Generalized System of Preferences

HANDBOOK ON SPECIAL PROVISIONS FOR LEAST DEVELOPED COUNTRIES

(under the schemes of E.C., Japan, U.S., Canada)

(INT/97/A06)

UNCTAD Technical Cooperation Project on Market Access,

Trade Laws and Preferences

DRAFT

UNCTAD/ITCD/TSB/Misc... **May, 2001**

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Preface

This handbook is published under the auspices of the UNCTAD Technical Cooperation Project on Market Access, Trade Laws and Preferences (INT/97/A06). It is intended to provide Government officials and exporters in Least Developed Countries with detailed and up-to-date information on the special provisions in favour of LDC beneficiaries available under the GSP schemes of the European Community, Japan, the United States and Canada.

This handbook is a part of a series of publications aimed at assisting exporters, producers and government officials to utilize the trade opportunities available under the various GSP schemes. The publication of this handbook has been made possible thanks to a contribution from the Commission of the European Communities. The series comprises the following publications:

Publications in the "Generalized System of Preferences" series:

Handbook on the Scheme of the USA (UNCTAD/ITCD/TSB/Misc.58)
Handbook on the Scheme of Canada (UNCTAD/ITCD/TSB/Misc. forthcoming)
Handbook on the Scheme of New Zealand (UNCTAD/ITCD/TSB/Misc.48)
Handbook on the Scheme of Australia (UNCTAD/ITCD/TSB/Misc.56)
Handbook on the Scheme of Japan 2001/2002 (UNCTAD/ITCD/TSB/Misc.42/Rev.1)
Handbook on the Scheme of the European Community (UNCTAD/ITCD/TSB/Misc.25/Rev.1)
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Handbook on Special Provisions for Least Developed Countries (present volume)

Digest of GSP Rules of Origin (UNCTAD/ITCD/TSB/Misc. forthcoming)
Compendium on Rules of Origin - Part I (ITD/GSP/31)

List of GSP Beneficiaries (UNCTAD/ITCD/TSB/Misc. forthcoming)

Trade Laws of the EC (forthcoming)
Trade Laws of the United States (TAP/277)
Trade Laws of Japan (TAP/299 – new version forthcoming)

Quantifying the Benefits Obtained by Developing Countries from the Generalized System of Preferences (UNCTAD/ITCD/TSB/Misc.52)

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For any further information on the publications listed above, please contact the UNCTAD Technical Cooperation Project on Market Access, Trade Laws and Preferences (INT/97/A06):

Tel.: +41 22 907 4944
Fax: +41 22 907 0044
E-mail: gsp@unctad.org

Note: Some of these publications are also available on the Internet:

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Introduction and Historical Background

Least developed countries are 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 ACP-EU Cotonou Partnership Agreement, as well as other preferential instruments granted to selected countries and groups of countries. The present handbook will focus on the special provisions in favor of LDCs and applicable rules of origin, as contained in the GSP schemes of the Quad countries, namely the European Community, Japan, the United States and Canada.

The idea of the Generalized System of Preferences was adopted in New Delhi, in 1968, in the context of UNCTAD II. As stated in UNCTAD Resolution 21(II)[1], *"... the objectives of the generalized, non-reciprocal, non-discriminatory system of preferences in favor of the developing countries, including special measures in favor 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 this 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 the countries concerned to participate in the necessary consultations. The Special Committee on Preferences met in 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. It is stated in paragraph 2 of Part IX of the "Agreed Conclusions" that: *"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-favored-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. [2]

The granting of the generalized preferential treatment had been therefore subjected to two major limitations, namely that the preferences should be temporary in nature and that they should not be regarded as a binding commitment.

In view of the objectives for which the preferences were to be granted, it was generally accepted that they should be of temporary nature. However it was also understood that they should last for so long as it is necessary to achieve the aim of diversifying the export products and the industrial base of the beneficiary developing countries. In view of the need of developing countries for long-term export planning and in order to make more secure the investment of these countries in production for export, it was then unanimously agreed at

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[1] See UNCTAD, Proceedings of the Conference of 1968, Report and Annexes (*United Nations, TD/97*).

[2] See "Agreed Conclusions of the Special Committee on Preferences", UNCTAD, *Document TD/B/330*, p.6.

UNCTAD IV that the GSP should continue beyond the initial period of ten years originally envisaged[3].

The second limitation to which the GSP was subjected is more productive of uncertainty and instability in the system, since the developed countries are not legally obligated to grant such preferences to the developing countries. However, the formal negotiations of the GSP at the international level and the conclusion of an agreement on its implementation led to the development of an expectation of, and a reliance on, the continued compliance by preference-giving countries with the provisions of the "Agreed Conclusions".

In line with the "Agreed Conclusions", the prospective preference-giving countries concerned submitted a formal application to the contracting parties to GATT for a waiver in accordance with Article XXV (5) from their obligations under Article I (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 ten 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[4].

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 Favorable Treatment, Reciprocity and Fuller Participation of Developing Countries) as a supplementary rule which permits them, for an indefinite 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 favor of developing countries. Such special 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.

There are currently 15 national GSP schemes in operation. The following countries grant generalized tariff preferences: Australia, Belarus, Bulgaria, Canada, Czech Republic, European Community, Hungary, Japan, New Zealand, Norway, Poland, Russian Federation, Slovak Republic, Switzerland and United States of America. For more details on the various national GSP schemes, see the UNCTAD publications under the present series "Generalized System of Preferences" (also available on the Internet at: www.unctad.org/gsp).

