisions as well as the binding language have considerably been weakened throughout the process.²⁹

F. Summary tables

Table 1

Market access

Country/ group of countries	Product coverage ^a	Depth of tariff cut	Exceptions	Safe- guards	Validity	Other requirements
Canada	98.6%	Duty-free	Some dairy and other animal products, meat, meat preparations, cereal products	Yes	31 December 2024	
European Union EBA	99.8%	Duty free	Arms and ammunition	Yes	Indefinite	Temporary suspension of preferences possible if certain conditions are not met
Japan	97.9%	Duty-free	Fish and crustaceans, footwear, milling products, cereal products, sugar	Yes	31 March 2021	
United States GSP	82.4%	Duty-free	Textiles and apparel products, cotton, fibres, footwear, dairy, other animal products	Yes	31 December 2017	Some conditional requirements on eligibility
United States AGOA	97.5%	Duty-free	Few products excluded	Yes	30 September, 2025	Some conditional requirements on eligibility
United States Caribbean Basin Economic Recovery Act (CBERA) / Caribbean Basin Trade Partnership Act (CBTPA)	Most products, including textiles apparels; special benefits for Haiti (HOPE/ HELP Acts)	Duty-free	Few products excluded	Yes	CBERA indefinite CBTPA 30 September 2020 HOPE/ HELP 30 September 2025	Some conditional requirements on eligibility
United States NEPAL	Duty free access, specific regulation on articles of apparel/ textiles				30.12.2016 - 31.12.2025	

Note: ^a World Trade Organization, WT/COMT/LDC/W/65/Rev. 1.

Table 2

Rules of Origin

Country/ group of countries	Origin criteria	Requirements	Numerator	Denominator	Percentage level	Administrative requirements
Canada	One single rule across the board, for all products except textile and apparel articles where product specific rules apply	Maximum amount of non-originating inputs	Value of non-originating materials	Ex-factory price	Maximum non originating materials 60%,; for LDCs, 80% with cumulation	Form A – certificate of origin or the exporter's statement of origin may be submitted as proof of origin. Special certificate of origin for textile and clothing
European Union (EBA)	Product-specific rules for all products	Change of HS heading with or without exemptions, specific working or processing requirements and/or maximum percentage of imported inputs or combinations of requirements	Value of non-originating material	Ex-works price	Maximum amount of non-originating materials does not exceed 70%. Exception under chapter 63: 25%, 40%, 50% where used in the Single List	System of registered exporters (REX) which issues statements of origin, administered by beneficiary countries
Japan	CTH as a general rule and Single List of product-specific rules	Change of HS heading with or without exemptions, specific working or processing requirements and/or maximum percentage of imported inputs or combinations of requirements	Value of non-originating material	FOB price	Maximum amount of non-originating materials 40%	Form A to be stamped by Chamber of Commerce GSP; Form A exempted for consignments not exceeding ¥200,000 or goods whose origins are evident
United States GSP	One single percentage (35%) rule across the board for all products,	Minimum local content requirement	Cost of materials produced in preference-receiving country plus the direct cost of processing carried out there	Appraised value of the article at time of entry into the United States	Minimum 35%, exact percentage must be written in certificate of origin	No certificate of origin required, claim of GSP on entry form
United States AGOA	Same as above, with exclusion of textiles and clothing ^a	Same as above; Product-specific origin for textiles and clothing ^a	Same as above	Same as above	Same as above	Special requirements apply for textiles and clothing
United States CBERA/ CBTPA	Same as above, with exclusion of textiles and clothing ^a	Same as above; Product-specific origin for textiles and clothing ^a	Same as above	Same as above	Same as above	No certification for CBERA required, but for CBTPA specific regulations ^a
United States CBERA/ HOPE & HELP	Specific regulation ^a	Specific regulation ^a	Specific regulation ^a	Specific regulation ^a	Specific regulation ^a	Special requirements apply ^a
United States NEPAL	Same as GSP, product-specific rules for textiles and clothing ^a	Same as GSP, product-specific rules for textiles and clothing, ^a article belongs to designated 77 categories	Same as GSP	Same as GSP	Same as GSP	Same as GSP

Note: ^a For product-specific rules of origin, see below in the corresponding section.

III. EUROPEAN UNION

A. General overview

The preferential market access conditions of the European Union (EU) are regulated by its Generalized System of Preferences (GSP), which aims at eradicating poverty, promoting sustainable development and good governance, and safeguarding the EU's financial and economic interests.

The European Union, following UNCTAD recommendations, has applied GSP schemes since 1971. The schemes aim to support developing countries to export to the European Market by granting them non-reciprocal trade preferences. This is achieved by providing reduced tariffs for beneficiary countries' goods when entering the European Union market.

A special arrangement for LDCs, the Everything but Arms initiative (EBA) entered into force in 2001. This scheme provides all LDCs with full duty-free and quota-free access to the European Union for all exports except arms and ammunition.

A reformed GSP law, Regulation (EU) No 978/2012, entered into force in October 2012. The EU's GSP reform aims to provide preferences to the countries that most need them. It removes a number of more advanced beneficiary countries and eases and simplifies rules and procedures to facilitate access of the least developed countries to preferential trade arrangements of the European Union.

The latest major reform of the European Union GSP arrangements (Regulation EU 978/2012) occurred in 2012. The entry into force of the Lisbon Treaty had forced a review of the GSP regulation in order to reflect the new institutional environment that strengthened the role of the European Parliament in trade policy. The EU GSP reforms came into force on 1 January 2014. They are built upon three fundamental pillars:

- a. The first and main objective was to better focus the preferences to those countries most in need. In 2012, high and upper-middle-income economies accounted for about 32% of preferences under GSP. To achieve greater focus on low-income and lower middle-income countries, the European Union reduced the number of beneficiaries eligible for preferential treatment from 178 in its prior GSP scheme to 92 countries after the reform. This aimed at reducing the competitive advantage of higher middle-income economies that was at the detriment of exports from LDCs;
- b. The second pillar is the promotion of sustainable development. The reformed scheme provides incentives to ensure respect for human and labour rights as well as environment and good governance standards. To this end, the GSP+ scheme provides zero duties for 66% tariff lines for vulnerable economies under the condition that they effectively implement international conventions on human and labour standards;
- c. The reform aimed at enhancing stability and predictability. The EBA scheme will remain in force for an indefinite period and the duration of all other GSP preferences was increased from a renewal every 3 years to 10 years. The current GSP and GSP+ will thus remain in place until at least the end of 2023.

In addition to the EBA, the reformed EU GSP consists of two other preferential arrangements, which offer different sets of preferences, depending on the needs of the beneficiary developing country. The three tiers of the EU GSP are as follows:

- a. Standard GSP reduces import duties for 66% of all European Union tariff lines for beneficiaries. All low-income and lower middle-income countries and territories (according to World Bank classifications) are eligible, unless they have access to an alternative trading arrangement with the EU that provides the same or better trade preferences. 22 countries and territories currently benefit from this arrangement;
- b. GSP+, a conditional arrangement with incentives for sustainable development and good governance, provides zero duties for the same 66% tariff lines as the standard GSP. Economically vulnerable countries

may apply for GSP+ if they commit to the implementation and ratification of 27 core conventions on human and labour rights, the environment and good governance; 9 countries currently benefit from the scheme and an additional 35 countries are eligible to apply for GSP+ status;

- c. The Everything But Arms arrangement (as stated above) provides duty-free, quota-free access to all LDCs and for all tariff lines except arms and ammunition. Currently, 49 LDCs are benefiting from the scheme.

B. Introduction of the Everything But Arms initiative and the EU GSP reform

1. Product coverage

The current EBA extends duty-free and quota-free access to all products originating in LDCs, except for arms and ammunition falling within HS chapter 93.³⁰ The EBA coverage includes all agricultural products by adding sensitive products such as beef and other meat, dairy products, fruit and vegetables, processed fruit and vegetables, maize and other cereals, starch, oils, processed sugar products, cocoa products, pasta and alcoholic beverages. For most of such products, the pre-EBA GSP used to provide a percentage reduction of MFN rates, which would apply only to the ad valorem duties, thus leaving the specific duties still entirely applicable.

Competitive products under the standard GSP scheme will no longer receive preferences. For example, China, Costa Rica, India, Indonesia, Nigeria, Thailand and Ukraine have several competitive sectors that will no longer be covered by the standard GSP, even if each of these countries remains a GSP beneficiary.³¹ However, this rule does not apply to either GSP+ or EBA.

The introduction of EBA in 2001 brought a substantial improvement in the GSP treatment granted to LDC beneficiaries. It offers more favourable product coverage, deeper tariff cuts and stability of market access than the previous Lomé and Cotonou trade regimes for ACP countries. Under the EBA scheme, all products are admitted duty and quota-free for an unlimited period of time. All dutiable products that were previously granted only a margin of preference or were subject to quantitative limitations are now given full duty-free and quota-free treatment. The EBA programme is considered to be one of the most inclusive schemes in terms of DFQF product coverage.

Even though the GSP reform does not directly affect the EBA scheme, it strengthens its effectiveness since it refocuses preferences on lower-income economies and LDCs by eliminating GSP benefits that were previously granted to countries that have become globally competitive. These measures aim to diminish the competitive pressure on LDCs and, thereby increase their export opportunities.

Furthermore, in 2010 a new regulation (Regulation (EU) No 1063/2010) reformed the European Union rules of origin for its preferential arrangements. The regulation introduced less stringent rules for products originating in LDCs.

2. Eligibility

All countries identified as LDCs by the United Nations are eligible for the EBA arrangement.³² When an EBA beneficiary country graduates and therefore is no longer considered a least developed country according to UN classifications, it is also withdrawn from the list of the beneficiaries of the EBA scheme. The removal of a country from the list of EBA beneficiaries, as well as the establishment of a transitional period of three years, is decided by the European Commission.³³

Graduation from LDC status

Under EBA, LDCs are those countries classified as such by the United Nations. When a country is no longer defined as a LDC by the UN, it is also withdrawn from the list of EBA beneficiaries. In these cases, a transition period of three years is granted to alleviate adverse effects caused by the removal of EBA tariff preferences.³⁴

Withdrawal of one country or territory

An eligible country can benefit from tariff preferences except for the two cases indicated in Regulation 978/2012 (Art.4):

It has been classified by the World Bank as a high-income or an upper-middle income country for three consecutive years immediately preceding the updated list of beneficiary countries;

It benefits from a preferential market-access arrangement that provides the same tariff preferences as the scheme, or better, for substantially all trade.

Temporary withdrawal of the EU GSP treatment (Regulation 978/2012, Articles 19 to 21)

GSP treatment may at any time be temporarily withdrawn, in whole or in part, in the following circumstances:

- a. *The serious and systematic violation of principles laid down in the conventions listed in Annex III, part A, on the basis of the conclusions of the relevant monitoring bodies;*³⁵
- b. *The export of goods made by prison labour;*
- c. *Serious shortcomings in customs controls on the export or transit of drugs (illicit substances or precursors) or failure to comply with international conventions on money-laundering;*
- d. *Serious and systematic unfair trading practices that have an adverse effect on the Community industry and that have not been addressed by the beneficiary country. For those unfair trading practices that are prohibited or actionable under the WTO Agreements, the application of this article shall be based on a previous determination to that effect by the competent WTO body;*
- e. *The serious and systematic infringement of the objectives of regional fishery organizations or arrangements of which the Community is a member concerning the conservation and management of fishery resources.*

Temporary withdrawal is not automatic, but follows the procedural requirements laid down in Articles 15 and 19 of the Regulation (EU) 978/2012.

C. Rules of origin under the European Union GSP scheme

On 1 January 2011, a new regulation of the rules of origin for the EU's GSP entered into force, which simplified rules of origin for beneficiary countries.³⁶ The new rules of origin regime for the EU GSP was incorporated into the Union Customs Code that came fully into force on 1 May 2016.³⁷

Changes in rules of origin in the European Union GSP reform

The 2011 reform of the EU GSP simplified the earlier rules of origin regime by introducing four major changes:

(a) Rules of origin specifications

The new regulation introduced a differentiation among developing beneficiary countries and LDCs. The general threshold for non-originating materials was increased to a maximum of 70 per cent for LDCs and a maximum of 50 per cent for other GSP beneficiaries. Additionally, product-specific origin requirements were changed in order to obtain more lenient rules, especially for LDCs, and the list of products and working or processing operations which confer originating status for agricultural and manufactured products was simplified. Furthermore, the tolerance rule, which is now expressed as percentage of weight rather than value, was raised from 10 per cent to 15 per cent and can also be applied to wholly obtained products when the origin requirement is used as a product-specific rule of origin criterion:

- i) **Textile and apparel products:** For LDCs, the new rules of origin permit single-stage processing, while for developing countries the double transformation rule remains;
- ii) **Machinery and electronics products:** The new rules of origin requirements for LDCs are easier to observe. The new chapter rule requires a CTH or a maximum allowance of 70 per cent of non-originating materials out of the ex-works price for developing countries and LDCs;
- iii) **Fishery products:** The prior requirement of 50 per cent of the crew on vessels fishing outside territorial sea being European Union or beneficiary country citizens was removed. Furthermore, the tolerance value was increased to 15 per cent from previous 10 per cent of non-originating materials;
- vi) **Agricultural and processed agricultural products:** In some chapters with high most favoured nation (MFN) duties, such as chapter 15, the rules of origin were substantially liberalized. In others such as chapter 4 (dairy products), limits concerning the use of non-originating sugar were introduced at chapter level; nevertheless the use of non-originating fruit juices previously restricted for yoghurt was also liberalized.

(b) Cumulation of origin

The possibilities for cumulation were further expanded under the new regulation in a number of cases:

- i) MERCOSUR was added as a new beneficiary of regional cumulation;
- ii) The new rules on regional cumulation established a simplified procedure. Under the previous regulation, the origin was conferred to the country of last manufacturing only if the value added there was greater than the customs value of the imported inputs from other country members of the regional organization. In the

new legislation, this requirement was lifted, as far as the inputs originating in the other members of the regional group underwent working or processing beyond minimal working or processing operations. Some agricultural and fishery products are excluded from cumulation;

- iii) Extended cumulation was introduced. This cumulation is applicable between GSP beneficiaries and European Union FTA partner countries under certain conditions. However, agricultural products classified under HS chapters 1 to 24 are excluded from this type of cumulation.

(c) European Commission's administration of the rules of origin

The GSP reform and subsequent introduction of the new Union Customs Code have fundamentally changed the administration of rules of origin. Origin Form A (officially stamped by certifying authorities), the invoice declaration and the movement certificate EUR.1 were replaced by statements on origin to be given directly by registered exporters. Governments of beneficiary countries are required to set up a database including the registered exporters where statements under the Registered Exporter REX system.³⁸ Only exporters registered in the electronic database, which needs to be administered and updated by the authorities of the beneficiary country, will be able to issue statements of origin to receive trade preferences. This new administration will shift part of the burden of administering rules of origin to the preference-receiving countries. The previous system will remain in place until 2017, with a provision for extension until 2020 for beneficiaries that request an additional transitional period.

(d) Direct transport provision

The previous direct transport rule, which obliged exporters to provide documents issued by the customs authorities of third countries certifying that the products were unchanged, was replaced by the more flexible non-manipulation principle. According to the new rule, products imported under the GSP scheme will be assumed to be compliant with the direct transport requirements and therefore systematic evidence of direct transport is no longer required, except in case of doubt. Nevertheless, customs authorities may still request evidence of compliance in case of doubt.

Rules of origin

Goods shipped to the EU market must comply with the rules of origin requirements if they are to benefit from the preferential tariff treatment provided under the GSP scheme. Goods not complying with the rules of origin requirements will be denied preferential treatment and normal duty will apply to them. The EU rules of origin, like other GSP schemes, comprise three elements:

- a. Origin criteria;
- b. Territorial requirement and non-manipulation principle;
- c. Documentary evidence.

LDCs that have initialled interim economic partnership agreements (EPAs) could also use the rules of origin under these latter agreements.³⁹ However this handbook does not cover such arrangements.

Origin criteria

The origin criteria are at the core of the rules of origin. They determine how and when a product can be considered to be originating in a GSP beneficiary country. Under the EU GSP, origin criteria are defined as follows: a product shall be considered to be originating in a beneficiary country if it has been either wholly obtained or undergone sufficient working or processing in that country (Regulation (EU) 2015/2446, Article 41).

Products wholly obtained⁴⁰

Regulation (EU) 2015/2446, Article 44 provides a list of products considered to be wholly obtained. Products fall into this category by virtue of the total absence of imported input in their production. The following are considered to be wholly obtained in a country:

- a. Mineral products extracted from its soil or from its seabed;
- b. Plants and vegetable products harvested there;
- c. Live animals born and raised there;
- d. Products obtained there from live animals;
- e. Products from slaughtered animals born and raised there;

- f. Products obtained by hunting or fishing conducted there;
- g. Products of aquaculture where the fish, crustaceans and molluscs are born and raised there;
- h. Products of sea fishing and other products taken from the sea outside any territorial sea by its vessels;
- i. Products made on board its factory ships exclusively from the products referred to in point (h);
- j. Used articles collected there fit only for the recovery of raw materials;
- k. Waste and scrap resulting from manufacturing operations conducted there;
- l. Products extracted from the seabed or below the seabed which is situated outside any territorial sea but where it has exclusive exploitation rights;
- m. Goods produced there exclusively from products specified in points (a) to (l).

“Territorial waters” within the context of these rules of origin is strictly limited to the 12-mile zone, as laid down in the United Nations International Law of the Seas (1982 Montego Bay Convention). The existence of an exclusive economic zone with more extensive coverage (up to a 200-mile limit) is not relevant for this purpose. Fish caught outside the 12-mile zone (“on the high seas”) can only be considered to be wholly obtained if caught by a vessel that satisfies the definition of its “vessels”. Fish caught inland or within the territorial waters is always considered to be wholly obtained.