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, i.e. 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, i.e. 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 place conditions on eligibility and some have

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[3] See UNCTAD Resolution 96(IV), section I, paragraph C.

[4] See GATT document L/3545, June 28, 1971.

withdrawn preferences indirectly. This action implies a certain degree of reciprocity in the form of concessions or conformity with a certain pattern of behavior.

The third principle, i.e. 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.

Over the years of the implementation of the GSP schemes, intergovernmental meetings have taken place in UNCTAD in the Special Committees on Preferences and the Working Groups on Rules of Origin, their respective original mandates provided for ambitious objectives, such as having a single GSP scheme for all preference-giving countries, including a harmonized set of GSP rules of origin.

The GSP rules of origin exist to identify the goods produced in the beneficiary country and to ensure that the benefits provided are strictly confined to the products originating in the beneficiary countries. One of the main purposes of the rules of origin is to ensure that goods produced in other countries and simply trans-shipped or given minimal processing in a beneficiary country do not benefit from trade preferences. However, the role of the rules of origin in international trade is not limited to preferential trade agreements. In fact, the notion of the origin of goods is an essential instrument in the implementation of any commercial policy, ranging from the negotiation of a free-trade area or the constitution of a regional economic grouping to the application of an anti-dumping duty or the issuance of an import license.

During the debates in the UNCTAD Committees, the shortcomings of the GSP origin systems and consequent obstacles to full GSP utilization have been identified and discussed. In addition, other findings related to the difficulties in fulfilling origin requirements emerged in the course of UNCTAD technical cooperation activities.

Although the need for improvements in the rules of origin was recognized and some progress has effectively been made regarding some specific provisions of individual schemes, major problems in fulfilling the origin requirements still persist after almost thirty years since the inception of the GSP. At present, the main shortcomings encountered by preference-receiving countries with rules of origin requirements remain almost the same as those encountered and discussed in the first UNCTAD Working Groups on rules of origin of late seventies. Part 5 of this handbook highlights some of these problems, with specific examples drawn from practical experience in the textile and clothing sector.

Checklist: how to benefit from the GSP schemes

Step 1: Check the product coverage

- Establish the tariff classification of the product according to the Harmonised System (HS);
- Ascertain that the product is covered by the individual GSP scheme;
- Check the country- or country/sector-graduation mechanism, since certain sectors or certain countries may be excluded from the GSP scheme.

Step 2: Identify the correct GSP rate

- Identify the conventional MFN rate which applies to the product in the customs code of the individual preference-giving country;
- Apply the reduction granted to the product category in which the HS product is listed. The GSP tariff preference may be in the form of a percentage reduction of the MFN rate of duty or a total elimination of customs duties.

Step 3: Investigate the possibility of obtaining additional preferences

- There usually are provisions for special treatment for the least developed beneficiary countries;

Step 4: Check the origin criteria

- Ensure that the product complies with the origin criteria applicable under the individual GSP scheme.

Step 5: Check the consignment conditions

- Ensure that the modalities governing the transport of goods from the preference-receiving country to the preference-giving country's market fulfill the provisions laid down in the relevant regulations.

Step 6: Prepare documentary evidence

- Fill in the certificate of origin Form A or the invoice declaration correctly, or any other document as required by the relevant regulations in the individual schemes. These are the official documents on which the customs authorities of the preference-giving country rely to grant GSP benefits to products.

PART 1: The European Community

A. General Overview

EC preferential market access conditions for LDCs' exports are regulated by two main trade arrangements:

(1) the EC GSP scheme, which, as of 5 March 2001 (date of entry into force of the "everything but arms" – EBA – amendment), provides, for an unlimited period of time, duty/quota-free treatment for all products originating in LDC beneficiaries, except for arms and ammunition and for special provisions applicable to three sensitive products, namely rice, sugar and fresh bananas (where customs duties will be the phased-out over specific transitional periods), and;

(2) the new ACP-EC Cotonou Partnership Agreement[5] (the CPA, successor to the Lomé IV Convention), which basically provides for an eight-year roll over of the previous preferences granted under Lomé with minor improvements, until 2008.[6]

The introduction of the EBA amendment to the EC GSP scheme has brought about a substantial improvement in the GSP treatment granted to LDC beneficiaries, which has made it a more favorable programme in terms of product coverage, depth of tariff cuts and stability of market access than the Lomé/Cotonou trade regime. The EBA amendment, however, does not include any change to the current GSP rules of origin, which are conversely characterized by a more stringent system of cumulation of origin, as compared to the one available to ACP countries under the CPA.

It is worth noting that, before the implementation of the EBA initiative, ACP LDCs had traditionally enjoyed more generous market access conditions and legal certainty under the Lomé regime. As a matter of fact, the only effective LDC users of the EC pre-EBA GSP scheme have been those LDCs that are not members of the ACP group, namely Afghanistan, Bangladesh, Bhutan, Laos, Cambodia, Nepal, Yemen, Maldives and Myanmar (the latter has been temporarily excluded from GSP benefits).

The main difference between the tariff preferences provided to LDCs by the EC under its pre-EBA GSP scheme and the Lomé trade regime lied in the different legal nature of the two preferential arrangements. While the GSP was conceived as a unilateral, non-reciprocal, unbound grant by industrialized countries aimed at contributing to the economic development of the developing States, the Lomé/Cotonou preferences are an integral part of a broader international treaty which is legally binding upon the two Parties (the EC, on the one hand, and the ACP States, on the other hand) and whereby the EC has committed itself, on a contractual basis, to ensure, until 2008, non-reciprocal preferential market access conditions to ACP products. With a view at imparting greater stability to the EBA-GSP preferences for LDCs, the EC has undertaken to maintain the special preferential treatment in favor of LDC products for an unlimited period of time, exempting such treatment from the periodical reviews of the basic GSP scheme.