The definition of its “vessels” (laid down in Article 44 (2)) consists of a number of cumulative criteria - so all criteria listed must be fulfilled as specified below. Fish caught on the high seas can be considered to originate in the beneficiary country in question (or in the EC) if:

- a. They are registered in the beneficiary country or in a Member State,
- b. They sail under the flag of the beneficiary country or of a Member State,
- c. They meet one of the following conditions:
 - i) They are at least 50% owned by nationals of the beneficiary country or of Member States;
 - ii) They are owned by companies that have their head office and their main place of business in the beneficiary country or in Member States, and are at least 50% owned by the beneficiary country or Member States or public entities or nationals of the beneficiary country or Member States.

Products which are manufactured wholly or partly from imported materials, parts or components

As mentioned above, a product is considered to be wholly obtained in a beneficiary country when it does not contain any imported input. When imported inputs are used in the manufacturing process of a finished product, Regulation (EU) No. 2015/2446 requires that these non-originating materials be sufficiently worked or processed. In particular, Article 45(1) specifies what is considered sufficient working or processing as follows: “...products which are not wholly obtained in the beneficiary country concerned within the meaning of Article 44 shall be considered to originate there, provided that the conditions laid down in the list in Annex 22-03 for the goods concerned are fulfilled”.

The Annex reproduces the list of products and working or processing operations that confer originating status.⁴¹ The current product list contains 290 product-specific criteria, compared with the previous one with around 500 origin-determining requirements. Reducing the product list to half is beneficial for producers and customs officers’ administration of rules of origin.

Allowance for use of non-originating inputs for products originating in LDCs⁴²

In order to overcome the concern of capacity constraints of LDCs, the current rules of origin contain specific origin-determining requirements for LDCs compared with developing countries: Allowance of the use of non-originating materials that is set out in the Annex is generally at 70% of the ex-works price for LDCs, while the percentage criterion for developing countries beneficiaries is set at 50% for mostly all manufactured products.⁴³

Example: Suppose that a producer in a beneficiary country manufactures a chair from imported sawnwood. The chair cannot be considered to be wholly obtained in one country because the producer has used imported sawnwood. Therefore, it is essential to know whether the sawnwood (the imported material) can be considered to have undergone “sufficient working or processing” according to the conditions laid down in the list of working and processing as specified in Annex 22-11.

The final product, a chair, is classified under heading 9403 of the HS at the four-digit level. As shown in Table 3, in the case of goods falling under HS chapter 94, the Single List provides for two alternative origin criteria:

Table 3

Example of sawnwood processing

HS heading number	Product description	Working or processing carried out on non-originating materials that confers originating status	
(1)	(2)	(3)	(4)
Ex chapter 94	Furniture, etc.	Manufacture from material of any heading, except that of the product	Manufacture in which the value of all the materials used does not exceed 70% of the ex-works price of the product

“Change of tariff heading” (CTH) rule or the percentage criterion.

Thus, the chair would be entitled to GSP treatment under one of the two following conditions:

- a. The non-originating material, sawnwood, must be classified under an HS heading that differs from the heading where the final product is classified (CTH rule). Given that the sawnwood is classified under HS heading 4407, which is different from the one where the chair is classified, it can be determined that the sawnwood has been “sufficiently worked or processed” and that the chair qualifies as an originating product.
- b. The value of imported inputs must not exceed 70 per cent of the value of the finished product. In order to fulfil this condition, it is necessary to calculate the amount of non-originating sawnwood incorporated in the final product, the chair. To this end, the exporter must take into account the following:
 - i) The term “value” in the Single List means the customs value at the time of the importation of the non-originating materials used or, if this is not known and cannot be ascertained, the first ascertainable price for the materials in the territory concerned;
 - ii) The term “ex-works price” in the Single List means the price paid for the product obtained from the manufacturer within whose enterprise the final working or processing is carried out: this price includes the value of all materials used in manufacture, minus any internal taxes which are, or may be, payable when the product obtained is exported.

Furthermore, for textile and apparel products to obtain originating status for LDCs, only a single-stage processing is required, meaning that using non-originating fabric will confer origin when woven or knitted domestically. In contrast, for developing countries, double transformation requirements exist. Not needing to comply with the double transformation requirement is a significant improvement for LDCs, given that they often do not have the capacity to meet this requirement for apparel products.⁴⁴

Example: For LDCs the rules of origin requirements for apparel products (HS chapter 61 and 62) permits single transformation, meaning that apparel products assembled in an LDC using imported fabric can obtain originating status. In contrast, the double transformation or specific processing with value added criterion applies for developing countries. Therefore, in order to obtain originating status developing countries need to use fabrics that have been woven or knitted domestically. Alternatively, if the value of unprinted fabric does not exceed 47.5 per cent of the ex-works price of the apparel product, these imported unprinted fabrics could be used if printing and at least two preparatory or finishing operations (rising, heat setting, raising, calendering, shrink resistance processing, permanent finishing, decatizing, impregnating, mending and burling) are performed.

Tolerance level (Regulation (EU) 2015/2446, Article 48)

Derogation from Regulation (EU) 2015/2446, Article 45 provides that the total value of the non-originating materials used in the manufacture of a given product shall not exceed 15 per cent of the ex-works price of the product, subject to certain conditions (Regulation (EU) 2015/2446, Article 48(1)).⁴⁵ For agricultural products except chapters 1 and 3 as well as processed fishery products (Chapter 16), tolerance levels are defined at 15 per cent of the weight of the product.

This provision does not apply to products falling within chapters 50 to 63 (textile and clothing) of the Harmonized System. For this latter category of products, different tolerances exist mentioned in Annex 22-03.

Table 4

Example of apparel and clothing

HS heading number	Product description	Working or processing carried out on non-originating materials that confers originating status	
		(A) LDCs	(B) Other beneficiary countries
(1) Ex chapter 62	(2) Articles of apparel and clothing accessories, not knitted or crocheted	Manufacture from fabric	Weaving accompanied by making-up (including cutting) or making-up preceded by printing accompanied by at least two preparatory or finishing operations, provided that the value of the unprinted fabric used does not exceed 47,5 % of the ex-works price of the product

The European User's guide provides the following example for illustration:

Example: A doll (classified HS 9502) will qualify as originating if it is manufactured from any imported materials which are classified in a different heading. This means a manufacturer in a beneficiary country is allowed to import raw materials such as plastics and fabrics that are classified in other chapters of the HS. But the use of doll parts (e.g. doll eyes) is not normally possible as these are classified in the same heading (HS 9502). However, the tolerance rule allows the use of these parts if they amount to not more than 15 % of the doll's value.⁴⁶

Insufficient working or processing (Regulation (EU) 2015/2446, Article 62)

In some cases, insufficient working and processing may result in a change of tariff heading, and the final product is not considered to be originating in the country in question. Regulation (EU) 2015/2446 provides the following list of what would be considered insufficient working or processing (Article 62):

- a. Operations to ensure the preservation of products in good condition during transport and storage (ventilation; spreading out; drying; chilling; placing in salt, sulphur dioxide or other aqueous solutions; removal of damaged parts; and similar operations);
- b. Simple operations consisting of the removal of dust, sifting or screening, sorting, classifying or matching (including the making-up of sets of articles, washing, painting, cutting-up);
- c. Changing the packaging and the breaking-up and assembly of consignments, placing in bottles, flasks, bags, cases or boxes, fixing on cards, boards or other things, and all other simple packaging operations;
- d. Ironing or pressing of textiles and textile articles;
- e. Simple painting and polishing operations;
- f. Husking and partial or total milling of rice; polishing and glazing of cereals and rice;
- g. Operations to colour or flavour sugar or form sugar lumps; partial or total milling of crystal sugar;
- h. Peeling, stoning and shelling of fruits, nuts and vegetables;
- i. Sharpening, simple grinding or simple cutting;
- j. Sifting, screening, sorting, classifying, grading, matching (including the making-up of sets of articles);
- k. Simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations;
- l. Affixing marks, labels and other similar distinguishing signs on products or their packaging;
- m. Simple mixing of products, whether or not of different kinds, where one or more components of the mixture do not meet the conditions laid down by the Regulation to enable them to be considered originating products;
- n. Simple assembly of parts of products to constitute a complete product;
- o. A combination of two or more operations specified in subparagraphs (a)-(f);
- p. Slaughter of animals.

Cumulation

Cumulative origin–regional cumulation (Regulation (EU) 2015/2446, Articles 53-57)

The GSP rules of origin are in principle based on the concept of single country origin – that is, the origin requirements must be fully complied with in one exporting country receiving preferences, which must also be the country of manufacture of the finished products concerned. Under the EU GSP scheme, cumulation – which permits beneficiary countries to consider imported inputs as originating content – is allowed in several possibilities.

Bilateral cumulation (Regulation (EU) 2015/2446, Articles 53 and 54)

According to Articles 53 and 54, cumulation is allowed for products originating in the European Union, Norway, Switzerland and Turkey. Cumulation with the three countries is only allowed, given reciprocity of the cumulation. Therefore, the three countries must provide the possibility of cumulation for European Union originating materials under their respective GSPs. It is the obligation of the exporters to verify if the condition of reciprocity is met for the product concerned.

Agricultural products (HS chapters 1 to 24) are excluded from cumulation with Norway, Switzerland and Turkey.

Regional cumulation (Regulation (EU) 2015/2446, Article 55)

Regional cumulation permits beneficiary countries in a regional group to consider imported inputs within the same group as originating material. By allowing regional cumulation, regional integration shall be promoted. The origin requirements for cumulation within regional groupings are thus relaxed.

Countries from the following four regions can apply for regional cumulation with other countries in their group:

Group I: Brunei Darussalam, Cambodia, the Lao People's Democratic Republic, Malaysia, the Philippines, Thailand and Viet Nam;

Group II: The Plurinational State of Bolivia, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Peru and the Bolivarian Republic of Venezuela;

Group III: Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka;

Group IV: Argentina, Brazil, Paraguay and Uruguay.

The authorities of countries in one these regional group must transmit information on the undertakings of other member countries of the group to ensure compliance with cumulation requirements to the European Commission.

Two conditions have to be fulfilled in order to use regional cumulation (Article 55, paragraph 2). The countries involved in the cumulation must be beneficiary countries for which arrangements have not been temporarily withdrawn in accordance with Regulation (EU) No. 978/2012 at the time of exportation of the product to the European Union (Regulation EU 2015/428). In addition, the countries of the regional group provide administrative cooperation, which is necessary to ensure the correct implementation.

According to Article 55, paragraph 3, materials listed in Annex 22-04 shall be excluded from the regional cumulation in the case where:

- a. The tariff preference applicable in the European Union is not the same for all the countries involved in the cumulation;
- b. The materials concerned would benefit, through cumulation, from a tariff treatment more favourable than the one they would benefit from if directly exported to the European Union.

Under the EU rules for regional cumulation, materials or parts imported by a member country of one of these four groupings from another member country of the same grouping for further manufacture are considered originating products of the country of manufacture and not as third-country inputs, provided that the materials or parts are already originating products of the exporting member country of the grouping. Originating products are those that have acquired origin by fulfilling the individual origin requirements under the basic EU rules of origin for GSP purposes. Furthermore, regional cumulation between countries in the same regional group is applied only if the working or processing carried out in the beneficiary country where the materials are further processed or incorporated goes beyond “minimal” operations and, in the case of textile products, also beyond the operations set out in Annex 22-05 of Regulation No. 2015/2446.⁴⁷

Example: The List rule requires cotton jackets (HS heading 6203) to be produced from originating yarn. With regional cumulation, however, preference-receiving country A may utilize imported fabrics from country B (note that these fabrics must already have acquired originating status in country B), which is a member of the same

regional grouping, and the finished jacket will be considered to be an originating product. This is because the imported fabric, which again must already have come from an originating producer in the same grouping, is counted under the cumulation rules as a domestic input and not as an imported input.⁴⁸

Extended cumulation (Regulation (EU) 2015/2446, Article 56)

Beneficiary countries can cumulate with countries with which the European Union has concluded FTAs in accordance with GATT Article XXIV. This extended cumulation is not automatic. Beneficiary country's authorities must request an authorization from the European Commission. In order to get extended cumulation authorized, three conditions must be met. First, the countries involved ensure compliance with the EU GSP rules of origin. Second, they provide the administrative cooperation to ensure the correct implementation. And finally, the undertakings to meet the first two conditions have been notified to the European Commission by the beneficiary country concerned. The European Commission will decide on the material that may be subject to extended cumulation. Agricultural products are excluded from extended cumulation.

In case of extended cumulation, the rules of origin of the relevant FTA determine the origin of the materials and the documentary proof or origin required. In case of export to the European Union, the rules of origin under EU GSP apply.

Cumulation between Group I and Group III (Regulation (EU) 2015/2446, Article 55(5)(6))

Interregional cumulation is possible between countries in Groups I (Southeast Asia) and III (South Asia). Therefore, the authorities of the Group I or Group III beneficiary countries must submit a request to the European Commission supported by evidence that the requirements to benefit from cumulation are met. The European Commission decides on the request. The date of effect of the cumulation between countries of Group I and Group III, the countries involved as well as the list of material to which the cumulation applies is published in the Official Journal of the European Union.

Derogations in favour of beneficiaries (Regulation (EU) 952/2013, Article 64(6))

Article 64(6) of Regulation (EU) 952/2013 provides that there may be derogations from the provisions on rules of origin in the EU GSP scheme in favour of the LDCs as well as for developing countries when the development of existing industries or creation of new industries justifies them. For this purpose, the country concerned shall submit to the Community a request for a derogation together with the reasons for the request. The derogation is limited to either the duration of the effects of the internal or external factors that give rise to the request or the length of time needed for the beneficiary country to achieve compliance with the rules.

Following an initiative by the European Commission or in response to a request from a beneficiary country, a beneficiary country may be granted a temporary derogation from the EU GSP rules of origin where:

- a. *internal or external factors temporarily deprive the beneficiary country or territory of the ability to comply with those rules;*
- b. *the beneficiary country or territory requires time to prepare itself to comply with those rules.*

Derogation for Cambodia⁴⁹

The Cambodian bicycle industry relies on the supply of parts originating in Singapore and Malaysia. Singapore and Malaysia used to be GSP beneficiaries and belonged to the same regional group as Cambodia (Group I); thus Cambodia was benefiting from regional cumulation with the former countries. Nevertheless, on 1 January 2014, the amended regional cumulation provisions applied (Implementing Regulation EU No. 530/2013), clarifying that cumulation may only be applied in the same regional group to countries which, at the time of exportation to the European Union, are beneficiaries of the GSP scheme. Therefore, under the amendment, the possibility of cumulation with other countries of regional Group I, such as Cambodia, ceased to exist. Consequently, bicycle parts originating in Singapore and Malaysia were no longer regarded as originating in Cambodia under regional cumulation. This would prevent Cambodia from meeting the rule of origin that the EU applies to LDCs, allowing the use of up to 70% of non-originating materials.

In this regard, Cambodia requested a three-year derogation to which the Cambodian bicycle industry would continue to be entitled, for the purpose of determining the origin of bicycles of HS heading 8712 that Cambodia exports to the European Union, to consider parts originating in Malaysia and Singapore as materials originating in Cambodia by applying regional cumulation under the GSP scheme.

The derogation was implemented by Regulation EU 822/2014 of 28 July 2014 to allow Cambodia sufficient time to prepare itself to comply with the rules of origin for bicycles HS heading 8712. The Government of Cambodia applied for a prolongation of this arrangement in June 2017. The European Commission has proposed to prolong the derogation for another three years, although with a lower quota of 100 000 units.⁵⁰

Territorial requirement and non-manipulation principle

Another part of the rules of origin relates to the modalities of transport of goods from the preference-receiving country to the EU market. Once the goods in question have complied with the origin criteria, exporters have to make sure that the shipment of their products follows the provision laid down in Regulation (EU) 2015/2446. This requirement aims to ensure that goods shipped from a beneficiary country will be the same goods as those presented at the port of entry into the EU and that they have not been manipulated or further processed in third countries during shipment. Therefore, the rules of origin state that originating products lose their originating status if they are exported from the beneficiary country to another country and returned. The originating status is not lost if it can be demonstrated that the returned products are the same as the exported ones and that they have not undergone any operations beyond those necessary to preserve them in good condition (Article 43).

Only in case of doubt, the European Union customs authorities request the declarant to provide evidence of compliance (Article 43(5)). Without reasonable doubts, it will be assumed that direct consignment requirements are met. Systematic evidence of direct transport is no longer required.

Documentary evidence

As of 2017 exporters in beneficiary countries have to self-register in the European Commission's newly established Registered Exporter (REX) system.⁵¹ Governments of beneficiary countries are required to set up a database with registered exporters. The system of registered exporters will issue statements of origin that can be electronically transmitted. Only exporters registered in the electronic database can issue these statements of origin for receiving trade preferences. REX was implemented on 1 January 2017 and replaced the transitional procedures based on the previous rules of origin until 31 December 2016. Beneficiary countries that were not ready to implement the system by 1 January 2017 were able to apply for a postponement of the registration of their exporters until 1 January 2018 or 1 January 2019.

Although the responsibility of administering exporters falls on the governments of beneficiary countries, the underlying IT system is provided by the European Commission. To claim preferences, exporting firms from beneficiary countries need to register with their competent authorities according to the process laid out in Regulation (EU) No 2015/2447, Articles 80, 86 and Annex 22-06. REX furthermore applies to:

European Union operators exporting to GSP beneficiary countries for the purpose of bilateral cumulation of origin;

European Union operators exporting to third countries with which the EU has an FTA where the REX system is applied;

European Union operators replacing proofs of origin initially made out in GSP beneficiary countries.⁵²

After the initial registration, any changes to the database entries of registered exporters, including removal from the system in cases of companies ceasing to exist or committing fraud, are performed by the competent authorities in beneficiary countries, according to the procedures outlined in Regulation (EU) No 2015/2447, Articles 80 and 89.

REX provides a publicly searchable interface that allows end users to verify the authenticity of registered exporters.⁵³ Exporters can opt out of the publication according to the process in Regulation (EU) No 2015/2447, Annex 22-06, but in such cases an anonymous subset of the registration data will still be published for verification purposes.

For consignments below a value of 6000 EUR, the EU continues to allow exporters outside of the REX system to claim preferences, if they provide a statement on origin that follows the rules laid out in Regulation (EU) No 2015/2447, Articles 92, 93, and Annex 22-07.