As far as product coverage and depth of tariff cuts are concerned, the ACP preferences had always been characterized by more favorable conditions than the ones available under the pre-EBA GSP for LDCs. More precisely, notwithstanding the pledge by the EC to grant non-

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[5] The Partnership Agreement between the EU and 78 African, Caribbean and Pacific States was signed at Cotonou, Benin, on 23 June 2000. Pending the ratification process, the Agreement was put into provisional application on 2 August 2000, according to the modalities laid down in Decision No 1/2000 of the ACP-EC Council of Ministers of 27 July 2000 (2000/483/EC, Official Journal L 195 of 1.8.2000, p. 46).

[6] Under the Cotonou Partnership Agreement, the EU had anticipated the EBA initiative, by entering into a commitment whereby it would *"start a process which, by the end of multilateral trade negotiations and at the latest 2005, will allow duty-free access for essentially all products from all LDCs, building on the level of the existing trade provisions of the Fourth ACP-EC Convention and which will simplify and review the rules of origin, including cumulation provisions, that apply to their exports"* (article 37, paragraph 9, of the Cotonou Partnership Agreement).

ACP LDCs preferences "equivalent" to those enjoyed by the ACP group under the Lomé trade regime, the 1998 extension in GSP coverage for the exclusive benefit of non-ACP LDCs[7] brought to a situation where the access conditions for ACP LDCs were, most of the time, still more favorable than the ones for non-ACP LDCs under the GSP. In fact, all those sensitive agricultural concessions, which are granted under Lomé/Cotonou special protocols and quotas and only apply to few ACPs, had not been extended to the non-ACP LDCs. The particularly high sensitivity of the protocol products in the EC market is the main reason why the original EBA proposal, which provided for unrestricted access for all LDC products with the only exception of arms and ammunitions, had to be fine-tuned in order to provide specific phasing-out periods for the customs duties applicable to rice, bananas and sugar.

B. The EC GSP scheme for LDCs: product coverage and tariff treatment

The current EC GSP scheme, which will be in force until 31 December 2001, is regulated by Regulation 2820/98[8], as recently modified by the EBA amendment, introduced by Regulation 416/2001[9]. The EBA amendment is applicable as of 5 March 2001 and , as mentioned above, EBA special treatment for LDCs will be maintained for an unlimited period of time.

EBA extends duty/quota-free access to all products originating in LDCs, except arms and ammunition falling within HS Chapter 93.[10] The EBA coverage now includes all agricultural products, by adding such sensitive products 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. On most of such products, the pre-EBA GSP used to provide a percentage reduction of MFN rates, which would only apply to the *ad valorem* duties, thus leaving the *specific* duties still entirely applicable. The relevant provision is contained in article 29, paragraph 4, of Regulation 2820/98, which has now been amended to allow for the EBA exemption from customs duties to apply also to the *specific* duties.[11] Furthermore, the EBA treatment does away with the complicated "entry price system" that used to regulate the access into the EU market of certain fruit and vegetables, such as cucumbers and courgettes.

Under EBA, only the three most sensitive agricultural products are not subject to immediate liberalization:

- **Fresh bananas (CN code 0803 0019)**: EBA provides for full liberalization between 1 January 2002 and 1 January 2006, by reducing the full Community tariff by 20% every year.
- **Rice (HS 1006)**: Customs duties on rice between 1 September 2006 and 1 September 2009, by gradually reducing the full Community tariff to zero. During the interim period, in order to provide effective market access, LDC rice will be allowed to enter the EC market duty-free within the limits of a tariff quota. The initial quantities of

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[7] See Council Regulation (EC) 602/98, OJ L 80, 18.03.1998. This Regulation was adopted by the EC Council, on the basis of a Commission communication of 16 April 1997, with a view at implementing the conclusions of the First WTO Ministerial Meeting, held in Singapore in 1996.

[8] OJ L 357, 30.12.1998. The current scheme, which will be in force until 31 December 2001 for all non-LDC beneficiaries, is the result of the main 1995 revision for the 1995-2004 decade and of the changes introduced by Regulation 2820/98. Among the major innovations that the Community brought to its ten-year offer by the 1995 revision were the elimination of quantitative restrictions, the introduction of the graduation mechanism and of the special incentive arrangements for the environment and labor rights. For further details on the EC GSP scheme, including main legislative texts, please refer to the latest version of the UNCTAD Handbook on the Scheme of the European Community (document UNCTAD/ITCD/TSB/Misc.25/Rev.2, also available on the GSP website).

[9] OJ L 60, 1.3.2001. See annex II to the UNCTAD Handbook on the Scheme of the European.

[10] It has to be noted that products of Chapter 93 are excluded from the EC GSP product coverage for all beneficiaries. See article 1, paragraph 2, of Regulation 2820/98.

[11] See article 6 of Regulation 416/2001, amending article 29, paragraph 4, of Regulation 2820/98.

this quota are based on best LDC export levels to the EC in the past years, plus 15%. The quota will grow by 15% every year, from 2517 tons (husked-rice equivalent) in 2001/2002 to 6696 tons in 2008/2009 (marketing year starts in September and finishes in August of the following year).

– **Sugar (HS 1701)**: Full liberalisation will be phased in between 1 July 2006 and 1 July 2009 by gradually reducing the full Community tariff to zero. In the meantime, as for rice, LDC raw sugar can come in duty free within the limits of a tariff quota, which will grow from 74,185 tons (white-sugar equivalent) in 2001/2002 to 197,355 tons in 2008/2009 (July to June marketing year). Imports of sugar under the ACP-EC Sugar Protocol shall be excluded from the above calculations so as to uphold the viability of this Protocol.

Table 1: Tariff quotas for rice and raw sugar from LDCs

	2001-2002	2002- 2003	2003- 2004	2004-2005	2005-2006	2006-2007	2007-2008	2008-2009
Products	"EU import 000 tons"	"EU import 000 tons"	"EU import 000 tons"	"EU import 000 tons"	"EU import 000 tons"	"EU import 000 tons"	"EU import 000 tons"	"EU import 000 tons"
Rice (1)	2,517	2,895	3,329	3,829	4,403	5,063	5,823	6,696
Sugar (2)	74,185	85,313	98,110	112,827	129,751	149,213	171,595	197,335
(1) marketing years: September 2001 to September 2009								
(2) marketing years: July 2001 to July 2009								

C. Temporary withdrawal of the EC GSP treatment

According to article 22 of the basic Regulation, GSP treatment may at any time be temporarily withdrawn, in whole or in part, in the following circumstances:

(a) Practice of any form of slavery and forced labor as defined in the Geneva Conventions of 25 September 1926 and 7 September 1956 and International Labor Organization Conventions Nos. 29 and 105;

(b) Export of goods made by prison labor;

(c) Manifest 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) Fraud or failure to provide administrative cooperation as required for the verification of certificates of origin Form A;

(e) Manifest cases of unfair trading practices on the part of a beneficiary country. The withdrawal shall be in full compliance with the WTO rules;

(f) Manifest cases of infringement of the objectives of the international conventions such as NAFO, NEAFC, ICCAT and NASCO[12] concerning the conservation and management of fishery resources.

The EBA amendment has added to the reasons for possible withdrawal under (d) “massive increases in imports into the Community of products originating in … [LDCs beneficiaries] … in relation to their usual levels of production and export capacity”.

Temporary withdrawal is not automatic, but follows the procedural requirements laid down in articles 23 to 26. The procedure may be initiated by EC Commission, as regards the

[12] NAFO: North West Atlantic Fisheries Organization; NEAFC: North East Atlantic Fisheries Commission; ICCAT: International Commission for the Conservation of Atlantic Tunas; NASCO: North Atlantic Salmon Conservation Organization.

circumstances under sub-paragraphs (d) and (f) above, and by a member State, or by any natural or legal person or association not endowed with legal personality, which can show an interest in the withdrawal, as regards sub-paragraphs (a) to (f) above (article 23, paragraph 1). Once the procedure has been initiated, consultations between the Commission and the member States take place within eight working days in the Generalized Preferences Committee. The consultations will be concerned, *inter alia*, with analysis of the circumstances referred to in article 22 and the measures to be taken.

According to article 24, if the Commission finds that there is sufficient evidence to establish that a beneficiary country meets the conditions laid down in sub-paragraph (d), it may take action against that country to suspend in whole or in part the granting of generalized tariff preferences for a period of three months, renewable only once, provided that it has first:

- informed the Generalized Preferences Committee of its intentions;
- called on the member States to take such precautionary measures as are necessary in order to safeguard the Community's financial interests;
- published a notice on the *Official Journal of the European Communities* stating that there are grounds for reasonable doubts about the application of the preferential arrangements by the beneficiary country concerned, which may call into question its right to continue enjoying the benefits granted by the Regulation.

On conclusion of the period of suspension, the Commission may decide either to:

- terminate the provisional suspension measure following consultations with the Generalized Preferences Committee; or
- initiate the consultations referred to in article 32, paragraph 2, with a view to temporary withdrawal of GSP entitlement. Pending the outcome of such consultations and of any investigation initiated pursuant article 25, the Commission may decide to extend the suspension measure.

If the Commission finds, following the consultations under article 23, that there is sufficient evidence to justify the initiation of an investigation, it shall (article 25, paragraph 1):

(a) announce the initiation of the investigation on the *Official Journal of the European Communities* and notify the country concerned;

(b) commence the investigation, lasting up to one year, in cooperation with the member States and in consultation with the Generalized Preferences Committee. The duration of the investigation may be extended if necessary.

During the investigation, the Commission may (article 25, paragraphs 2 and 4):

- seek all information it considers necessary
- verify the information with economic operators and the competent authorities of the beneficiary country concerned;
- hear interested parties.

When the investigation is complete, the Commission reports the findings to the Generalized Preferences Committee. If the Commission considers temporary withdrawal unnecessary, it publishes a notice in the *Official Journal of the European Communities*, announcing the termination of the investigation and its conclusions. If, on the contrary, the Commission considers temporary withdrawal to be necessary, it submits an appropriate proposal to the Council, which will decide within 30 days on it by qualified majority (article 26).

Council Regulation 552/97of 24 March 1997, which provided for the temporary withdrawal of access to generalized tariff preferences in respect of the Union of Myanmar on account of the use of forced labor there, is still applicable under the current scheme (article 34, paragraph 4, of the Regulation).