In order to qualify for the REX system, governments of beneficiary country have to:

- (1) Submit to the Commission an Undertaking providing for administrative cooperation in the framework of the REX system (Article 70 of Regulation (EU) 2015/2447)
- (2) Communicate to the Commission the contact details of the competent authorities dealing with the registration of the exporters and administrative cooperation (Article 72 of Regulation (EU) 2015/2447).⁵⁴

Provided that beneficiary countries satisfy the two conditions laid out above, REX will be applicable as of 1 January 2017 for the following countries: Angola, Burundi, Bhutan, Democratic Republic of Congo, Central African Republic, Comoros, Congo, Cook Islands, Djibouti, Ethiopia, Micronesia, Equatorial Guinea, Guinea Bissau, India, Kenya, Kiribati, Laos, Liberia, Mali, Nauru, Nepal, Niue Island, Pakistan, Solomon Islands, Sierra Leone, Somalia, South Sudan, Sao Tomé & Príncipe, Chad, Togo, Tonga, Timor-Leste, Tuvalu, Yemen, Zambia.

Provided that beneficiary countries satisfy the two conditions laid out above, REX will be applicable as of 1 January 2018 for the following countries: Afghanistan, Armenia, Bolivia, Ivory Coast, Eritrea, Gambia, Guinea, Malawi, Mozambique, Myanmar, Niger, Rwanda, Sri Lanka, Sudan, Swaziland, Syria, Tanzania.

Provided that beneficiary countries satisfy the two conditions laid out above, REX will be applicable as of 1 January 2019 for the following countries: Bangladesh, Benin, Burkina Faso, Cabo Verde, Cambodia, Haiti, Indonesia, Kyrgyz Republic, Lesotho, Madagascar, Mauritania, Mongolia, Nigeria, Paraguay, Philippines, Samoa, Senegal, Tajikistan, Uganda, Uzbekistan, Vanuatu, Vietnam.

According to the European Commission,

Until 31 December 2017, the competent authorities should continue to issue certificates of origin Form A at the request of exporters who have not yet been registered in the REX system. At the same time they should cease issuing certificates of origin Form A for exporters who have been registered in the system. Should this transition period prove insufficient for a beneficiary country, it may request an extension by maximum six months (grey arrow), i.e. until 30 June 2018. At the end of the transition period, consignments above 6 000 EUR will be entitled to GSP preferential tariff treatment in the EU only if accompanied by a statement on origin made out by a registered exporter.⁵⁵

The provisions for the issuance process of Form A are laid out in Regulation (EU) 2015/2447, Articles 74-77 and Annexes 22-08, 22-09, and 22-10.

Procedures applicable from 1 January 2017

Establishment and management of database (Regulation (EU) No. 2015/2447, Articles 80-87)

Exporters apply to the competent authorities of the beneficiary country, from which the goods are intended to be exported and where the goods are considered to originate, in order to get registered. For this application a form using the model set out on Annex 22-06 of Regulation (EU) No. 2015/2447 has to be submitted. The record must contain information on registered exporters, products intended to export, indications about the registration period of the exporter as well as the reason for withdrawal. This application includes consent to store the information in the database of the European Commission and to publish non-confidential data on the Internet.

In four cases exporters may be withdrawn from the record of registered exporters: first, if the registered exporter ceases to exist; second, if he no longer meets the conditions for exporting under the scheme; third, if he has informed to the competent authority of the beneficiary country or the customs authorities of a Member State, that does not have intention to continue exporting goods under the scheme; and finally if his statement of origin contains incorrect information which leads wrongly to the obtaining of preferential tariff treatment. The record of these registered exporters shall be immediately removed. A reintroduction into the record is only possible once they have proved to their competent authorities that they have remedied the situation that led to their withdrawal.

The competent authorities of the beneficiary countries shall notify the European Commission of the national numbering system used for designating registered exporters. The number shall begin with ISO alpha 2 country code (Regulation (EU) 2015/2447, Article 67(4)). Furthermore, they must carry out regular controls on exporters on their own initiative. If the information contained in the record of registered exporters changes, the European Commission must immediately be informed. Also, in case of a request made by the European Commission for control and verification, the competent authorities of beneficiary countries need to render all necessary support.

Control and verification (Regulation (EU) 2015/2447, Articles 109-111)

For the purpose of control of origin, exporters must hold appropriate commercial accounting records for production and supply of goods and keep all evidence and customs documentation relating to the material used in the manufacture. They need to preserve these documents for at least three years from the end of the year in which a statement was made out. These obligations also apply to the suppliers who provide exporters with supplier declarations certifying the originating status of the goods they supply.

In order to ensure continued compliance to obligations, exporters are checked periodically, whereby the interval is determined by appropriate risk analysis criteria. Subsequent verification will also be done randomly. The customs authorities of European Union Member States can carry out subsequent verifications of statements on origin in case of doubt of authenticity, of the originating status of the products or of the fulfilment of other requirements of the GSP rules of origin. The initial deadline to communicate the results of the verification is set at six months, starting from the date of the verification request. In case of no reply within this period or if the reply does not contain sufficient information, a further deadline for a second communication is set at not more than six months.

Statement of origin (Regulation (EU) No. 2015/2447, Annex 22-07)

A statement on origin is issued if the goods concerned can be considered to be originating. A registered exporter needs to make out a statement on origin for each consignment and provide it to the customer in the European Union. It can be made in either English or French. The length of validity is 12 months from the date of its completion by the exporter. A retrospective statement on origin – made out after the exportation – can be issued exceptionally on the condition that it is presented in the European Union Member State of declaration for release for free circulation no longer than two years after the export.

The following items are exempt from the obligations to deliver a statement on origin: small packages of which the total value does not exceed EUR 500, products of which the total value does not exceed EUR 1,200 or those items that are part of travellers' personal luggage.

Discrepancies between a statement on origin and those in other documents shall not ipso facto render the certificate null and void. If it is duly established that the document corresponds to the products concerned, the discovery of slight discrepancies shall not have an impact.

The belated presentation of statements on origin may be accepted, provided that the failure to submit these documents to the customs authorities of the importing country by the final date is due to exceptional circumstances. Statements on origin submitted after the period of validity may be accepted if the products have been presented to customs before expiry of the time limit.

IV. JAPAN

A. Provisions of the Japanese GSP scheme for LDCs

Since 1971, developing countries have received preferential tariff treatment under the Japanese GSP scheme to promote their economic development. To date, five GSP renewals have taken place – that means every 10 years.

In 2007 Japan started to improve its DFQF treatment for LDCs by adding a number of products eligible for preferential treatment. The number of agricultural and fishery products originating from LDCs receiving preferential treatment increased from 497 to 1,523. In addition, the number of industrial products under the scheme for LDCs increased from 4,185 to 4,244, thus raising the treatment coverage from 86% to 97.9 % as defined at the tariff line level. Excluded are mainly certain fish and crustaceans, footwear, milling and cereal products as well as sugar.⁵⁶

On 31 March 2011, the effective period of the GSP scheme was extended for 10 years until 31 March 2021. Beneficiary countries of the current scheme are 135 countries and 5 territories, including all LDCs.⁵⁷

Furthermore, Japan's preferential rules of origin were modified in April 2015. In particular, a simplification measure was applied in the rules of origin of articles under chapter 61 of the HS.

B. Rules of origin under the Japanese GSP scheme⁵⁸

Origin criteria – Wholly obtained

Goods are considered to be originating in a preference-receiving country if they are wholly obtained in that country. Wholly obtained goods include:

- a. Mineral goods obtained in the country;
- b. Vegetable goods harvested in the country;
- c. Live animals born and raised in the country;
- d. Goods obtained from live animals in the country;
- e. Goods obtained from hunting or fishing in the country;
- f. Marine products taken from the high seas and the economic exclusive zones of Japan or foreign countries by vessels of the country;
- g. Goods produced from the goods referred to (f) on board ships;
- h. Articles collected in the country which are fit only for the recovery of parts or raw materials;
- i. Scrap and waste derived from manufacturing or processing operations in the country;
- j. Goods obtained or produced in the country exclusively from the goods referred to in subparagraphs (a) through (j)

Origin criteria – Substantial Transformation Criterion

In the case of goods produced totally or partly from materials or parts which are imported from other countries or are of unknown origin, such resulting goods are considered to be originating in a preference-receiving country if those materials or parts used have undergone sufficient working or processing in that country.

As a general rule, working or processing operations will be considered sufficient when the resulting good is classified in an HS tariff heading (four digits) other than that covering each of the non-originating materials or parts used in the production, i.e. all non-originating materials used for the production of the good have undergone a change in tariff classification at the four-digit level of HS. However, there are two exceptions to this rule:

- a. *Certain working or processing will not be considered sufficient when the working or processing is actually so simple even if there is a change in the HS heading;*

Following minimal processes are *not accepted* as obtaining originating status:⁵⁹

- i) Operations to ensure the preservation of products in good condition during transport and storage (drying, freezing, placing in salt water and similar operations);
- ii) Simple cutting or screening;
- iii) Simple placing in bottles, boxes and similar packing cases;
- iv) Repacking, sorting or classifying;
- v) Marking or affixing of marks, labels or other distinguishing signs on products or their packaging;
- vi) Simple mixing of non-originating products;
- vii) Simple assembly of parts of non-originating products;
- viii) Simple making up of sets of articles of non-originating products;
- ix) A combination of two or more operations specified in (i) to (ix).

- b. *Some goods are required to satisfy specific conditions in order to obtain originating status without a change in the HS heading.*

A list of products for case (b) – the “Single List” – has been established to determine the origin criteria for such cases. It lays down, on a product-by-product basis, processing requirements to obtain originating status. These processes are identified essentially either through a description of the process required or by a maximum percentage of imported materials (cost, insurance and freight value).⁶⁰

Example: Consider a beneficiary country producing “yarn of combed wool” (HS 5107) to export to Japan. “Carded wool” (HS 5105) non-originating in the beneficiary country is processed to “yarn of combed wool” (HS 5107). Since the processing from “carded wool” to “yarn of combed wool” implies a change of tariff classification at the four-digit level of the HS code from HS 5105 to HS 5107, the “yarn of combed wool” produced in the beneficiary country shall be considered originating and therefore entitled to preferential treatment.⁶¹

On 1 April 2015, Japan applied a simplification measure for preferential rules of origin. The amendment affects articles of apparel and clothing accessories, knitted or crocheted classified under chapter 61 of the HS. With this modification, goods classified under the above-mentioned chapter are qualified as originating when these are manufactured from woven fabrics, felt, nonwovens, knitted or crocheted fabric or lace of Chapter 50 to 56 or 58 to 60.⁶²

Use of materials imported from Japan⁶³

In application of the origin criteria, the following special treatment will be given to materials imported from Japan into a preference-receiving country and used there in the production of goods to be exported to Japan later (“Donor Country Content Rule”):

- a. *In the case of goods produced in a preference-receiving country only from materials imported from Japan, or those produced in a preference-receiving country only from materials wholly obtained in that country and materials imported from Japan, such goods will be regarded as being wholly obtained or produced in that country;*
- b. *Any goods exported from Japan that have been used as part of raw materials or components for the production of any goods produced other than those goods as provided for in paragraph (a) above shall be regarded as wholly obtained in that country.*

Exceptions to these rules apply in some cases, mostly furskin and leather products as well as footwear.⁶⁴

Rules of cumulative origin⁶⁵

Japan applies regional cumulation with Indonesia, Malaysia, the Philippines, Thailand and Viet Nam. For goods produced in one of the above-mentioned countries, manufacturing or processing operations conducted in one or more of the remaining countries may be considered to be an operation conducted in the country of production of the good. In other words, these five countries are considered a single beneficiary country for the purpose of applying the origin criteria.

- a. *When calculating the rate of use of materials not originating in Indonesia, Malaysia, the Philippines, Thailand and Viet Nam, the goods listed below are treated as having originated in such countries;*
 - i) *All raw materials consisting only of the goods originating in the five countries;*
 - ii) *All raw materials consisting only of the goods exported from Japan to the five countries;*
 - iii) *All raw materials consisting only of the goods prescribed in (i) and (ii);*
 - iv) *If mixed with raw materials from other countries (except goods exported from Japan), the portion of the raw materials which conform to the provisions of (i) through (iii);*
- b. *The goods are qualified to have originated in one of the countries when certain requirements as to their process or manufacture are satisfied in all these countries involved in their production.*

The origin of goods which are eligible for the preferential tariff treatment according to the rules of cumulative origin, is the country that exports the goods to Japan.

To make use of cumulative origin system, a Cumulative Working/Processing Certificate should be presented to customs at the time of import declaration in addition to the Certificate of Origin Form A.

De Minimis (DMI) for textiles and textile articles

When a good classified under HS chapters 50–63 (textile articles) is produced in a beneficiary country using non-originating materials does not satisfy the applicable rule for the good, the preferential tariff rate shall only be applied if the total weight of the non-originating materials is less than 10 per cent of the weight of the good.

Rules for transportation (direct consignment)⁶⁶

These rules are to ensure that goods retain their identity and are not manipulated or further processed in the course of shipment.

- a. *In principle, the goods must be transported directly to Japan without passing through any*
 - i) *territory other than the exporting preference-receiving country;*
 - ii) *However, with regard to the goods transported to Japan through the territories of countries other than the exporting preference-receiving country, they are entitled to preferential treatment, if:*
 - a. *They have not undergone any operations in the transit countries other than transshipment or temporary storage exclusively on account of transport requirements;*
 - b. *The transshipment or temporary storage has been carried out in a bonded area or any other similar place, under the supervision of the customs authorities of those transit countries.*
 - iii) *With regard to the goods exported from a preference-receiving country, for temporary storage or display at exhibitions, fairs and similar performances in another country, which have been exported by the person who has so exported the goods from the said another country to Japan, they are entitled to preferential treatment, if:*
 - a. *The transportation to Japan from the country where the exhibition, etc., has been held falls under (i) or (ii) above;*
 - b. *The exhibition, etc., has been held in a bonded area or any similar place, under the supervision of the customs authorities of that country.*

C. Documentary evidence⁶⁷

Documentary requirements for all goods to receive GSP treatment

For goods to receive preferential tariff treatment, a certificate of origin (combined declaration and certificate) Form A must be submitted to the Japanese customs authorities upon importation of the goods into Japan.⁶⁸ The certificate will be issued by the customs authorities (or other competent government authorities of the exporting preference-receiving country or other bodies of that country, such as chambers of commerce, which are registered as the issuers by the Japanese customs authorities) upon application from the exporter when he exports the goods concerned. However, with regard to consignments of a customs value not exceeding ¥200,000 or goods whose origins are evident, this certificate will not be required.⁶⁹

Materials imported from Japan

When one or other of the special treatments under the preference-giving country content rule is sought in respect of goods to be exported from a preference-receiving country to Japan, the following evidence to establish that the materials used in the production of the goods were originally imported from Japan into that country will be required: a Certificate of Materials Imported from Japan issued by the same competent authorities issuing the Certificate of Origin Form A.

Cumulative origin

When one or more of the special treatments under the rules of cumulative origin is sought in respect of goods produced in one of the countries (Indonesia, Malaysia, the Philippines, Thailand and Viet Nam), a cumulative working/processing certificate must be submitted, on importation of the goods into Japan, to the Japanese customs authorities, together with a certificate of origin (Form A). The cumulative working/processing certificate shall be issued by the same authorities issuing the certificate of origin.

The term reference number of the cumulative working/processing certificate must be filled in box 4 (“for official use”) of the certificate of origin.

Evidence relating to transport

In the case of transportation coming under (a) or (b) of the rules for transportation mentioned above, the following evidence to prove that the transportation was in conformity with the conditions specified respectively thereunder must be produced:

- a. *A through bill of lading;*
- b. *Certification by the customs authorities or other government authorities of the transit countries;*
- c. *Any other substantiating document deemed sufficient.*

However, with regard to consignments of customs value not exceeding ¥200,000, this evidence will not be required.

V. UNITED STATES

A. Provisions of the United States GSP scheme for LDCs

The United States GSP scheme provides unilateral, nonreciprocal preferential tariff treatment to all products covered by the scheme from designated beneficiaries.⁷⁰ The scheme was authorized under the Trade Act of 1974 and instituted on 1 January 1976. In June 2015, the Trade Preferences Extension Act of 2015 was signed, extending the GSP scheme, which had expired in July 2013, until 31 December 2017.⁷¹ The bill also extended duty reductions retroactively for any goods entered in between 31 July 2013 and the date in which the extension entered into effect. In March 2018, the GSP scheme was again retroactively extended for goods entering in the period from January 2018 to December 2020.

The United States GSP provides preferential duty-free entry for up to 5,000 products (based on eight-digit tariff lines of the United States Harmonized Tariff Schedule) imported from the 120 122 designated beneficiary countries and territories.⁷² It covers 3,500 products from developing beneficiary countries, including LDCs. Additionally, 1,500 products are eligible for GSP treatment when these are imported from eligible least developed countries.

Under GSP the duty-free tariff line coverage reaches 82.4%.⁷³ Among the products eligible for the duty-free treatment under GSP, are goods such as most manufactured items; many types of chemicals, minerals and building stone; jewellery; many types of carpets; and certain agricultural and fishery products. The main exceptions are dairy products, sugar, cocoa, articles of leather, cotton, articles of apparel and clothing, other textiles and textile articles, footwear and watches.⁷⁴

Among the products eligible for the duty-free treatment under GSP, there are goods such as most manufactured items; many types of chemicals, minerals and building stone; jewellery; many types of carpets; and certain agricultural and fishery products. Certain articles, including most textiles and apparel; watches; and most footwear, handbags, and luggage products are excluded from the list of eligible products.