D. Safeguards under the EC GSP scheme

In the EC GSP scheme there are two general safeguard clauses. The first safeguard clause provides that MFN duties on a particular product may be reintroduced at any time at the request of a member State or on the Commission's own initiative, if a product originating in one of the beneficiary countries is imported on terms which cause or threaten to cause serious difficulties to a Community producer of like or directly competing products (article 28, paragraph 1, of the Regulation). In particular, following the EBA amendment, given the high sensitivity of bananas, rice and sugar, should imports of these products cause serious disturbance to the Community markets and their regulatory mechanisms, the GSP treatment may be suspended in accordance with the procedure set out below (new paragraph 2 of article 28).[13]

The Commission may thus open of an investigation. In examining the possible existence of serious difficulties, the Commission takes into account, *inter alia*, the following factors, which are listed in annex VI, where the information is available:

- reduction in the market share of Community producers;
- reduction in their production;
- increase in their stocks;
- closure of their production capacity;
- bankruptcies;
- low profitability;
- low rate of capacity utilization;
- employment;
- trade;
- prices.

The decision is taken within 30 working days of consulting the Generalized Preferences Committee. The beneficiary countries concerned are notified of the decision before the measures become effective. In exceptional circumstances (article 28, paragraph 6), the Commission may implement any preventive measure which is strictly necessary and which satisfies the conditions laid down in paragraph 1 to deal with the situation.

This safeguard clause does not affect the application of safeguard clauses adopted as part of the common agricultural policy under article 43 of the Treaty of Rome, or as part of the common commercial policy under article 113 of the same Treaty, or any other safeguard clauses which may be applied.

E. Rules of Origin under the EC GSP scheme for LDCs

The rules of origin in relation to the GSP are contained in Commission Regulation No. 2454/93 of 2 July 1993, which lays down provisions for the implementation of Council Regulation No. 2913/92 establishing the European Community Custom Code (hereinafter ECCC), as last modified by Commission Regulation No. 1602/2000 (see annex III to the UNCTAD Handbook on the Scheme of the European Community).

Goods shipped to the EC market must comply with the 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 the goods. The EC rules of origin, like other GSP schemes, comprise three elements:

a) Origin criteria;

b) Direct consignment conditions;

c) Documentary evidence.

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[13] See article 5 of Regulation 416/2001, amending article 28 of Regulation 2820/1998.

(i) Origin criteria

The origin criteria are at the core of the rules of origin. They determine how and when a product can be considered as originating in a GSP beneficiary country. Under the GSP, the origin criteria are defined as follows: a product shall be considered as originating in a beneficiary country if it has been either wholly obtained or undergone sufficient working or processing in that country (article 67 of the ECCC).

Products wholly obtained

Article 68 of the ECCC lays down 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:

(1) Mineral products extracted from its soil or from its seabed;

(2) Vegetable products harvested there;

(3) Live animals born and raised there;

(4) Products obtained there from live animals;

(5) Products obtained by hunting or fishing conducted there;

(6) Products of sea fishing and other products taken from the sea by their vessels;[14]

(7) Products made on board their factory ships exclusively from products referred to in (f);

(8) Used articles collected there fit only for the recovery of raw materials;

(9) Waste and scrap resulting from manufacturing operations conducted there;

(10) Products extracted from the sea-bed or below the sea-bed which is situated outside its territorial waters, provided that it has exclusive exploitation rights;

(11) Products produced there exclusively from products specified in (a) to (j).

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, the ECCC, requires that these non-originating materials be sufficiently worked or processed. In particular, article 69, paragraph 1, as last amended by Regulation 1602/2000, of the ECCC specifies what is considered sufficient working or processing as follows:

> "(...) products which are not wholly obtained in a beneficiary country or in the Community are considered to be sufficiently worked or processed when the conditions set out in the list in Annex 15 *(the new Single List)* are fulfilled."[15]

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[14] The terms "their vessels" and "their factory ships" (see (f) and (g) above) only refer to vessels and factory ships which are registered or recorded in the beneficiary country or in a member State, which sail under the flag of a beneficiary country or of a member State or which are owned to the extent of at least 50 per cent by nationals of the beneficiary country or of a member State or by a company having its head office in the country or in one of the member States; of which the manager(s), chairman of the board and the majority of the members of such boards are nationals of that beneficiary country or of the member State and of which, in the case of companies, at least half the capital belongs to that beneficiary country or one of the member States or to public bodies or nationals of that beneficiary country or of the member States; of which the master and officers are nationals of the beneficiary country or one of the member States; and of which at least 75 per cent of the crew are nationals of the beneficiary country or of a member State (article 68, paragraph 2, of the ECCC).

The new EC preferential rules of origin are laid down in the new and more comprehensive Single List which contains the applicable requirements for origin determination. Thus, in the current scheme, the only general rule to be followed in order to determine the origin of a product is to establish the HS tariff classification of the product and check if the conditions laid down in the Single List for that specific product are fulfilled.

A derogation from article 69 provides that the total value of the non-originating materials used in the manufacture of a given product shall not exceed 5 per cent of the ex-works price of the product, subject to certain conditions (article 71, paragraph 1, of the ECCC)[16].

Example 1.

Let us suppose that a producer in a beneficiary country manufactures a chair from imported sawnwood. The chair cannot be considered as wholly obtained in one country because the producer has used imported sawnwood. Therefore, it is essential to know if the sawnwood (the imported material) can be considered to have undergone "sufficient working or processing" according to the conditions laid down in the Single List.

Table 2: Origin requirements for furniture

HS HEADING NO	DESCRIPTION OF PRODUCT	WORKING OR PROCESSING CARRIED OUT ON NON-ORIGINATING MATERIALS THAT CONFERS ORIGINATING STATUS	
(1)	(2)	(3)	(4)
Ex Chapter 94	Furniture; (etc.)	Manufacture in which all the materials used are classified within a heading other than that of the product	Manufacture in which the value of all the materials used does not exceed 40% of the ex-works price of the product

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

I. "Change of tariff heading" (CTH) rule; and

II. Percentage criterion.

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

I. The non-originating material, sawnwood, must be classified in an HS heading which differs from the heading where the final product is classified (CTH rule). Given that the sawnwood is classified in HS heading 4407, which is different from the one where the chair is classified, we can determine that the sawnwood has been "sufficiently worked or processed" and that the chair qualifies as an originating product.

II. The value of imported inputs must not exceed 40 percent 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. In order to do this, the exporter must take into account the following:

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15 As a result of the latest amendments introduced by Regulation 46/99 and reported in Regulation 1602/2000, with a view at harmonizing the EC preferential rules of origin, a new Single List should be gradually substituted for the lists of working and processing which are currently annexed to the Protocols on rules of origin provided for each of the preferential agreements signed by the Community. The new List has replaced annex 15 of the ECCC, and thus constitutes the basic reference for the application of the EC GSP rules of origin.

16 Paragraph 1, second subparagraph, of article 71 of the ECCC, as contained in Regulation 1602/2000, states that "where, in the list, one or several percentages are given for the maximum value of non-originating materials, such percentages must not be exceeded through the application of" the first subparagraph.

- The term "value" in the Single List means the customs value[17] 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;
- The term "ex-works price" in the single list means the price paid for the product obtained to 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.

Example 2.

For most articles of apparel and clothing accessories that are not knitted nor crocheted, classified in HS Chapter 62, the Single List requires manufacture from yarn; this means that the use of imported fabric would not confer origin.

Example 3.

For articles of plastic under HS heading Nos. 3922 - 3926, the Single List requires that the value of all non-originating inputs used in their manufacture should not exceed 50 per cent of the ex-works price of the product.

Insufficient working or processing

In some cases, insufficient working and processing may result in a change of tariff heading and the final product is not considered as originating in the country in question. The ECCC provides the following list of what would be considered insufficient working or processing (article 70):

1. 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);
2. 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);
3. 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;
4. Affixing marks, labels and other similar distinguishing signs on products or their packaging;
5. 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 as originating products;
6. Simple assembly of parts of products to constitute a complete product;
7. A combination of two or more operations specified in subparagraphs (a)-(f);
8. Slaughter of animals.

[17] Customs value is defined as the customs value determined in accordance with the 1994 Agreement on Implementation of Article VII of GATT (WTO Agreement on Customs Valuation).

Cumulative origin - regional cumulation (articles 72, 72a and 72b of the ECCC)

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 preference-receiving country, which must also be the country of manufacture of the finished products concerned. Under the schemes of some preference-giving countries, this rule has been liberalized so as to permit imported inputs from other beneficiary countries to be regarded as local content, thus easing compliance with the rules of origin requirements.

Under the EC GSP scheme, partial cumulation is permitted (subject to certain conditions) on a regional basis. Four regional economic groupings of preference-receiving countries are permitted to utilize the EC regional cumulation system, namely the Association of South-East Asian Nations (ASEAN: Brunei Darussalam, Indonesia, Laos, Malaysia, the Philippines, Singapore, Vietnam and Thailand), the Central American Common Market (Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua), the Andean Group (Bolivia, Colombia, Ecuador, Peru and Venezuela) and the South Asian Association for Regional Cooperation (SAARC: Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka)[18].

The withdrawal of one country or territory from the list of the countries and territories benefiting from generalized preferences by virtue of the criteria referred to in article 5 of the Regulation (on the country graduation mechanism) does not affect the possibility of using products originating in that country under the regional cumulation rules. This possibility is subject to the following conditions (see Council Regulation 2623/97, OJ L 354, 30.12.1997, p.9):

1. The country in question must have been a member of the regional grouping since the multi annual system of preferences applicable to the product concerned entered into force; and
2. It is not considered to be the country of origin of the final product within the meaning of article 72*a* of the ECCC.

Under the EC rules for partial and regional cumulation, materials or parts imported by a member country of one of these three groupings from another member country of the same grouping for further manufacture are considered as 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 EC rules of origin for GSP purposes.

Paragraph 1 of article 72*a* lays down the rules according to which the country of origin of the final product shall be determined:

> "When goods originating in a country which is a member of a regional group are worked or processed in another country of the same regional group, they shall have the origin of the country of the regional group where the last working or processing was carried out provided that:
>
> (i) the value-added[19] there is greater than the highest customs value of the products used originating in any of the other countries of the regional group, and;
>
> (ii) the working or processing carried out there exceeds that set out in article 70 (insufficient working or processing) and, in the case of textile products, also those operations referred to at annex 16 (of the ECCC)."

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18 The addition of the SAARC in the list of regional grouping benefiting from the cumulation provisions was introduced by Regulation 1602/2000.

19 Value-added means the ex-works price minus the customs value of each of the products incorporated which originated in another country of the regional group.

When the above-mentioned conditions are not satisfied, the products shall have the origin of the country of the regional group which accounts for the highest customs value of the originating products coming from other countries of the regional group (article 72*a*, paragraph 2).

Example 4.

The Single List 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 as 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.

Example 5.