Furthermore, any article determined to be import sensitive cannot be made eligible. Such ineligible products included steel, glass and electronic equipment. However, in the 2015 extension, new product categories were designated as eligible for GSP status, including some cotton products for LDC beneficiaries only, as well as certain luggage and travel goods. The United States Government, through the GSP Subcommittee, conducts an annual review of the list of eligible articles and beneficiaries.⁷⁵

All least developed countries are eligible for United States GSP scheme except for Bangladesh, the Lao People's Democratic Republic and Sudan. Bangladesh has been suspended from GSP since June 2013, respectively, for failing to meet statutory eligibility requirements related to worker rights.⁷⁶ The Lao People's Democratic Republic was removed from the scheme's eligibility in August 1976 because it had become a communist country several months before. Furthermore, Equatorial Guinea graduated from GSP in 2011, since it was deemed to be a high-income country according to the World Bank guidelines. Myanmar had been suspended from GSP from April 1989 due to worker rights concerns and was readmitted in November 2016.⁷⁷

United States GSP eligibility criteria, excludes among others, communist countries (except those that are members of WTO or the International Monetary Fund and which enjoy normal trade relations).⁷⁸ Also excluded are those countries that have not taken steps to grant internationally recognized worker rights or honour their commitments to stand against child labour.⁷⁹ Additionally, a beneficiary developing country may be withdrawn, suspended or limited from GSP status if it is deemed to be sufficiently competitive or developed. When a beneficiary country is determined to be a high-income country by the World Bank, it graduates from the GSP programme and its beneficiary status is terminated.

The first and most simple step for exporters is to ensure that GSP-eligible products are in fact taking advantage of the programme. Firms and Governments should take the following steps for all products of interest to them:⁸⁰

Step 1

Determine the Harmonized Tariff Schedule of the United States (HTSUS) number of a product, and the product's eligibility for GSP.⁸¹

In order to determine such eligibility, one should know how to read the HTSUS.⁸² Part of a page from the United States schedule, together with an explanation of its structure and codes, is reproduced in Table 5. The principal distinction is between countries that receive NTR (MFN) treatment, as specified in column 1, and those that are still subject to the high tariff rates in column 2. While the column 2 tariffs were applied to many Communist countries during the Cold War, currently only two countries, Cuba and the Democratic People's Republic of Korea, remain

Table 5
Harmonized tariff schedule of the United States, 2018

Heading/ Subheading	Stat. Suf- fix	Article Description	Unit of Quantity	Rates of Duty		
				1		2
				General	Special	
0910		Ginger, saffron, turmeric (curcuma), thyme, bay leaves, curry and other spices:				
		Ginger:				
0910.11.00		Neither crushed nor ground.....		Free		Free
	10	Certified organic.....	kg			
	15	Other.....	kg			
0910.12.00	00	Crushed or ground.....	kg	1¢/kg	Free (A, AU, BH, CA, CL, CO, D, E, IL, JO, KR, MA, MX, OM, P, PA, PE, SG)	11¢/kg
0910.20.00	00	Saffron.....	kg	Free		Free
0910.30.00	00	Turmeric (curcuma).....	kg	Free		Free
		Other spices:				
0910.91.00	00	Mixtures referred to in note 1(b) to this chapter.....	kg	1.9%	Free (A, AU, BH, CA, CL, CO, D, E, IL, JO, KR, MA, MX, OM, P, PA, PE, SG)	25%
0910.99		Other:				
		Thyme; bay leaves:				
0910.99.05	00	Crude or not manufactured.....	kg	Free		Free
		Other:				
0910.99.06	00	Thyme.....	kg	4.8%	Free (A, AU, BH, CA, CL, CO, D, E, IL, JO, KR, MA, MX, OM, P, PA, PE, SG)	25%
0910.99.07	00	Bay leaves.....	kg	3.2%	Free (A+, AU, BH, CA, CL, CO, D, E, IL, JO, KR, MA, MX, OM, P, PA, PE, SG)	25%
0910.99.10	00	Curry.....	kg	Free		11¢/kg
		Origanum (<i>Lippia spp.</i>):				
0910.99.20	00	Crude or not manufactured.....	kg	Free		Free
0910.99.40	00	Other.....	kg	3.4%	Free (A*, AU, BH, CA, CL, CO, D, E, IL, JO, KR, MA, MX, OM, P, PA, PE, SG)	25%
		Other:				
0910.99.50	00	Dill.....	kg	Free		25%
0910.99.60	00	Other.....	kg	1.9%	Free (A, AU, BH, CA, CL, CO, D, E, IL, JO, KR, MA, MX, OM, P, PA, PE, SG)	25%

Source: <https://hts.usitc.gov/current>, Section II, Number 9.

subject to column-two duty-rate status. Countries that receive MFN treatment pay the tariffs that are shown in column 1. Some of the countries that receive NTR treatment also benefit from preferential trade agreements or programme tariffs, as shown in the “special” subcolumn of column 1. Products that are eligible for GSP treatment are identified by the letter “A” in this subcolumn. This designation is further qualified in the case of products for which some GSP countries are denied duty-free treatment (A*), and products that are eligible for GSP treatment only when imported from least developed countries (A+).

How to read the United States tariff schedule

- a. The numbers and nomenclature (product descriptions) used in the schedule are identical to those used by all countries that adhere to the Harmonized Tariff System (HTS).
- b. The eight-digit tariff item number identifies the product. It is at this level of specificity that tariff rates are determined.
- c. The two-digit statistical suffix further distinguishes products for reporting purposes, but has no effect on the tariff rate.
- d. The unit of quantity indicates whether the item is counted by weight, volume, number, etc. This helps to determine the tariff when rates are expressed in specific terms (e.g. the cents per kilogram for some products shown above) rather than ad valorem terms (e.g. the 3.2 per cent for HTS item 0910.99.07).
- e. Rates of Duty, Column 1 applies to countries that receive normal trade relations (NTR) treatment, otherwise known as most-favoured-nation (MFN) treatment. It is subdivided into non-preferential (“General”) and preferential (“Special”) columns.
- f. Letters in the “Special” column indicate whether the product is eligible for duty-free or reduced-duty treatment under various preferential trade agreements or programmes:

A	Generalized System of Preferences (GSP)
A*	GSP (certain countries are not eligible)
A+	GSP (only least developed countries)
AU	United States–Australia free trade area
B	Automotive Products Trade Act
BH	United States Bahrain free trade area
C	Agreement on Trade in Civil Aircraft
CA	Canada (NAFTA)
CL	United States–Chile free trade area
CO	United States–Colombia Trade Promotion Agreement Act
D	AGOA
E or E*	Caribbean Basin Initiative
IL	United States–Israel Free Trade Area
J	Andean Trade Preferences Act
JO	United States–Jordan Free Trade Area Implementation Act
K	Agreement on Trade in Pharmaceutical Products
KR	United States–[Republic of] Korea Free Trade Agreement Implementation Act
L	Uruguay Round Concessions on Intermediate Chemicals for Dyes
MA	United States–Morocco Free Trade Agreement Implementation Act
MX	Mexico (NAFTA)
OM	United States–Oman Free Trade Agreement Implementation Act
P or P+	Dominican Republic–Central America–United States Free Trade Agreement Implementation Act
PA	United States–Panama Trade Promotion Agreement Implementation Act
PE	United States–Peru Trade Promotion Agreement Implementation Act
R	United States–Caribbean Basin Trade Partnership Act
SG	United States–Singapore Free Trade Agreement

Source: U.S. International Trade Commission, Harmonized Tariff Schedule (2017 HTSA Revision 1 Edition), General Note 3 (c) (i), Available from <https://hts.usitc.gov/current>.

Column 2 applies to four countries that do not receive NTR treatment.

Example: HTS item 0910.12.00 (Ginger, saffron, turmeric (curcuma), thyme, bay leaves, curry and other spices; crushed or ground) would face a tariff of 1 cent per kilogram if imported from a country that receives NTR treatment, or 11 cents per kilogram from a country that does not. It can thus be imported duty free under the GSP from any beneficiary country.

HTS item 0910.99.40 (Origanum; other) can be imported duty free under the GSP; nevertheless, the SPI (Special programme indicator) code under the “Special” subcolumn A* indicates that one or more countries are excluded from duty-free and quota-free treatment.

In the case of product 0910.99.07 (Bay leaves), in contrast, the SPI code A+ indicates that only LDCs receive preferential treatment under such scheme.

Step 2

Check whether the preferences granted are actually applied, thus see if the United States imports of that product are actually entering under the GSP. This can be done by examining the most recent trade data reported in the database of the United States International Trade Commission (USITC).⁸³

Step 3

If the data shows that significant shares of the country’s exports of a GSP-eligible product are not entering under the GSP, the firm or Government should determine why the duty-free privileges are not being claimed.

For instance, it may be the case that the country’s producers do not meet the GSP rules of origin, in which case it may be advisable to determine whether it is economically rational to change production processes (e.g. sourcing of components) in order to meet the rules of origin. If the rules of origin are already being met, the GSP privileges should be claimed.

Exceptions might occur in the case of competitive need limits. The granting of duty-free access to eligible products under the United States GSP programme is subject to these regulations, where a ceiling for each product and country is provided. A country will automatically lose its GSP eligibility with respect to a product if competitive need limits are exceeded.⁸⁴

However, competitive needs can be waived under several circumstances. More importantly, all competitive limitations are automatically waived for GSP beneficiaries that are designated as LDCs and beneficiary developing countries that are also beneficiaries of the African Growth and Opportunity Act.

The United States scheme also provides for a graduation mechanism. The GSP law sets out per capita GNP limits, and advances in beneficiaries’ level of economic development and trade competitiveness are regularly reviewed. In considering graduation actions, the GSP Subcommittee reviews (a) *the country’s general level of development*; (b) *its competitiveness in the particular product*; (c) *the country’s practices relating to trade, investment and worker rights*; (d) *the overall economic interests of the United States, including the effect continued GSP treatment would have on the relevant U.S. producers, workers and consumers*; and (e) *any other relevant information*.⁸⁵

Procedures for receiving duty refunds

Prior to the latest extension of the United States GSP Scheme in 2015, the programme lapsed for almost two years, since 31 July 2013. However, the GSP was retroactively renewed for all GSP-eligible entries during such period, meaning that duties paid on GSP-eligible products imported during this period are being refunded.

Goods entered between 31 July 2013 and 29 July 2015 “shall be liquidated or re-liquidated” as if they had entered before the programme expired. Importers may claim their duty refunds by filing a request for liquidation or re-liquidation with CBP.

In the case of duties deposited on GSP-eligible goods during the lapse period from 1 August 2013 through 28 July 2015, the United States Customs and Border Protection (CBP) shall directly process the entries filed via the Automated Broker Interface (ABI) with the Special Programme Indicator (SPI) “A”, “A+” or “A*”. Thus, no action is required for such entries in order to have their duties refunded.⁸⁶

B. Rules of origin under the United States GSP scheme⁸⁷

The United States GSP rules of origin provide that an article must be shipped directly from the beneficiary country to the United States without passing through the territory of any other country or, if shipped through the territory

of another country, the merchandise must not have entered the commerce of that country en route to the United States. In all cases, the invoices must show the United States as the final destination.⁸⁸

The rules further provide that the sum of the cost or value of materials produced in the beneficiary country, or any two or more such countries that are members of the same association of countries and are treated as one country, plus the direct costs of processing must equal at least 35 per cent of the appraised value of the article at the time of entry into the United States.⁸⁹

Imported materials can be counted towards the value added requirement only if they are substantially transformed into new and different constituent materials of which the eligible article is composed. Where articles are imported from GSP-eligible regional associations, member countries of the association will be accorded duty-free entry if they together account for at least 35 per cent of the appraised value of the article, the same for a single country. The customs service is charged with determining whether an article meets the GSP rules of origin. Articles or materials that have only undergone simple combining, or mere dilution with water or mere dilution with another substance that does not alter the characteristics of the article materially, are not be eligible for the GSP preferential scheme.⁹⁰

a. *These simple operations include, but are not limited to:*

- i) *The addition of batteries to devices;*
- ii) *Fitting together a small number of components by bolting, glueing, soldering, etc.;*
- iii) *Blending foreign and beneficiary developing country tobacco;*
- iv) *The addition of substances such as anticaking agents, preservatives, wetting agents, etc.;*
- v) *Repacking or packaging components together;*
- vi) *Reconstituting orange juice by adding water to orange juice concentrate; and*
- vii) *Diluting chemicals with inert ingredients to bring them to standard degrees of strength;*

b. *Simple combining or packaging operations and mere dilution will not be taken to include processes such as the following:*

- i) *The assembly of a large number of discrete components onto a printed circuit board; mixing together of two bulk medicinal substances followed by the packaging of the mixed product into individual doses for retail sale;*
- ii) *The addition of water or another substance to a chemical compound under pressure which results in a reaction creating a new chemical compound; and*
- iii) *A simple combining or packaging operation or mere dilution coupled with any other type of processing such as testing or fabrication (for example, a simple assembly of a small number of components, one of which was fabricated in the beneficiary developing country where the assembly took place); and*
- iv) *The fact that an article has undergone more than a simple combining or packaging operation or mere dilution is not necessarily dispositive of the question of whether that processing constitutes a substantial transformation for purposes of determining the country of origin of the article.*

The 35 per cent value added can be spread across more than one country when imported from GSP-eligible members of certain regional associations. Articles produced in two or more eligible member countries of an association will be accorded duty-free entry if the countries together account for at least 35 per cent of the appraised value of the article, the same requirement as for a single country. The competitive need limits will be assessed only against the country of origin and not against the entire association. There are currently six associations that may benefit from this provision: the Andean Group, the Association of South-East Asian Nations (ASEAN), the Caribbean Common Market (CARICOM), the Southern African Development Community (SADC), the West African Economic and Monetary Union (WAEMU), and the South Asian Association for Regional Cooperation (SAARC)⁹¹

In most cases the merchandise will be appraised at the transaction value. This is the price actually paid or payable for the merchandise when sold for export to the United States, plus the following items if not already included in the price: (a) the packing costs incurred by the buyer; (b) any selling commission incurred by the buyer; (c) the value of any assistance; (d) any royalty or licence fee that the buyer is required to pay as a condition of the sale; and (e) the proceeds, accruing to the seller, of any subsequent resale, disposal or use of the imported merchandise. As a rule, shipping and other costs related to the transport of the GSP articles from the port of export to the United States are not included in the value of the article or in the value added calculation.

Documentary evidence⁹²

It should be noted that the United States programme does not require that GSP imports be accompanied by extensive documentation. It used to be the case that importers had to file a special Form A in order to obtain GSP treatment, but that requirement was eliminated several years ago.⁹³ Today an importer requests GSP treatment simply by placing the GSP+s SPI code “A”, “A*”, or “A+”, as a prefix, before the HTSUS tariff-line number on the shipment entry documentation. Other way to claim it are filing a Post Entry Amendment with Customs at least 20 working days prior to liquidation of the entry or filing a protest.

The only additional documentary requirements (other than those mentioned above for transactions within a free zone) pertain to certified handicraft textile products eligible for GSP duty-free treatment. A triangular seal certifying their authenticity and placed on the commercial invoice is required for entry.⁹⁴

C. The Nepal Preference Program

In addition to GSP, Nepal is granted a special beneficiary status. In response to the 2015 earthquake, the United States adopted a Waiver Decision for Nepal, the “Trade Facilitation and Trade Enforcement Act of 2015.”⁹⁵

This regulation granted duty free access to the American market for articles that:⁹⁶

- a. are grown, produced or manufactured in Nepal; and
- b. for textile or apparel articles, Nepal is the country of origin according to regulation 102.21 of title 19, Code of Federal Regulations;⁹⁷
- c. are directly imported from Nepal into the customs territory of the US;
- d. fall under the classification of specified 66 subheadings according to the United States HS (cf. Annex II);
- e. are not declared import-sensitive;
- f. have a minimum of 35 per cent of appraised value when entering consisting of the sum of cost or value of materials produced in, and the direct costs of processing in Nepal or the custom territory of the United States.

The arrangement excludes simple combining and packaging operations like the GSP regulations as well as mere dilution with water or another substance.

Following up on this Act, a Preferential Trade Agreement was formulated and entered into force on December 15, 2016. Preferences for currently 77 articles under the HS-8 scheme are granted until December 31, 2025.⁹⁸

D. African Growth and Opportunity Act

The African Growth and Opportunity Act (AGOA) is the most recent United States initiative authorizing a new trade and investment policy towards Africa. Signed into law on May 18, 2000, it is a meaningful opportunity for eligible sub-Saharan African countries, which could result in a substantial improvement of conditions for preferential access to United States markets. AGOA legislation has subsequently been amended and renewed. Since its enactment, AGOA legislation has been modified four times, in 2002, 2006, 2006 and 2015. Currently, it is extended until 30 September 2025.

Under Title I-B of the Act, beneficiary countries in sub-Saharan Africa designated by the president as eligible for the AGOA benefits are granted what could be called a “super GSP.” In contrast to the GSP that has a duty-free tariff line coverage of 82,4 per cent, the AGOA regulation covers 97,5 per cent.⁹⁹

While the current standard GSP programme of the United States is subject to periodic short-term renewals and contains several limitations in terms of product coverage, AGOA amends the GSP programme by providing duty-free treatment for a wider range of products. This would include, upon fulfilment of specific origin and visa requirements, certain textile and apparel articles that were heretofore considered import-sensitive and thus statutorily excluded from the programme. It covers around 6,600 tariff lines duty free, extending duty-free treatment to certain apparel and footwear products not eligible under GSP, including for LDCs. Furthermore, AGOA beneficiaries are excluded from some caps on duty-free imports under the GSP scheme. The Trade Act of 2002, aiming to improve the utilization of the African Growth Opportunity Act programme, contained amendments to apparel and textile provisions under the programme (AGOA II). It modified certain provisions under AGOA by including knit-to-shape articles, doubling the cap on apparel imports, granting AGOA lesser-developed beneficiary status to Botswana

and Namibia, and revising the technical definition of merino wool to allow sub-Saharan countries take advantage of the AGOA benefit for merino wool sweaters. Furthermore, it clarified the origin of yarns under the special rule for designated LDCs and made eligible for preferences hybrid apparel articles (i.e. cutting that occurs both in the United States and in AGOA countries does not render fabric ineligible).

In 2004, provisions of the African Growth Opportunity Act were amended by the AGOA Acceleration Act (AGOA III). The act extended preferential access for imports from beneficiary sub-Saharan African countries until December 2015, and the third country fabric provision, from September 2004 until September 2007. It also included a modification of the rules of origin for textile and apparel to allow articles assembled either in the United States or sub-Saharan Africa to qualify for AGOA treatment (hybrid) and the de minimis rule was increased from 7 per cent to 10 per cent. Furthermore, it expanded the “folklore” AGOA coverage to include selected machine-ethnic printed fabric made in sub-Saharan African countries or the United States.