The Single List requires that product X must not incorporate more than 40 per cent of imported inputs. Product X manufactured in Laos, for example, may incorporate the following inputs (all prices are in US$):

Inputs originating in Singapore[20]	1,400
Inputs originating in Thailand	4,500
Inputs originating in Japan	1,500
Value added in Laos (local content, labor costs, profits)	2,600
Total (ex-works price)	**10,000**

According to the partial cumulation provision of the ECCC, in order to calculate the percentage of imported inputs, the materials imported from Singapore and Thailand will not be taken into account if they already originate in these countries. Materials originating in other ASEAN member countries will not be considered as imported inputs. Therefore, only the components imported from elsewhere (in this hypothetical case, Japan, which is not an ASEAN member country) are to be considered as imported inputs. As the amount of the inputs from Japan is US$ 1,500, equal to 15 per cent of the export price, and as this is less than the 40 per cent limit, product X will be considered as originating in Thailand and will be entitled to GSP treatment.

Proof of the originating status of goods exported from a country belonging to a regional group to another country of the same group for further working or processing, or for re-exportation without further operations, shall be established by the certificate of origin Form A issued by the first country (article 72a, paragraph 4). On the basis of this certificate, a further certificate of origin Form A or invoice declaration made out in that country will establish proof of the originating status of the goods re-exported to the EC from a country belonging to a regional group (article 72a, paragraph 5).

Example 6.

An exporter in country C wishes to export a finished product which contains imported inputs originating in countries A and B of the same regional grouping. The exporter will have to submit to the competent authority two certificates of origin Form A relating to the inputs originating in country A and country B, respectively, and issued by the competent authorities

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[20] Note that Singapore has been withdrawn from the list of beneficiary countries in application of the country graduation mechanism under article 5 of the Regulation (see above paragraph B.3 of the Explanatory Notes), but its inputs may still be used in application of the regional cumulation rules.

in each of these countries. On the basis of these two certificates, the competent authority in country C will then issue the final certificate of origin Form A relating to the finished product to be exported.

Donor country content and cumulation with Norway and Switzerland

Article 67, paragraph 2, of the ECCC provides that products originating in the European Community which are subject to sufficient working or processing in a beneficiary country are to be considered as originating in that beneficiary country. This provision further expands the cumulation options by allowing the use of inputs or intermediate products which have already acquired originating status in the EC.

Proof of originating status of Community products has to be provided in accordance with article 90b either by production of a EUR.1 movement certificate or by an invoice declaration. The ECCC provisions concerning the issue, use and subsequent verification of certificates of origin Form A shall apply *mutatis mutandis* to EUR.1 movement certificates and, with the exception of the provisions concerning their issue, to invoice declarations.

By virtue of paragraph 4 of article 67, the "donor country content" rules are also extended to products originating in Norway and Switzerland, insofar as these countries grant generalized preferences and apply a definition of the concept of origin corresponding to that set out in the EC scheme.

When the competent authorities of a beneficiary country are requested to issue a certificate of origin Form A for products manufactured with materials originating in the Community, Norway or Switzerland, they shall rely on the EUR.1 movement certificate or, where necessary, the invoice declaration (article 91, paragraph 1).

Box 4 on the certificates of origin Form A issued in the cases set out in paragraph 1 of article 91 shall contain the endorsement "Cumul CE", "Cumul Norvège", "Cumul Suisse" (in French) or "EC cumulation", "Norway cumulation", "Switzerland cumulation" (in English) (article 91, paragraph 2).

On the basis of three recent bilateral agreements[21], that entered into force on 1 April 2001, the Community, Switzerland and Norway recognize that they apply similar rules of origin for GSP purposes and that materials originating in the EC, Switzerland or Norway (in terms of the GSP origin requirements), which, in a beneficiary country, are processed and incorporated into a product originating in a beneficiary country, shall be considered as originating in that beneficiary country when the final product is exported to the Community, Switzerland or Norway.

The customs authorities of the Community, Switzerland and Norway have undertaken to provide each other with any appropriate administrative assistance, particularly for the purposes of subsequent verification of the movement certificate EUR.1 corresponding to the materials referred in the subparagraphs above.

These provisions shall not apply to products of HS Chapters 1 to 24.

Derogations in favour of LDC beneficiaries

Article 76 of the ECCC provides that there may be derogations from the provisions on rules of origin in the EC GSP scheme in favor of the LDCs 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

[21] Agreement in the form of an Exchange of Letters between the Community and each of the EFTA countries that grants tariff preferences under the GSP (Norway and Switzerland), providing that goods originating in Norway or Switzerland shall be treated on their arrival on the customs territory of the Community as goods with content of Community origin (reciprocal agreement) (OJ L 38, 8.2.2001, p.25).

request. The following, in particular, shall be taken into account when the request is considered:

1. Cases where the application of existing rules of origin would significantly affect the ability of an existing industry in the country concerned to continue its exports to the Community, with particular reference to cases where this could lead to cessation of these activities;

2. Specific cases where it can be clearly demonstrated that significant investment in an industry could be deterred by rules of origin and where a derogation favoring the realization of the investment program would enable these rules to be satisfied in stages;

3. The economic and social impact of the decision to be taken, especially in respect of employment.

In order to facilitate consideration of the request for derogation, the country making the request shall furnish the fullest possible information in support of its request, covering the points listed below:

- Description of the finished product;
- Nature and quantity of the products processed;
- Manufacturing process;
- Value added;
- Number of employees in the company concerned;
- Anticipated volume of exports to the Community;
- Reasons for the duration requested;
- Other observations.

The same rules apply to any request for an extension.