AGOA was subsequently amended by the Africa Investment Incentive Act of 2006 (AGOA IV). The new legislation extended textile and apparel provisions until 2015, and the third country fabric provision, for five years, from September 2007 until September 2012. It furthermore increased the cap to 3.5 per cent and added an abundant supply provision. Additionally, duty-free treatment for textiles or textile articles originating totally in one or more lesser-developed beneficiary countries was extended.

The AGOA Extension and Enhancement Act of 2015 introduced the latest modification of AGOA by extending the duty-free treatment of the products of beneficiary sub-Saharan African countries until 2025.¹⁰⁰ Furthermore, such extended period applies to the preferential treatment of apparel articles wholly assembled, or components knit-to-shape and wholly assembled which have been assembled in one or more beneficiary sub-Saharan African countries from yarns originating in the United States or in one or more beneficiary sub-Saharan African countries and/or former beneficiary sub-Saharan African countries. It also applies to the third-country fabric programme. Additionally, the rules of origin for duty-free treatment of articles of beneficiary sub-Saharan African countries have been revised, extending cumulation with former beneficiary countries of AGOA and including direct costs of processing operations in order to achieve the required minimum local value content.

Country eligibility:

The United States Government aims to allow the largest possible number of sub-Saharan African countries to take advantage of AGOA. In October 2000, when AGOA was implemented, 34 countries in sub-Saharan Africa were designated as eligible for the trade benefits of AGOA. Currently, 39 countries are eligible for preference treatment (see Table 6).

Sub-Saharan countries are designated as eligible to receive the benefits of AGOA if they are determined to establish, or are making progress towards establishing:¹⁰¹

- a. Market-based economies;
- b. Rule of law and political pluralism;
- c. Elimination of barriers to United States trade and investment; including national treatment and measures to foster an investment friendly environment, protection of intellectual property; resolution of bilateral trade and investment disputes
- d. efforts to combat corruption;
- e. Policies to reduce poverty, increasing availability of health care and educational opportunities;
- f. Protection of workers' rights and elimination of certain child labour practices.

The eligibility criteria for GSP and AGOA is overlapping, for countries must be GSP eligible in order to receive AGOA's trade benefits including both expanded GSP and the apparel provisions. However GSP eligibility does not imply AGOA eligibility.

Table 6 lists AGOA eligible countries, the effective date of their eligibility, and the effective date of their eligibility for AGOA textile and apparel benefits, if applicable.

Rules of origin under AGOA Regulation

An AGOA article must meet the basic requirements set out in the rules of origin of the United States GSP origin and related rules to receive duty-free treatment.¹⁰² In the context of AGOA specifically, rules of origin is subject to the following rules:¹⁰³

Table 6

Overview of AGOA beneficiaries

Country	Date declared AGOA eligible	Date eligible for 'wearing apparel' provisions	Qualification 3rd Country Fabric Rule for LDCs	Category 9 - hand-loomed/handmade	Category 9 - folklore annex	Category 9 – ethnic printed fabrics
Angola	30-Dec-2003	Not eligible	--	--	--	--
Benin	2-Oct-2000	28-Jan-2004	Yes	N/A	N/A	N/A
Botswana	2-Oct-2000	27-Aug-2001	Yes	Yes	No	No
Burkina Faso	10-Dec-2004	4-Aug-2006	Yes	Yes	Yes	Yes
Burundi	lost eligibility 1 Jan 2016	Not eligible	--	--	--	--
Cameroon	2-Oct-2000	1-Mar-2002	Yes	No	No	No
Cabo Verde	2-Oct-2000	28-Aug-2002	Yes	No	No	No
Chad	2-Oct-2000	26-Apr-2006	Yes	No	No	No
Central African Republic	reinstated 15-Dec-2016	Not eligible	--	--	--	--
Comores	30-Jun-2008	Not eligible	--	--	--	--
Congo (Republic)	2-Oct-2000	Not eligible	--	--	--	--
Cote d'Ivoire	25-Oct-2011	19-Mar-2013	--	--	--	--
Democratic Republic of the Congo	Declared ineligible 1/1/2011	Not eligible	--	--	--	--
Djibouti	2-Oct-2000	Not eligible	--	--	--	--
Ethiopia	2-Oct-2000	2-Aug-2001	Yes	Yes	Yes	No
Gabon	2-Oct-2000	Not eligible	--	--	--	--
Gambia	Lost eligibility 23-Dec-2014	Not eligible	--	--	--	--
Ghana	2-Oct-2000	20-Mar-2002	Yes	Yes	Yes	No
Guinea	25-Oct-2011	Not eligible	--	--	--	--
Guinea-Bissau	Regained eligibility 12/23/2014	Not eligible	--	--	--	--
Kenya	2-Oct-2000	18-Jan-2001	Yes	Yes	No	No
Lesotho	2-Oct-2000	23-Apr-2001	Yes	Yes	No	No
Liberia	29-Dec-2006	February 7, 2011	Yes			
Madagascar	Regained eligibility 27-Jun-2014	15-Dec-2014	Yes	--	--	--
Malawi	2-Oct-2000	15-Aug-2001	Yes	Yes	No	No
Mali	Regained eligibility 01/01/2014	Not eligible	--	--	--	--
Mauritania	1-Jan-2010	Not eligible	--	--	--	--
Mauritius	2-Oct-2000	18-Jan-2001	Yes	No	No	No
Mozambique	2-Oct-2000	8-Feb-2002	Yes	Yes	Yes	No
Namibia	2-Oct-2000	3-Dec-2001	Yes	Yes	No	No
Niger	25-Oct-2011	25-Oct-2011	Yes	Yes	Yes	Yes
Nigeria	2-Oct-2000	14-Jul-2004	Yes	Yes	Yes	Yes
Rwanda	2-Oct-2000	4-Mar-2003	Yes	No	No	No
Sao Tome and Principe	2-Oct-2000	Not eligible	--	--	--	--
Senegal	2-Oct-2000	23-Apr-2002	Yes	Yes	No	No
Seychelles (graduated)	Declared ineligible effective 1-1-2017	Graduated out of AGOA	--	--	--	--
Sierra Leone	23-Oct-2002	5-Apr-2004	Yes	Yes	Yes	No
South Africa	2-Oct-2000	7-Mar-2001	No	Yes	No	Yes
South Sudan	Lost eligibility 23-Dec-2014	Not eligible	--	--	--	--
Swaziland	Lost eligibility during 2014	Not eligible	--	--	--	--
Togo	17-Apr-2008	Not eligible	--	--	--	--
Uganda	2-Oct-2000	23-Oct-2001	Yes	No	No	No
United Rep. of Tanzania	2-Oct-2000	4-Feb-2002	Yes	Yes	Yes	Yes
Zambia	2-Oct-2000	17-Dec-2001	Yes	Yes	No	No

Source: US government Information, adapted by Trade Law Centre, available from <https://agoa.info/about-agoa/country-eligibility.html>

- a. The cost or value of materials produced in the customs territory of the United States may be counted towards the 35 per cent requirement up to a maximum amount not to exceed 15 per cent of the article's appraised value;
- b. The cost or value of the materials used that are produced in one or more beneficiary sub-Saharan African countries shall be applied in determining the 35 per cent requirement.
- c. Excluded from this regulation are articles that have only undergone simple combining or packaging operations or dilution with water.¹⁰⁴

Specific provisions on textile/apparel articles

*Country eligibility*¹⁰⁵

AGOA provides preferential tariff treatment for imports of certain textile and apparel products from designated sub-Saharan African countries, provided that these countries

- a. have adopted an effective visa system and related procedures to prevent illegal transshipment and the use of counterfeit documents and
- b. have implemented and follow, or are making substantial progress towards implementing and following, certain customs procedures that assist the customs service in verifying the origin of the products and
- c. agrees to reporting mechanisms and cooperation with the United States Customs Services

*Rules of origin and preferential articles of textile and apparel*¹⁰⁶

AGOA provides duty-free and quota-free access for selected textile and apparel articles if they are imported from designated sub-Saharan African countries under the textile/apparel provision. The 35 per cent value added requirement for AGOA GSP treatment is not required for the textile/apparel provision. Apparel products eligible for benefits under the AGOA must fall within one of 10 specific preferential groups and meet the related requirements. The Trade Act of 2002 modified certain rules by making knit-to-shape articles eligible for duty-free and quota-free treatment in the preferential groups. Furthermore the Africa Investment Incentive Act of 2006 increased the cap for AGOA apparel made of third-country fabric to 3.5 per cent of the total, provided special rules governing fabrics or yarns that are produced in commercial quantities (or abundant supply) in designated sub-Saharan African countries for use in qualifying apparel articles and expanded duty-free treatment for textile or textile articles (e.g. towels, sheets, made-ups) originating entirely in one or more lesser-developed AGOA beneficiary countries.

Qualifying articles for duty-free and quota-free treatment include:¹⁰⁷

- a. Apparel
 - i) made of U.S. yarns and fabrics;
 - ii) made from sub-Saharan African yarns and fabrics (subject to a cap);
 - iii) made in a designated lesser-developed country of lesser - developed country yarns and fabrics (subject to a cap);¹⁰⁸
 - iv) made from yarns and fabrics not produced in commercial quantities in the United States;
 - v) certain cashmere and merino wool sweaters;¹⁰⁹
- b. textile or textile articles originating fully in one or more beneficiary sub-Saharan African countries;
- c. eligible handloomed, handmade, or folklore articles as well as ethnic printed fabrics.¹¹⁰

Administrable rules on the provision of textile/apparel articles

Certain apparel imports are subject to a cap that will be filled on a "first-come, first-served" basis.¹¹¹

The current limitations are: *For the one-year period, beginning on October 1, 2017, and extending through September 30, 2018, the aggregate quantity of imports eligible for preferential treatment under these provisions is 2,022,822,376 square meters equivalent. Of this amount, 1,011,411,188 square meters equivalent is available to apparel articles imported under the special rule for lesser- developed countries. Apparel articles entered in excess of these quantities will be subject to otherwise applicable tariffs.*¹¹²

To date, the cap has not been an effective quote, since aggregate AGOA apparel exports were within the limitations.¹¹³

Abundant Supply

AGOA IV provides special rules on determining whether fabrics or yarns are produced in commercial quantities (or, “abundant supply”) in designated sub-Saharan African countries for use in qualifying apparel articles. AGOA IV provides that the United States International Trade Commission will make such determinations, and also provides that 30 million square metre equivalents of denim are determined to be in abundant supply beginning 1 October 2006. Subject to these rules, certain apparel goods may be excluded from AGOA third-country benefits.¹¹⁴

Commercial availability

CITA may grant duty-free benefits for apparel made of fabric or yarns that cannot be supplied by the domestic industry in commercial quantities in a timely manner. As of 2017, 18 commercial availability petitions have been approved and 7 were denied.¹¹⁵

Furthermore, in any year, when the cap is filled, products may still be imported; however, normal trade tariffs will be assessed at the time of entry. It is important to note that the benefits for apparel and textile provision are significant for certain countries.¹¹⁶ This could mean that those countries that have traditionally exported apparels to the United States might account for a large portion of the cap.

Other special rules on the provision of textile/apparel articles

An article is eligible for preferential treatment even if it contains findings or trimmings of foreign origin, if the value of such findings or trimmings does not exceed 25 per cent of the cost of the components of the assembled article. Examples of findings and trimmings include sewing thread, hooks and eyes, snaps, buttons, bow buds, decorative lace trims, elastic strips, and zippers, excluding sewing thread.¹¹⁷

Certain interlinings are also eligible for duty-free treatment. These include only a chest-type plate, a hymo piece, or sleeve header made of woven or weft-inserted warp knit construction, and made of coarse animal hair or man-made filaments. An article is eligible for preferential treatment even if the article contains interlinings of foreign origin, if the value of those interlinings and any findings and trimmings does not exceed 25 per cent of the cost of the components of the assembled article.¹¹⁸

Under the AGOA de minimis rule, an article is eligible for preferential treatment because it contains fibres or yarns not wholly formed in the United States or one or more beneficiary sub-Saharan African countries if the total weight of all such fibres and yarns is not more than seven per cent of the total weight of the article.¹¹⁹

Documentation Requirements

Generally, a certificate of origin is not required, but when the article is not wholly obtained in a single beneficiary country, the exporter shall be prepared to submit a declaration about the details.¹²⁰

In order to claim preferential treatment for textile and apparel goods, a certificate of origin is required.¹²¹

E. The Caribbean Basin Initiative

The programs collectively known as The Caribbean Basin Initiative consist of separate schemes granting preferences to different groups of beneficiaries. The Caribbean Basin Economic Recovery Act (CBERA) entered into force on 1 January 1984 and was substantially expanded by the Caribbean Basin Trade Partnership Act (CBTA) in 2000. While CBERA has no expiry date, CBTA is currently in place until 30 September 2020. Currently, these regulations expand to seventeen countries and territories in the region.¹²² In addition, eight countries receive benefits mainly relating to textiles and petroleum, under the Caribbean Basin Trade Partnership Act.¹²³

Haiti, the only LDC in the region, furthermore benefits from specific regulations for textile and apparel products by the Haitian Hemispheric Opportunity Through Partnership Encouragement Act (HOPE) of 2006, the HOPE II Act of 2008 and the Haiti Economic List Program Act (HELP) of 2010.¹²⁴ These regulations provide duty-free preferences for mainly apparel products and other light-manufactured products, under the conditionality to comply with international labour standards and Haitian labour law. In 2015, the Trade Preferences Extension Act extended Haiti's preferential treatment until 30 September 2025.¹²⁵

The HELP regulation of 2010 was drafted in response to the earthquake that hit the island state on January 12, 2010. It focuses on the apparel sector, that was severely affected, not only by the destruction of factories but also the damage on the seaport of Port-au-Prince.¹²⁶

Rules of origin under the Caribbean Basin Initiative¹²⁷

Generally, eligible articles (excluding textiles and apparels) must fulfil two main criteria:

- a. Similarly to the GSP scheme of rules of origin, the product in question for CBERA/ CBTA treatment must be shipped directly from the beneficiary country to the United States without passing through the territory of any other country or, if shipped through the territory of another country, the merchandise must not have entered the commerce of that country en route to the United States.¹²⁸
- b. Minimum 35 per cent of the appraised value of the good at the time of entering must be the sum of
 - i) The cost or value of the materials produced in one beneficiary country or group of beneficiary countries and
 - ii) The direct costs of processing operations in a beneficiary country or countries

Simple working processes such as combining or packaging are furthermore excluded from preference granting.¹²⁹

Example: Consider the case of raw, perishable skin of an animal grown in a non-beneficiary country is sent to a beneficiary country where it is tanned to create nonperishable “crust leather”. The tanned skin is then imported directly into the U.S. Although the tanned skin represents a new or different article of commerce produced in a beneficiary country within the meaning of §10.195(a), the cost or value of the raw skin may not be counted toward the 35 percent value requirement because (1) the tanned material of which the imported article is composed is not wholly the growth, product, or manufacture of a beneficiary country and (2) the tanning operation creates the imported article itself rather than an intermediate article which is then used in the beneficiary country in the production or manufacture of an article imported into the U.S. The tanned skin would be eligible for duty-free treatment only if the direct costs attributable to the tanning operation represent at least 35 percent of the appraised value of the imported article.¹³⁰

Product-specific Requirements

Specific regulations apply under CBTPA, HOPE and HELP for textile and apparel products, footwear and non-textile travel goods.

Under CBTPA, imports classified in HTS chapters 61 and 62 (cotton, wool, man-made fibre apparel) from CBERA countries qualify for duty-free treatment. In most cases, these goods must be produced wholly from U.S. or CEBRA regional inputs and assembled in an eligible CBTPA country.¹³¹ CBTPA also enlarged the product range of CEBRA including goods such as petroleum, petroleum products, certain tuna, certain footwear, watches and watch parts.¹³²

HOPE and HELP grant duty-free treatment for certain textile and apparel products, that are not already included under CBTPA. These must be imported directly from Haiti or the Dominican Republic.¹³³

This regulation covers:¹³⁴

a. *Certain apparel articles:*

Apparel articles of a producer or entity controlling production that are wholly assembled or knit-to-shape in Haiti from any combination of fabrics, fabric components, components knit-to-shape, and yarns, subject to the applicable quantitative limits and provided that the following applicable value-content requirement are met:

(i) The individual entry method:

The sum of the cost or value of the materials produced in Haiti, plus the direct costs of processing operations performed in Haiti or one or more eligible countries or any combination thereof, is not less than:¹³⁵

50 per cent or more of the declared customs value of the articles entered during the initial applicable one-year period, the second applicable one-year period, and the third applicable one-year period;

55 per cent or more of the declared customs value of the articles entered during the fourth applicable one-year period; and

60 per cent or more of the declared customs value of the articles entered during the fifth applicable one-year period.

(ii) The annual aggregation method.

- b. Certain woven apparel articles.*
- c. Brassieres.*
- d. Certain knit apparel articles (excluded are mainly cotton shirts for boys and men)*
- e. Other apparel articles.*
- f. Luggage and similar items.*
- g. Headgear.*
- h. Certain sleepwear.*
- i. Apparel articles that earned import allowance certificates issued from Department of Commerce*
- j. Apparel articles of short supply materials.*
- k. Wiring sets.*

Documentation Requirements

Regulations differ according to the preference program and good being exported under the Caribbean Basin Initiative.

For claiming preferential treatment under CBERA no certificate of origin is required.¹³⁶

In contrast, the CBTPA programme requires documentation. For textile and apparel goods, a Certificate of Origin must be attached.¹³⁷ For non-textile and apparel goods, CBP form 450 must be used.¹³⁸

For Haiti's preferential treatment under HOPE and HELP no certificate of origin is required, but different administrative regulations apply.¹³⁹ Generally, importers may claim for duty-free treatment of the specified qualifying products by

- a. including on the entry summary, or equivalent documentation
- b. or the applicable subheading within Subchapter XX of Chapter 98 of the HTSUS under which the article is classified

or by the method specified for equivalent reporting via an authorized electronic data interchange system.

VI. CANADA

A. Provisions of the Canadian GSP scheme for LDCs

Canadian legislation implementing a system of tariff preferences in favour of developing countries was brought into effect on 1 July 1974. After an initial period of 10 years, the Canadian scheme was renewed in 1984 with a number of improvements, including expanded coverage. Similarly, the scheme was again renewed in 1994 until 2004.

On 1 September 2000, Canada added an extra 570 tariff lines to the list of duty-free tariff items for the benefit of the least developed beneficiaries (LDCs). This new coverage includes a wide range of agricultural and fish products as well as a number of other industrial goods such as iron and steel, chemical products, toys and games. However, this extension of product coverage does not include any textile and clothing product.

Rates and coverage of the General Preferential Tariff (GPT), the Canadian designation of the GSP scheme, were reviewed in 1995 to take into account the effect of erosion on the margin of preference of the Uruguay Round on Multilateral Trade Negotiations. The review resulted in an expansion of product coverage and lower GPT rates of duty. While GPT rates for non-LDC developing country beneficiaries range from duty-free entry to reductions to the most-favoured-nation (MFN) rate, there is duty-free entry for all eligible products originating in LDCs. Certain products, such as selected agricultural products, certain textiles, footwear, products of the chemical, plastic and allied industries, speciality steels and electron tubes were originally excluded from the scheme.

In 2003, the Government of Canada extended duty-free and quota-free access to imports from 48 LDCs with the exception of some agricultural products such as dairy, poultry and eggs. This extension of the Canadian GSP scheme entered into effect on 1 July 2003. All eligible imports from these eligible countries became subject to duty-free and quota-free treatment.¹⁴⁰

In May 2008, the Canada Border Services Agency issued Memorandum D11-4-4, introducing some changes in the Guidelines and general information section to clarify policy or procedural issues.

As part of its 2013 Economic Action, Canada carried out a review of its GPT regime. The review led to the graduation from GPT treatment in 2015 of 72 trading partners considered higher income or trade-competitive partners. As a result, 104 countries became eligible for the GPT, 48 of which are eligible for the least developed country tariff (LDCT). Beneficiaries' eligibility shall be reviewed every two years. Countries meeting one of the criteria below will cease to be eligible for the GSP scheme:

- a. Are classified for two consecutive years as high-income or upper-middle income economies according to the latest World Bank income classifications;
- b. Have a 1% or greater share of world exports for two consecutive years, according to the latest World Trade Organization statistics.

Moreover, the rules of origin regulations under the LDCT scheme were amended to ensure that benefits for LDCs are not affected by changes to GPT country eligibility. Thus, LDC exports continue to be eligible for duty-free treatment upon importation to Canada, even when incorporating inputs from countries that are no longer eligible for the GPT and allowing a maximum of non-originating materials up to 80 per cent of the ex-factory price of the final good.¹⁴¹

The programme was extended until 31 December 2024. From the total tariff lines, as of 2015, the programme covers duty free about 73.7 per cent tariff lines for the GPT and 98.6 per cent tariff lines for the LDCT scheme.¹⁴²

B. Rules of origin under the Canadian GSP scheme for LDCs (LDCT)

The latest legislation on rules of origin under the Canadian GSP scheme came into force on 1 January 2015 and is set out in the General Preferential Tariff and Least Developed Country Tariff Rules of Origin Regulations.¹⁴³ It

was amended in 2017 broadening the qualification of apparel products (t-shirts and pants) from LDCs for duty-free importation to Canada. Expanding the list of countries for sourcing or processing manufacturing items, these modifications took account of highly integrated supply chains, mainly focusing on Haiti.¹⁴⁴

Origin criteria¹⁴⁵

According to subsection 2(1) of the General Preferential Tariff and Least Developed Country Tariff Rules of Origin Regulations, goods eligible for LDCT treatment (identified in the customs tariff), shall be considered “wholly obtained or produced” in the LDCT beneficiary country when they are defined as follows:

- (a) A mineral product extracted from the soil or the seabed of the country;*
- (b) A vegetable product harvested in the country;*
- (c) A live animal born and raised in the country;*
- (d) A good obtained in the country from a live animal;*
- (e) A good obtained from hunting or fishing in the country;*
- (f) A good obtained from sea fishing or any other marine good taken from the sea by a vessel of the country;*
- (g) A good produced on board a factory ship of the country exclusively from a good referred to in paragraph (f);*
- (h) Waste and scrap derived from manufacturing operations of the country;*
- (i) A used good of the country imported into Canada for use only for the recovery of raw materials;*
- (j) A good produced in the country exclusively from a product or good referred to in any of paragraphs (a) to (h).*

Therefore, such goods must not contain any foreign materials or parts from outside the LDCT beneficiary country.

Example: Consider cotton harvested in Burundi. At this stage, the good would be wholly obtained by the application of paragraph 2(1)(b). However, in the case that such cotton was spun into yarn and then woven into blankets, the good would apply under paragraph 2(1)(j) of the Regulations and therefore would be considered wholly produced.

In addition, goods that are not considered wholly obtained or produced are considered to originate in a least developed country if the value of the materials, parts or products originating outside that country, or in an undetermined location, and used in the manufacture or production of the goods is no more than 60% of the ex-factory price of the goods as packed for shipment to Canada (subsection 3 of the Regulations). For the purpose of subsection (3) of the Regulations, the following are deemed to have originated in the least developed country (subsection 9):¹⁴⁶

- a. Any materials, parts or products that are used in the manufacture or production of the goods referred to in that subsection and that*
 - i) Originate in any other least developed country or in Canada, or*
 - ii) Have a value of no more than 20% of the ex-factory price of the goods, as packed for shipment to Canada, and originate in a country set out in Schedule 2 (cf. Annex IV), other than a least developed country; and*
- b. Any packing required for the transportation of the goods referred to in that subsection, not including packing in which the goods are ordinarily sold for consumption in the least developed country.*

This applies to all articles except certain apparel products and made-up textile articles (HS 61 to 63).¹⁴⁷

Therefore, when determining whether goods are entitled to LDCT treatment, exporters must take into consideration that the content of a finished good when shipped directly to Canada may be:¹⁴⁸

- a. Maximum 60 per cent of the ex-factory price of the final good consisting of the value of manufacturing materials originating outside the exporting LDC country (without further restriction on country of origin)*
- b. In addition, the value of all materials used in the manufacture or production of the good may include a value of up to 20 per cent of the ex-factory price from any country listed in the Schedule 2 of the Regulations (cf. Annex IV);*

Therefore, except for articles included under chapters 61 to 63 of the HS, the maximum amount of non-originating materials may be up to 80 per cent of the ex-factory price of the good as packed for shipment to Canada and at least 20 per cent of the ex-factory price must originate in one or more LDCT beneficiary countries or Canada.

The ex-factory price is the total value of:

- a. *Materials;*
- b. *Parts;*
- c. *Factory overhead;*
- d. *Labour;*
- e. *Any other reasonable costs incurred during the normal manufacturing process, e.g. duties, taxes paid on materials imported to beneficiary country and not refunded when the goods are exported;*
- f. *A reasonable profit.*

Any costs incurred subsequent to the goods leaving the factory, such as freight, loading and temporary storage, are not included in the ex-factory price calculation.

Example: Wool from Yemen is combined with spandex from Hong Kong (China) and sewing thread from India to manufacture wool socks in Yemen. A textile or apparel good may contain parts and materials originating outside an LDC, a country set out in Schedule 2 of the Regulations of Canada and valued at no more than 60% of the ex-factory price of the good as packed for shipment to Canada. The wool from Yemen origin represents 35 per cent of the ex-factory price. The sewing thread from India and spandex from Hong Kong (China) represent an additional 7 per cent. Canada's LDCT rules of origin permit inputs from former GPT beneficiaries, in this case Hong Kong (China) and India, to be included in the 40 per cent parts and materials requirement. The 35 per cent input of wool from Yemen, combined with the 7 per cent sewing thread and spandex inputs from India and Hong Kong (China), adds up to 42 per cent, and therefore does not exceed the 40% minimum requirement, and the socks shall qualify for LDCT.

Special rules concerning textiles and clothing

Canada has product-specific rules of origin for textiles and clothing.

"Apparel goods", described in parts A1 and A2 of the Schedule 1 to the Regulations, must be assembled in a least developed country in order to be entitled to the LDCT. Other requirements are listed below:

- a. The fabric used in the assembly of such goods must be cut in that country or in Canada and produced in any LDC or in Canada from yarns spun or extruded in any LDCT beneficiary, a country included in Schedule 2 (see Annex IV) of the Regulations or in Canada;
- b. If assembled from parts, those parts must be knit to shape in any least developed country or Canada and produced in:
 - i) Any LDC or in Canada from yarns spun or extruded in any LDCT beneficiary, a country included in Schedule 2 of the Regulations or in Canada and the yarns and fabric do not undergo any further processing outside a least developed country, Canada or a country included in Schedule 2 (only in the case of yarns);

Example: Consider dresses or skirts manufactured in Mali. They will qualify as originating and will be eligible for duty-free LDCT if assembled in Mali from fabric that has been cut in Mali or Canada. The fabric must be produced in an LDC or in Canada from yarns that originate in an LDCT beneficiary, a country included in Schedule 2 of the Regulations, or Canada and the yarns or fabric must have not undergone any further processing outside any LDC, Canada or a country set out in Schedule 2 of the Regulations. In the case of materials used in the manufacture or production of the good originating in Canada, those are considered to have originated in Mali (the LDC where the goods are assembled).¹⁴⁹

- (ii) A country set out in Schedule 2 from yarns spun or extruded in a least developed country, a country set out in Schedule 2 or Canada, and the yarns and fabric do not undergo further processing outside a least developed country, a country set out in Schedule 2 or Canada. Furthermore, the value of any materials, including packing, that are used in the manufacture of the goods, that originate outside the LDC in which the goods are assembled must not be more than 75% of the ex-factory price of the goods as packed for

shipment to Canada. Nevertheless, any parts, materials or inputs used in the production of the goods that have entered the commerce of any country other than an LDCT beneficiary country of Canada lose their LDCT status.

Example: Consider the same dresses or skirts manufactured in Mali. Those shall be entitled to LDCT status if they are assembled in Mali and the fabric used in the manufacture of the dresses or skirts is produced in a country set out in Schedule 2 of the Regulations from yarns spun or extruded in an LDCT beneficiary, a country set out in Schedule 2 of the Regulations or Canada. Furthermore, the yarns and fabric cannot undergo further processing outside an LDCT beneficiary, a country included in Schedule 2 of the Regulations and the value of the materials, including packing, that are not originating in Mali (the LDC where the dresses or skirts are assembled) does not exceed 75% of the ex-factory price of the goods as packed for shipment to Canada.¹⁵⁰

c. The 2017 amendments widened the qualifying criteria for apparel products, mainly for t-shirts and pants. Referring to products outlined in A3 of Schedule 1, those are entitled to the LDCT, which are assembled in a least developed country from parts

d. that were cut or knit to shape in a least developed country, a country set out in Schedule 2 (cf. Annex IV), an FTA partner country or in Canada

From fabric or parts made out of yarn originating from a least developed country, a country mentioned in Schedule 2 (cf. Annex IV), an FTA partner country or Canada itself and being produced.

i) Either: in any least developed country or Canada

This only applies if the yarns are not further processed outside a least developed country, a country set out in Schedule 2, an FTA partner country or Canada

And the fabric is not further processed outside a least developed country or Canada

ii) Or: in a country set out in Schedule 2 or an FTA partner country

This only applies if the components are not further processed outside a least developed country, a country set out in Schedule 2, an FTA partner country or Canada

And the value of materials (including packing) not originating from the assembling least developed country does not exceed 75% of the ex-factory price.¹⁵¹

Example: Consider the case of raw cotton produced in the United States of America being exported to Haiti, where it is processed to cotton fabric. Cut pieces are assembled to trousers and thus qualify for LDCT.

In order to be entitled to the LDCT, “made-up textile goods”, which are included in part B of Schedule 1 to the Regulations, such goods should be cut, or knit to shape and sewn or otherwise assembled in an LDCT beneficiary. Additionally, the fabric or parts knit to shape must be produced in a least developed country or Canada from yarns spun or extruded in a least developing country, a country included in Schedule 2 of the Regulations or Canada and the yarns or fabric or parts knit to shape must not undergo any further processing outside of a country set out in Schedule 2 of the Regulations.

Example: Consider the case whereby wool yarn produced in Afghanistan is exported to Bangladesh. In Bangladesh, the yarn is produced into wool fabric. The wool fabric is shipped directly to the Lao People’s Democratic Republic for further manufacturing into a made-up textile good. The production process of such finished good in the Lao People’s Democratic Republic must include cutting, or knitting to shape, of the fabric as well as sewing or otherwise assembling in that country in order for the good to qualify for LDCT.¹⁵²

Documentary evidence

Exporters of goods originating in LDCT beneficiary countries, with the exception of textiles and apparel goods of chapters 50 to 63 of the HS, must provide proof of origin. A certificate of origin, Form A or the Exporter’s Statement of Origin must be submitted as proof of origin to the Canada Border Services Agency (CBSA) upon request.

Such proof of origin forms must be completed and signed by the exporter of the goods located in the LDCT country in which the goods were finished before being imported to Canada. Even though the proof of origin it is

not required to be an original, but in all cases, it must cross-reference the applicable invoice number(s), as well as, to list the goods for which the preferential treatment is claimed separately from the non-preference receiving goods. It is not a requirement, nevertheless, to provide separate invoices.

In general, exporters find it easier to complete and provide the Exporter's Statement of Origin rather than Form A. However, Form A does not require to be stamped and signed by an authority designated by the beneficiary country. In the case, of the Exporter's Statement of Origin, it must be written out in Form CI1, the Canada Customs Invoice, or a commercial invoice provided as a separate document. The information required in the statement must be entirely provided for goods to qualify for the LDCT.

For textile and apparel goods of chapters 50 to 63 of the HS, included in Schedule 1 of the Regulations, Form B255 (Certificate of Origin-Textile and Apparel Goods Originating in a Least Developed Country) must be submitted as proof of origin.¹⁵³

Direct shipment requirements¹⁵⁴

The goods must be shipped directly on a through bill of lading (TBL) to a consignee in Canada from the LDC in which the goods were certified. Evidence in the form of a TBL (or a copy) showing that the goods have been shipped directly to a consignee in Canada must be presented to the CBSA upon request.

The TBL is a single document that is issued prior to the goods beginning their journey when the carrier assumes care, custody, and control of the goods, and it is used to guarantee the direct shipment of goods from the country of origin to a consignee in Canada. It generally contains the following information:

- (a) Identity of the exporter in the country of origin;*
- (b) Identity of the consignee in Canada;*
- (c) Identity of the carrier or agent who assumes liability for the performance of the contract;*
- (d) Contracted routing of the goods identifying all points of transshipment;*
- (e) Full description of the goods and the marks and numbers of the package;*
- (f) Place and date of issue.*

Note

A TBL that does not include all points of transshipment may be accepted, if these are set out in related shipping documents presented with the TBL.

On a case-by-case basis, an amended TBL may be accepted as proof of direct shipment where documentation errors have occurred, and the amended TBL corrects an error in the original document.

In such cases, the carrier must provide proof that the amended TBL reflects the actual movement of the goods as contracted when the goods began their journey. Documentation presented must clearly indicate the actual movement of the goods.

Air cargo is usually transhipped in the air carrier's home country even if no transshipment is shown on the house air waybill. Therefore, where goods are transported via airfreight, the house air waybill is acceptable as a TBL.

Under the LDCT treatment, goods may be transhipped through an intermediate country, provided that:

- a. They remain under customs transit control in the intermediate country;*
- b. They do not undergo any operation in the intermediate country, other than unloading, reloading or*
- c. Splitting up of loads or any other operation required to keep the goods in good condition;*
- d. They do not enter into trade or consumption in the intermediate country;*
- e. They do not remain in temporary storage in the intermediate country for a period exceeding six months.*

A consignee in Canada must be identified in field No. 2 to ensure that the exporter in the beneficiary country certified the origin of the goods according to Canadian rules of origin. The consignee is the person or company, whether it is the importer, agent or other party in Canada, to which goods are shipped under a through bill of lading (TBL) and is so named in the bill. The only exception to this condition may be considered when 100 per cent of the value of the goods originates in the beneficiary country in question, in which case no consignee is required.

For both the normal GPT and LDC treatment, the origin criterion in field No. 8 of Form A must be one of the following:

P means wholly (100 per cent) produced (as defined in subsection 2(1) of the Regulations) in the beneficiary or least developed country;

F for GPT, means, at least 60 per cent of the ex-factory price was produced in the GPT beneficiary country;

F for LDCT, means, at least 40 per cent of the ex-factory price was produced in the LDCT country. The existing 40 per cent of the ex-factory price of the goods as packed for shipment to Canada may also include a value of up to 20 per cent of the ex-factory price of the goods from countries eligible for GPT;

G for GPT, means, at least 60 per cent of the ex-factory price was cumulatively produced in more than one GPT beneficiary country or Canada;

G for LDCT, means, at least 40 per cent of the ex-factory price was cumulatively produced in more than one LDCT beneficiary country or Canada. The existing 40 per cent of the ex-factory price of the goods as packed for shipment to Canada may also include a value of up to 20 per cent of the ex-factory.

Specimens of the Exporter's Statement of Origin are provided by the Canada Border Service Agency.¹⁵⁵ It must be completed and signed by the exporter in the beneficiary country in which the goods were finished. It must bear a full description of the goods and the marks and numbers of the package and must be cross-referenced to the customs invoice.

The proof of origin must be presented to the CBSA upon request. Failure to do so will result in the application of either the MFN tariff treatment or other appropriate tariff treatment. When requested by the CBSA to present the proof of origin, the importer may be required to provide a complete and accurate translation in English or French. In addition, importers may be requested to submit further documentation to substantiate the origin of the goods, such as bills of materials and purchase orders.

The making or assenting to the making of a false declaration in a statement made verbally or in writing to the CBSA is an offence under section 153 of the Customs Act and may be subject to sanctions under section 160 of the Act.

ANNEXES

Annex I

Conventions referred to in Regulation (EU) 978/2012, Articles 19 to 21

Part A

Core human and labour rights United Nations or ILO Conventions

1. International Covenant on Civil and Political Rights
2. International Covenant on Economic, Social and Cultural Rights
3. International Convention on the Elimination of All Forms of Racial Discrimination
4. Convention on the Elimination of All Forms of Discrimination against Women
5. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
6. Convention on the Rights of the Child
7. Convention on the Prevention and Punishment of the Crime of Genocide
8. Convention concerning Minimum Age for Admission to Employment (No. 138)
9. Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No. 182)
10. Convention concerning the Abolition of Forced Labour (No. 105)
11. Convention concerning Forced or Compulsory Labour (No. 29)
12. Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (No. 100)
13. Convention concerning Discrimination in Respect of Employment and Occupation (No. 111)
14. Convention concerning Freedom of Association and Protection of the Right to Organize (No. 87)
15. Convention concerning the Application of the Principles of the Right to Organize and to Bargain Collectively (No. 98)
16. International Convention on the Suppression and Punishment of the Crime of Apartheid.

Part B

Conventions related to the environment and to governance principles

17. Montreal Protocol on Substances that Deplete the Ozone Layer
18. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal
19. Stockholm Convention on Persistent Organic Pollutants
20. Convention on International Trade in Endangered Species of Wild Fauna and Flora
21. Convention on Biological Diversity
22. Cartagena Protocol on Biosafety
23. L 211/38 EN Official Journal of the European Union 6.8.2008
24. Kyoto Protocol to the United Nations Framework Convention on Climate Change
25. United Nations Single Convention on Narcotic Drugs (1961)
26. United Nations Convention on Psychotropic Substances (1971)
27. United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)
28. United Nations Convention against Corruption (Mexico).

Annex II

HS subheadings eligible for preferential treatment for US imports from Nepal

4202.11.00, 4202.22.60, 4202.92.08, 4202.12.20, 4202.22.70, 4202.92.15, 4202.12.40, 4202.22.80,
4202.92.20, 4202.12.60, 4202.29.50, 4202.92.30, 4202.12.80, 4202.29.90, 4202.92.45, 4202.21.60,
4202.31.60, 4202.92.60, 4202.21.90, 4202.32.40, 4202.92.90, 4202.22.15, 4202.32.80, 4202.99.90,
4202.22.40, 4202.32.95, 4203.29.50, 4202.22.45, 4202.91.00, 5701.10.90, 5702.91.30, 5703.10.80,
5702.31.20, 5702.91.40, 5703.90.00, 5702.49.20, 5702.92.90, 5705.00.20, 5702.50.40, 5702.99.15,
5702.50.59, 5703.10.20, 6117.10.60, 6214.20.00, 6217.10.85, 6117.80.85, 6214.40.00, 6301.90.00,
6214.10.10, 6214.90.00, 6308.00.00, 6214.10.20, 6216.00.80, 6504.00.90, 6505.00.30, 6505.00.90,
6505.00.08, 6505.00.40, 6506.99.30, 6505.00.15, 6505.00.50, 6506.99.60, 6505.00.20, 6505.00.60,
6505.00.25, 6505.00.80

Source: http://ptadb.wto.org/docs/US_NEPAL/2017/EnglishUSNepal.pdf

Annex III

Canada: Categories of textile and apparel for rules of origin purposes

Part A1 – Apparel

Goods referred to in headings 61.01 and 61.02, subheadings 6103.10, 6103.22, 6103.23, 6103.29, 6103.31, 6103.32, 6103.33, 6103.39, 6103.41, 6103.49, 6104.13, 6104.19, 6104.22, 6104.23, 6104.29, 6104.31, 6104.32, 6104.33, 6104.39, 6104.41, 6104.42, 6104.43, 6104.44, 6104.49, 6104.51, 6104.52, 6104.53, 6104.59, 6104.61 and 6104.69, headings 61.05, 61.06, 61.07 and 61.08, tariff item Nos. 6110.11.90, 6110.12.90 and 6110.19.90, subheadings 6110.20, 6110.30 and 6110.90, heading 61.12, tariff item No. 6113.00.90, heading 61.14, tariff item Nos. 6115.10.10 and 6115.10.99, subheadings 6115.21, 6115.22, 6115.30, 6115.95, 6115.96 and 6115.99, tariff item Nos. 6117.10.90 and 6117.80.90, heading 62.01, subheadings 6202.11, 6202.12, 6202.13, 6202.91, 6202.92, 6202.93, 6202.99, 6203.11, 6203.12, 6203.19, 6203.22, 6203.23, 6203.29, 6203.31, 6203.32, 6203.33, 6203.39, 6203.41, 6203.49, 6204.11, 6204.12, 6204.13, 6204.19, 6204.21, 6204.22, 6204.23, 6204.29, 6204.31, 6204.32, 6204.33, 6204.39, 6204.41, 6204.42, 6204.43, 6204.44, 6204.51, 6204.52, 6204.53, 6204.59, 6204.61, 6204.69, 6205.20, 6205.30, 6206.20, 6206.30, 6206.40, 6206.90, 6207.11, 6207.19, 6207.21, 6207.22, 6207.91, 6207.99, 6208.11, 6208.19, 6208.21, 6208.22, 6208.91 and 6208.92, tariff item No. 6210.10.90, subheadings 6210.20 and 6210.30, tariff item Nos. 6210.40.90 and 6210.50.90, subheading 6211.11, tariff item No. 6211.12.90, subheadings 6211.20 and 6211.32, tariff item Nos. 6211.33.90 and 6211.39.10, subheading 6211.42, tariff item Nos. 6211.43.90 and 6211.49.90, heading 62.12, tariff item Nos. 6213.90.90, 6214.20.90 and 6214.30.90, subheadings 6214.40, 6214.90, 6215.20 and 6215.90, tariff item No. 6217.10.90, subheading 6217.90 and tariff item Nos. 9619.00.23, 9619.00.24, 9619.00.25 and 9619.00.29.

Part A2 – Apparel

Goods referred to in tariff item Nos. 6110.11.10, 6110.12.10 and 6110.19.10, heading 61.11, tariff item Nos. 6113.00.10 and 6113.00.20, subheadings 6115.94, 6116.10, 6116.91, 6116.92, 6116.93 and 6116.99, tariff item Nos. 6117.10.10 and 6117.80.10, subheadings 6117.90, 6202.19, 6204.49, 6205.90, 6206.10, 6207.29, 6208.29 and 6208.99, heading 62.09, tariff item Nos. 6210.10.10, 6210.40.10, 6210.50.10, 6211.12.10, 6211.33.10, 6211.43.10, 6211.43.20, 6211.49.10 and 6211.49.20, subheading 6213.20, tariff item No. 6213.90.10, subheading 6214.10, tariff item Nos. 6214.20.10 and 6214.30.10, subheadings 6215.10 and 6216.00 and tariff item Nos. 6217.10.10, and 9619.00.10.

Part A3 Apparel

Goods referred to in subheadings 6103.42, 6103.43, 6104.62, 6104.63, 6109.10, 6109.90, 6203.42, 6203.43, 6204.62 and 6204.63.

Part B – Made-up textile articles

Goods referred to in subheadings 6301.10, 6301.30, 6302.10, 6302.21, 6302.22, 6302.29, 6302.31, 6302.32, 6302.39, 6302.40 and 6302.51, tariff item No. 6302.53.90, subheadings 6302.59, 6302.60, 6302.91, 6302.93 and 6302.99, heading 63.03, subheadings 6304.11 and 6304.19, tariff item Nos. 6304.91.90, 6304.92.90, 6304.93.90 and 6304.99.90, subheadings 6305.20, 6305.32, 6305.33 and 6305.39, tariff item Nos. 6307.10.90, 6307.90.40, 6307.90.93 and 6307.90.99, heading 63.08 and tariff item No. 6309.00.90.

Source: <http://laws-lois.justice.gc.ca/eng/regulations/SOR-2013-165/FullText.html>

Annex IV

Countries, dependencies and territories included in Schedule 2 of the Regulations of Canada

Afghanistan, Algeria, American Samoa, Angola, Anguilla, Antigua and Barbuda, Argentina, Armenia, Ascension Island, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belize, Benin, Bermuda, Bhutan, Plurinational State of Bolivia, Bosnia and Herzegovina, Botswana, Brazil, British Indian Ocean Territory, Brunei, Burkina Faso, Burundi, Cambodia, Cameroon, Cape Verde, Cayman Islands, Central African Republic, Chad, Chile, China, Christmas Island, Cocos (Keeling) Islands, Colombia, Comoros, Congo, Cook Islands, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Democratic Republic of the Congo, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Ethiopia, Falkland Islands, Fiji, French Polynesia, Gabon, the Gambia, Georgia, Ghana, Gibraltar, Grenada, Guam, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hong Kong (China), India, Indonesia, Islamic Republic of Iran, Iraq, Israel, Jamaica, Jordan, Kazakhstan, Kenya, Kiribati, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Lebanon, Lesotho, Liberia, Macao, Macedonia, Madagascar, Malawi, Malaysia, Maldives, Mali, Mariana Islands, Marshall Islands, Mauritania, Mauritius, Mexico, Federated States of Micronesia, Republic of Moldova, Mongolia, Montserrat, Morocco, Mozambique, Namibia, Nauru, Nepal, New Caledonia and Dependencies, Nicaragua, the Niger, Nigeria, Niue, Norfolk Island, Oman, Pakistan, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Pitcairn, Qatar, Russian Federation, Rwanda, Saint Helena and Dependencies, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Singapore, Solomon Islands, Somalia, South Africa, Republic of Korea, French Southern and Antarctic Territories, Sri Lanka, the Sudan, Suriname, Swaziland, Syrian Arab Republic, Tajikistan, United Republic of Tanzania, Thailand, Timor-Leste, Togo, Tokelau, Islands, Tonga, Trinidad and Tobago, Tristan Da Cunha, Tunisia, Turkey, Turkmenistan, Turks and Caicos Islands, Tuvalu, Uganda, Ukraine, United Arab Emirates, United States, Uruguay, Uzbekistan, Vanuatu, Bolivarian Republic of Venezuela, Viet Nam, Virgin Islands, British Virgin Islands, and Yemen.

Source: <http://laws-lois.justice.gc.ca/PDF/SOR-2013-165.pdf>



NOTES

- 1 For an analysis of the performances of the trade preferences for LDC market access, see UNCTAD/LDC/2005/6, UNCTAD/ITCD/TSB/2003/8, and UNCTAD/DITC/TNCD/4
- 2 World Trade Organization, WT/MIN(13)/DEC; World Trade Organization, WT/MIN(13)/42 or WT/L/917
- 3 World Trade Organization, WT/MIN(15)/DEC
- 4 UNCTAD, Proceedings of the Conference of 1968, Report and Annexes (TD/97)
- 5 UNCTAD, TD/B/330, Agreed conclusions of the Special Committee on Preferences, p. 6
- 6 GATT, L/3545, 28 June 1971
- 7 The market access conditions under the former Lomé Convention and European Union GSP for LDCs were not equivalent. For decades, the preferences granted under the Lomé conventions were more generous than those provided under the European Union GSP for LDCs. Only Council regulation 602/98 (OJ L 80, 18.3.98, p.1) granted LDCs not party to the Lomé IV Convention preferences almost equivalent to those enjoyed by signatories.
- 8 Dairy, poultry and egg products are not covered by the Canadian initiative.
- 9 World Trade Organization, WT/COMTD/N/2/Add.14
- 10 UNCTAD/LDC/2005/6
- 11 World Trade Organization, TN/MA/W/103/Rev.2
- 12 World Trade Organization, WT/MIN (13)/44 – WT/L/919
- 13 Office of the United States Trade Representative (2015), Generalized System of Preferences (GSP), available from <https://ustr.gov/issue-areas/trade-development/preference-programs/generalized-system-preference-gsp>
- 14 International Trade Administration (2015), African Growth and Opportunity Act, available from <http://trade.gov/agoa>
- 15 These additional programs were created via amendments of CBERA. Public Law No. 111- 171, available from <https://www.gpo.gov/fdsys/pkg/PLAW-111publ171/content-detail.html>
- 16 The US Government Factsheet for Haiti, available from <https://www.state.gov/r/pa/ei/bgn/1982.htm>
- 17 Legislation available from <https://www.congress.gov/114/plaws/publ125/PLAW-114publ125.pdf>, proclamation of the preference program available from <https://www.gpo.gov/fdsys/pkg/FR-2016-12-20/pdf/2016-30738.pdf>
- 18 World Trade Organization, WT/TPR/S/211
- 19 World Trade Organization, WT/TPR/G/276
- 20 The European Union reform was preceded by the Canada reform of their DFQF in favour of LDC and rules of origin in 2003, expanding product coverage to textiles and clothing and cumulation among all beneficiaries of the Canadian GSP schemes.
- 21 The value of this provision was severely diminished by the graduation of many GSP beneficiaries from cumulation in case the new European Union GSP entered into force in 2014. However in July 2015 the European Union representative provided another possible reading of the concept of extended cumulation that could partially compensate such graduation.
- 22 Government of Canada (2015), General Preferential Tariff Withdrawal Order (2013 GPT Review), available from <http://canadagazette.gc.ca/rp-pr/p2/2013/2013-10-09/html/sor-dors161-eng.php> .

- 23 Getting to better Rules of Origin for LDCs: From the WTO Ministerial Decision in Hong Kong (2005) To Bali (2013), Nairobi (2015) and Beyond (publication forthcoming 2018)
- 24 World Trade Organization, WT/MIN (05)/DEC – Annex F (36)
- 25 World Trade Organization, TN/CTD/W/29, TN/MA/W/74 and TN/AG/GEN/18
- 26 World Trade Organization, TNC/C/63
- 27 World Trade Organization, TN/CTD/W/30/Rev.2, TN/MA/W/74/Rev.2 and TN/AG/GEN/20/Rev.2
- 28 World Trade Organization, WT/MIN(13)/42 - WT/L/917
- 29 Getting to better Rules of Origin for LDCs: From the WTO Ministerial Decision in Hong Kong (2005) To Bali (2013), Nairobi (2015) and Beyond (publication forthcoming 2018)
- 30 Products of HS chapter 93 are excluded from the European Union GSP product coverage for all beneficiaries. See Regulation (EU) 2820/98, Article 1(2)
- 31 European Commission, 2015, The European Union's Generalized Scheme of Preferences (GSP). Practical guide to the new GSP trade regimes for developing countries, available from http://trade.ec.europa.eu/doclib/docs/2013/december/tradoc_152012.pdf; Regulation (EU) 978/2012, Article 18
- 32 Current EBA beneficiaries: Africa (Angola, Benin, Burkina Faso, Burundi, the Central African Republic, Chad, Comoros, the Democratic Republic of the Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, the Gambia, Guinea-Bissau, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Niger, Rwanda, Sao Tome and Principe, Senegal, Sierra Leone, Somalia, South Sudan, the Sudan, the United Republic of Tanzania, Togo, Uganda, Zambia); Asia (Afghanistan, Bangladesh, Bhutan, Cambodia, the Lao People's Democratic Republic, Myanmar, Nepal, Timor-Leste, Yemen); Australia and Pacific (Kiribati, Samoa, the Solomon Islands, Tuvalu, Vanuatu); the Caribbean (Haiti).
- 33 Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012, Art.16
- 34 Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012, Article 17(2)
- 35 See Annex I of this handbook.
- 36 For further information on rules of origin in the EUC GSP scheme, see part 2 of the Handbook on the Scheme of the European Community (UNCTAD/ITCD/TSB/Misc. 25/Rev.1). See also European Commission (2016) A Guide for users on GSP rules of origin, available from http://ec.europa.eu/taxation_customs/resources/documents/guide-contents_annex_1-en.pdf, https://ec.europa.eu/taxation_customs/business/calculation-customs-duties/rules-origin/general-aspects-preferential-origin/a-guide-users-gsp-rules-origin_en; The provisions regulating rules of origin for the EU GSP can be found in Articles 70-112 and Annexes 22-06, 22-07, 22-08, 22-09, 22-10 of Regulation (EU) 2015/2447 and Articles 37, 41-58 and Annexes 22-03, 22-04, 22-05 of Regulation (EU) 2015/2446
- 37 Available from https://ec.europa.eu/taxation_customs/business/union-customs-code_en
- 38 The rules of the REX system can be found in Regulation (EU) No 2015/2447.
- 39 One of the possible advantages of rules of origin under interim EPAs is the possibility of cumulation between members of the same group.
- 40 See A Guide for users on GSP rules of origin, European Commission, available from https://ec.europa.eu/taxation_customs/business/calculation-customs-duties/rules-origin/general-aspects-preferential-origin/a-guide-users-gsp-rules-origin_en
- 41 Regulation (EU) No. 2015/2446, Annex 22-03, Part II
- 42 UNCTAD Handbook on the EU GSP, UNCTAD/ITCD/TSB/Misc.25/Rev.1
- 43 Regulation (EU) No. 2015/2446, Annex 22-03, Part II
- 44 Regulation (EU) No. 2015/2446, Annex 22-11, Part II
- 45 The paragraph states that “where, in the list, one or more percentages are given for the maximum value of non-originating materials, such percentages must not be exceeded through the application of” the first subparagraph.
- 46 See A Guide for users on GSP rules of origin, European Commission, available from https://ec.europa.eu/taxation_customs/business/calculation-customs-duties/rules-origin/general-aspects-preferential-origin/a-guide-users-gsp-rules-origin_en

- 47 Inama, Stefano, Rules of origin in international trade, Cambridge University Press, 2009, p.196
- 48 According to articles 54 and 57, cumulation is allowed for products originating in the European Union, Norway, Switzerland and Turkey. Cumulation with the three countries is only allowed, given reciprocity of the cumulation. Therefore, the three countries must provide the possibility of cumulation for European Union originating materials under their respective GSPs. It is the obligation of the exporters to verify if the condition of reciprocity is met for the product concerned. Agricultural products (HS chapters 1 to 24) are excluded from cumulation with Norway, Switzerland and Turkey.
- 49 Regulation EU 822/2014
- 50 Available from https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-5815925_it
- 51 Note that the European Commission plans to progressively introduce the REX system for all of the EU's preferential trade arrangements, including reciprocal regional trade agreements
- 52 Available from https://ec.europa.eu/taxation_customs/business/calculation-customs-duties/rules-origin/general-aspects-preferential-origin/arrangements-list/generalised-system-preferences/the_register_exporter_system_en
- 53 Available from http://ec.europa.eu/taxation_customs/dds2/eos/rex_home.jsp?Lang=en
- 54 Available from https://ec.europa.eu/taxation_customs/business/calculation-customs-duties/rules-origin/general-aspects-preferential-origin/arrangements-list/generalised-system-preferences/the_register_exporter_system_en
- 55 Available from https://ec.europa.eu/taxation_customs/business/calculation-customs-duties/rules-origin/general-aspects-preferential-origin/arrangements-list/generalised-system-preferences/the_register_exporter_system_en
- 56 World Trade Organization, WT/COMT/LDC/W/65/Rev. 1; a detailed list of products for which duty-free, quota-free market access is granted to LDCs is available from <http://www.mofa.go.jp/policy/economy/gsp/dfqf.pdf>
- 57 Japan Customs, April 01, 2017, List of GSP Beneficiaries (countries and territories), available from http://www.customs.go.jp/english/c-answer_e/imtsukan/1504_e.htm
- 58 Ministry of Foreign Affairs of Japan, 2015, Generalized System of Preferences, Explanatory Notes for Japan's Scheme, available from <http://www.mofa.go.jp/policy/economy/gsp/explain.html#section8>.
- 59 Available from http://www.mofa.go.jp/policy/economy/gsp/min_proc.html
- 60 Available from http://www.meti.go.jp/policy/trade_policy/epa/process_en/e-step4.html, product specific list is available from <http://www.mofa.go.jp/files/000077857.pdf>
- 61 Available from http://www.meti.go.jp/policy/trade_policy/epa/process_en/e-step4.html
- 62 Details available from <http://www.mofa.go.jp/files/000077857.pdf>
- 63 Available from <http://www.mofa.go.jp/policy/economy/gsp/explain.html>
- 64 A full list of exceptions is available from <http://www.mofa.go.jp/policy/economy/gsp/content.html>
- 65 Available from <http://www.mofa.go.jp/policy/economy/gsp/explain.html>
- 66 Available from <http://www.mofa.go.jp/policy/economy/gsp/explain.html>
- 67 Available from <http://www.mofa.go.jp/policy/economy/gsp/explain.html>
- 68 Specimen available from http://www.mofa.go.jp/policy/economy/gsp/doc_evi.html
- 69 Detailed List of Goods (HS Code) Made Possible to Submit the Certificate of Origin, including exemptions, available from http://www.customs.go.jp/english/c-answer_e/imtsukan/1505_e.htm
- 70 Basic United States legislation on the GSP program may be found in Title V of the Trade Act of 1974, as amended. Available from <https://legcounsel.house.gov/Comps/93-618.pdf> .. Further details of the program are also provided in the United States Generalized System of Preferences. A guidebook is available from https://ustr.gov/sites/default/files/files/gsp/GSP%20Guidebook%20August%202017_1.pdf
- 71 Title II of The Trade Preferences Extension Act of 2015 (P.L. 114-27) refers to the GSP extension and can be found at <https://www.congress.gov/114/plaws/publ27/PLAW-114publ27.pdf>

- 72 A full list of GSP beneficiary countries available from <https://ustr.gov/sites/default/files/gsp/Beneficiary%20countries%20March%202017.pdf>
- 73 World Trade Organization, WT/COMT/LDC/W/65/Rev. 1
- 74 World Trade Organization, WT/COMT/LDC/W/65/Rev. 1
- 75 Detailed overview of GSP-eligible products available from <https://ustr.gov/issue-areas/trade-development/preference-programs/generalized-system-preferences-gsp/gsp-program-i-0>
- 76 Available from <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2013/june/michael-froman-gsp-bangladesh>.
- 77 Available from <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2016/september/united-states-reinstates-trade>.
- 78 Available from Sec. 502/2: <https://ustr.gov/sites/default/files/files/gsp/GSP%20statute%20updated%20to%202017.pdf> .
- 79 Ibid.
- 80 In addition, Country-specific overviews on regulations are available from <https://ustr.gov/issue-areas/trade-development/preference-programs/generalized-system-preferences-gsp/gsp-use-%E2%80%93-coun>
- 81 Quick Search available from <https://hts.usitc.gov/>
- 82 The updated United States tariff schedule is available from <http://dataweb.usitc.gov>
- 83 Available from <http://dataweb.usitc.gov/>
- 84 The upper competitive limits are exceeded if, during any calendar year, United States imports of that product from that country (a) account for 50 per cent or more of the value of total United States imports of that product; or (b) exceed a certain dollar value, which is annually adjusted in proportion to the change in the nominal GNP of the United States (for 2017 \$180 million). Office of the United States Trade Representative, U.S. Generalized System of Preferences Guidebook, available from https://ustr.gov/sites/default/files/files/gsp/GSP%20Guidebook%20August%202017_1.pdf
- 85 Ibid., p. 13.
- 86 Available from <https://www.cbp.gov/trade/priority-issues/trade-agreements/special-trade-legislation/generalized-system-preferences/gsp-refund-process>
- 87 Available from §10.176 Country of origin criteria: https://www.ecfr.gov/cgi-bin/text-idx?SID=31017316ea7c410ae832bd10ed56f584&mc=true&node=sg19.1.10_1153.sg31&rgn=div7
- 88 Details available from §10.174 , evidence of direct shipment and §10.175, Imported directly defined: https://www.ecfr.gov/cgi-bin/text-idx?SID=31017316ea7c410ae832bd10ed56f584&mc=true&node=sg19.1.10_1153.sg31&rgn=div7
- 89 The following may be included in the direct costs of processing: all those costs whether directly incurred in, or which can be reasonably allocated to, the growth, production, manufacture or assembly of the merchandise in question. These include actual labour costs, fringe benefits, on-the-job training and the cost of engineering, supervisory, quality control, and similar personnel; dies, moulds, tooling and depreciation on machinery and equipment, research, development, design, blueprint costs and engineering; and inspection and testing costs. The following may not be included in the direct cost of processing: those items that are not directly attributable to the merchandise under consideration or are not costs of manufacturing, including profit and general expenses and business overheads (such as administrative salaries, casualty and liability insurance, advertising and salespersons' salaries, commissions or expenses).
- 90 Generalized System of Preferences, §10.176 Country of origin criteria, available from https://www.ecfr.gov/cgi-bin/text-idx?SID=31017316ea7c410ae832bd10ed56f584&mc=true&node=sg19.1.10_1153.sg31&rgn=div7
- 91 GSP-eligible countries within benefiting associations: ASEAN (Cambodia, Indonesia, the Philippines, Thailand); CARICOM (Belize, Dominica, Grenada, Guyana, Jamaica, Montserrat, Saint Lucia, Saint Vincent and the Grenadines); SADC (Botswana, Mauritius, the United Republic of Tanzania); WAEMU (Benin, Burkina Faso, Côte d'Ivoire, Guinea-Bissau, Mali, Niger, Senegal, Togo); SAARC (Afghanistan, Bangladesh, Bhutan, India, Nepal, Pakistan, Sri Lanka).
- 92 Details available from Office of the United States Trade Representative, U.S. Generalized System of Preferences Guidebook, p.9, available from https://ustr.gov/sites/default/files/files/gsp/GSP%20Guidebook%20August%202017_1.

pdf; Shipment entry information available from §10.173 Evidence of country of origin: https://www.cbp.gov/sites/default/files/documents/CBP%20Form%207501_0.pdf; Evidence of country of origin specimen available from https://www.ecfr.gov/cgi-bin/text-idx?SID=31017316ea7c410ae832bd10ed56f584&mc=true&node=sg19.1.10_1153.sg31&rgn=div7

- 93 One consequence of the defunct Form A is that the letter “A” is still used in the United States tariff schedules to identify products that are eligible for the GSP
- 94 Following Beneficiaries signed an a certified handicraft textile agreement with the US: Afghanistan, Botswana, Cambodia, Egypt, Jordan, Mongolia, Nepal, Pakistan, Paraguay, Thailand, Timor-Leste, Tunisia, Turkey and Uruguay on loomed folkloric wall hangings and pillow covers, available from Guidebook pp.14 -15, <https://ustr.gov/sites/default/files/gsp/GSP%20Guidebook%20March%202017.pdf>
- 95 Legislation available form: <https://www.congress.gov/114/plaws/publ125/PLAW-114publ125.pdf>, proclamation of the preference program available from <https://www.gpo.gov/fdsys/pkg/FR-2016-12-20/pdf/2016-30738.pdf>
- 96 World Trade Organization, WT/L/1001
- 97 Available from <https://www.gpo.gov/fdsys/granule/CFR-2011-title19-vol1/CFR-2011-title19-vol1-sec102-21>
- 98 WT/COMTD/PTA/3/1
- 99 World Trade Organization, WT/COMTD/LDC/W/65/Rev. 1
- 100 Legislation available from <https://www.congress.gov/114/plaws/publ27/PLAW-114publ27.pdf>
- 101 Legislation Public Law 106-200, Section 104, available from <https://www.congress.gov/106/plaws/publ200/PLAW-106publ200.pdf>
- 102 Section 503(a)(2) of the Trade Act of 1974 (19 USC 2463: Designation of eligible articles), available from <http://uscode.house.gov/view.xhtml?hl=false&edition=2014&req=granuleid%3AUSC-2014-title19-section2463&num=0&saved=|KHRpdGxIOjE5IHNIY3Rpb246MjQ2NmEgZWRpdGlvbjpwcmVsaW0p|||0|false|prelim> .
- 103 Section 506A(b)(2) of Public Law 106 – 200, available from <https://www.congress.gov/106/plaws/publ200/PLAW-106publ200.pdf>
- 104 See also Section on US GSP
- 105 See Sec.113, Protection against Transshipment of Public Law 106 – 200, available from <https://www.congress.gov/106/plaws/publ200/PLAW-106publ200.pdf>
- 106 See Sec.112, Treatment of Certain Textiles and Apparel of Public Law 106 – 200, available from <https://www.congress.gov/106/plaws/publ200/PLAW-106publ200.pdf>
- 107 World Trade Organization, G/RO/LDC/N/USA/3, The specific rules of origin for these articles, 19 CFR 211-213, available from <https://www.ecfr.gov/cgi-bin/text-idx?SID=61efe140c8a30e01ae54661a8c33c917&mc=true&node=sp19.1.10.d&rgn=div6> , the full list of AGOA eligible products available from <https://agoa.info/about-agoa/products.html>
- 108 For the purposes of the Special Rule for Apparel under AGOA, lesser developed sub-Saharan African countries are defined as those with a per capita gross national product of less than USD 1,500 a year in 1998. For current eligible countries see Error! Reference source not found.
- 109 For merino wool sweaters: containing 50 per cent or more by weight of wool measuring 21.5 microns in diameter or finer
- 110 See Table 6 for details
- 111 Latest information on caps available from http://otexa.trade.gov/AGOA_Trade_Preference.htm
- 112 Available from http://otexa.trade.gov/PDFs/AGOA_new_12-month_cap_on_duty-free_quota-free_benefits-Oct%201_%202017-Sept_30_2018.pdf
- 113 Available from <https://agoa.info/about-agoa/apparel-rules-of-origin.html>
- 114 Available from <https://www.trade.gov/agoa/legislation/agoa4.asp>
- 115 Details on products available from http://otexa.trade.gov/AGOA_Trade_Preference.htm; “Commercial Availability”

- 116 For a country-by-country examinations for tariff treatment of principal United States imports from sub-Saharan Africa, see UNCTAD/ITCD/TSB/2003/1
- 117 AGOA sec.112(d)(1)(A), available from <https://www.congress.gov/106/plaws/publ200/PLAW-106publ200.pdf>
- 118 AGOA sec.112(d)(1)(B). available from <https://www.congress.gov/106/plaws/publ200/PLAW-106publ200.pdf>
- 119 AGOA sec. 112(d)(2). available from <https://www.congress.gov/106/plaws/publ200/PLAW-106publ200.pdf>
- 120 WTO Committee on Rules of Origin, Notification of preferential rules of origin for Least Developed Countries (G/RO/LDC/N/USA/3), Section III: Documentary requirements
- 121 Specimen available from <https://www.ecfr.gov/cgi-bin/text-idx?SID=61efe140c8a30e01ae54661a8c33c917&mc=true&n ode=sp19.1.10.d&rgn=div6, 19 CFR.10.214 Certificate of Origin>
- 122 Countries and territories: Antigua and Barbuda, Aruba, The Bahamas, Barbados, Belize, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, St. Kitts and Nevis, St. Lucia, St. Vincent, and the Grenadines, and Trinidad and Tobago. World Trade Organization, G/RO/LDC/N/USA/2
- 123 These countries are: Barbados, Belize, Curacao, Guyana, Haiti, Jamaica, St. Lucia, and Trinidad and Tobago. World Trade Organization, G/RO/LDC/N/USA/2
- 124 These additional programmes were created via amendments of the CBERA law. Public Law No. 111- 171 Available from <https://www.gpo.gov/fdsys/pkg/PLAW-111publ171/content-detail.html>
- 125 The US Government Factsheet for Haiti, available from <https://www.state.gov/r/pa/ei/bgn/1982.htm>
- 126 Estimates by the United States Department of Commerce, imports of apparel articles from Haiti to the United States in 2010 have decreased by 43 percent as compared to the same period in 2009. Available from Public Law 111, available from <http://uscode.house.gov/statutes/pl/111/171.pdf>.
- 127 Available from https://www.ecfr.gov/cgi-bin/retrieveECFR?%20gp=&SID=6909e89f368405633f2aeab 57906d0dd&r=PART&n=19y1.0.1.1.5#se19.1.10_1193
- 128 HTS General Note 7, available from <https://hts.usitc.gov/current>; for the Caribbean Basin Initiative available from https://www.ecfr.gov/cgi-bin/retrieveECFR?%20gp=&SID=6909e89f368405633f2aeab 57906d0dd&r=PART&n=19y1.0.1.1.5#se19.1.10_1193.
- 129 Full list of simple operations available from §10.195, country of origin criteria, available from https://www.ecfr.gov/cgi-bin/retrieveECFR?%20gp=&SID=6909e89f368405633f2aeab57906d0dd&r=PART&n=19y1.0.1.1.5#se19.1.10_1193
- 130 Available from §10.196, cost or value of materials produced in a beneficiary country or countries, available from https://www.ecfr.gov/cgi-bin/retrieveECFR?%20gp=&SID=6909e89f368405633f2aeab 57906d0dd&r=PART&n=19y1.0.1.1.5#se19.1.10_1193
- 131 World Trade Organization, G/RO/LDC/N/USA/2
- 132 The rates of duty as well as rules of origin applicable are identical than the preferences granted Mexico under NAFTA.
- 133 World Trade Organization, G/RO/LDC/N/USA/2
- 134 Available from Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2006, §10.843, articles eligible for duty-free treatment available from <https://www.ecfr.gov/cgi-bin/>
- 135 These countries are: The United States, Israel, Canada, Mexico, Jordan, Singapore, Chile, Australia, Morocco, Bahrain, El Salvador, Honduras, Nicaragua, Guatemala, Dominican Republic, and any other country that is a party to a free trade agreement with the United States (effective on December 20, 2006, or thereafter) and beneficiary countries listed of the Andean Trade Preference Act, African Growth and Opportunity Act, the Caribbean Basin Trade Partnership Act.
- 136 World Trade Organization, G/RO/LDC/N/USA/2
- 137 Specimen available from <https://www.ecfr.gov/graphics/pdfs/er21mr03.002.pdf>
- 138 Specimen available from https://www.cbp.gov/sites/default/files/documents/CBP%20Form%20450_0.pdf

- 139 Details in Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2006, §10.847, filing of claim for duty-free treatment, available from <https://www.ecfr.gov/cgi-bin/>
- 140 Available from www.dfait-maeci.gc.ca/tna-nac/ldc_back-en.asp, the CCRA Internet site: www.ccr-gc.ca/menu/EmenuKCA.html (Customs Memoranda), the Customs Tariff: www.ccr-gc.ca/customs/general/publications/tariff2003/table-e.html and the following Departmental memoranda.
- 141 Canada Border Services Agency, Memorandum D11-4-4
- 142 World Trade Organization, WT/COMT/LDC/W/65/Rev. 1
- 143 The General Preferential Tariff and Least Developed Country Tariff Rules of Origin Regulations (SOR/2013-165) text may be found online available from <http://laws-lois.justice.gc.ca/PDF/SOR-2013-165.pdf>.
- 144 Regulations Amending the General Preferential Tariff and Least Developed Tariff Rules of Origin Regulations (SOR/2017-127), Amendment 3 (1), available from <http://canadagazette.gc.ca/rp-pr/p2/2017/2017-07-12/pdf/g2-15114.pdf>
- 145 Subsection 2(1) of The General Preferential Tariff and Least Developed Country Tariff Rules of Origin Regulations (SOR/2013-165).
- 146 Subsection 9 of The General Preferential Tariff and Least Developed Country Tariff Rules of Origin Regulations (SOR/2013-165)
- 147 Schedule 1, Part A1, A2 and Part B of Schedule 1 in The General Preferential Tariff and Least Developed Country Tariff Rules of Origin Regulations (SOR/2013-165)
- 148 Canada Border Services Agency, Memorandum D11-4-4
- 149 Ibid.
- 150 Ibid.
- 151 Ibid.
- 152 World Trade Organization, WT/COMTD/W/159
- 153 The specimen including a detailed guide is available from <https://www.cbsa-asfc.gc.ca/publications/forms-formulaires/b255-eng.html>
- 154 Available from <https://www.cbsa-asfc.gc.ca/trade-commerce/tariff-tarif/ldct-tpmd-eng.html?wbdisable=true>
- 155 Further details on Canada Border Service Agency Memorandum D11-4-4, Appendix A and B of Rules of Origin Respecting the General Preferential Tariff and Least Developed Country Tariff, <http://cbsa-asfc.gc.ca/publications/dm-md/d11/d11-4-4-eng.pdf>