In 1997 the Community granted a waiver from the definition of the concept of originating products for certain exports of textiles in order to take account of the special situation of four LDCs: the Lao People's Democratic Republic, Cambodia, Nepal (see Commission Regulations Nos. 1713, 1714 and 1715/97 of 3 September 1997, OJ No. L 242 of 4.9.1997) and Bangladesh (see Commission Regulation No 2260/97 of 13 November 1997, OJ No. L 311 of 14.11.1997). These derogations expired on 31 December 1998.

The Lao People's Democratic Republic, Cambodia and Nepal requested and obtained extensions in both 1999 and 2000. The relevant provisions are contained in Regulations Nos. 1613, 1614 and 1615/2000 of 25 July 2000[22] for Laos, Cambodia and Nepal respectively.

The products, listed in the annexes attached to the above-mentioned Regulations, which are manufactured in these three Asian LDCs from woven fabric (woven items) or yarn (knitted items) imported into those countries and originating in a country belonging to the South Asian Association for Regional Cooperation (SAARC), ASEAN (except Myanmar) or an ACP country, shall be deemed to originate in Laos, Cambodia or Nepal (article 1, paragraph 1). The derogation shall only apply to products imported into the Community from Laos, Cambodia and Nepal during a the period from 15 July 2000 to 31 December 2001 (when Regulation 2820/98 expires), up to the annual quantities listed in the attached annexes against each product. Article 4 provides for the possibility of extending application of the derogation beyond the quantities indicated, when drawings account for 80% of such quantities.

The practical effects of the derogation in favor of LDCs are threefold: (1) to simplify the origin criterion applicable to apparel products (single-stage instead of double-stage transformation); (2) to make sure that the LDC beneficiary actually retains the origin of the apparel products exported to the Community (by waiving the application of the rule on allocation of origin in the context of the partial, regional cumulation system), and; (3) to extend the geographical coverage of the regional cumulation facility so as to facilitate their sourcing of input,

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[22] OJ L 185, of 25.7.2000 (see Annex V to the UNCTAD Handbook on the Scheme of the European Community).

otherwise limited to the regional grouping to which the exporting LDC beneficiary belongs.

(ii) Direct consignment conditions

The second part of the rules of origin relates to the modalities of transport of goods from the preference-receiving country to the EC market. Once the goods in question have complied with the origin criteria, the exporter has to make sure that the shipment of his products follows the provision laid down in the ECCC. 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 EC and that they have not been manipulated or further processed in third countries during shipment. As a general rule, article 78 of the ECCC requires that a product must be transported directly. According to the same article, the following shall be considered as transported directly from the beneficiary country to the Community or from the Community to the beneficiary country:

1. Products transported without passing through the territory of any other country, except in the case of the territory of another country of the same regional group where Article 72 is applicable;
2. Products constituting one single consignment transported through the territories of countries other than the beneficiary country or the Community, with, should the occasion arise, transshipment or temporary warehousing in those countries, provided that the products have remained under the surveillance of the customs authorities in the country of transit or of warehousing and have not entered into commerce or have been delivered for home use there, and have not undergone operations other than unloading, reloading or any other operation designed to preserve them in good condition;
3. Goods transported through the territory of Norway or Switzerland and subsequently re-exported in full or in part to the EC or to the beneficiary country, provided that the goods have remained under the surveillance of the customs authorities of the country of transit or warehousing and have not undergone operations other than unloading, reloading or any operation designed to preserve them in good condition;
4. Products which are transported by pipeline without interruption across a territory other than that of the exporting beneficiary country or that of the Community.

Documentary evidence that the requirements of direct transportation have been fulfilled must, for products passing through the territory of a third country, be supplied to the customs authorities in the EC by the presentation of:

1. A through bill of lading covering the passage through the country or countries of transit; or
2. Certification issued by the customs authorities of the country or countries of transit:
   - Giving an exact description of the products;
   - Stating the dates of unloading and reloading of the products or of their embarkation or disembarkation and identifying the ships used;
   - Certifying the conditions under which the products have remained in the transit country or countries; or
3. Failing these, any substantiating documents deemed necessary (for example, a copy of the order for the products, a supplier's invoice, or bills of lading establishing the route by which the products traveled).

(iii) Documentary evidence

Apart from the documentary evidence relating to the direct consignment conditions, evidence of the originating status is provided by a certificate of origin Form A duly filled in by the exporter and officially certified by the competent authorities in the exporting beneficiary country. Exporters must be aware that the certificate of origin Form A is one of the official

documents on which the EC customs authorities rely in order to grant GSP benefits to their goods. Therefore, it is of vital importance that it should be filled in correctly and in accordance with the rules contained in the ECCC.

Completion and issue of certificates of origin Form A (articles 81-89 of the ECCC)

A certificate of origin Form A is issued only upon written application from the exporter or his authorized representative (article 81, paragraph 3). The exporter or his representative must submit with the application any appropriate supporting documents proving that the products to be exported qualify for the issue of a certificate of origin (such documents could be invoices, cost statements, bills of lading, etc.) (article 81, paragraph 4). The certificate of origin Form A must meet certain requirements, including those concerning paper quality and size, as follows (see annex V to Regulation 12/97, containing a specimen of the certificate of origin Form A):

1. Each certificate shall measure 210 297 mm; a tolerance of up to plus 5 mm or minus 8 mm in the length may be allowed. The paper used shall be white, sized, writing paper, that does not contain mechanical pulp and weighs no less than 25g/m^2. It shall have a printed green guilloche-pattern background, making any falsification by mechanical or chemical means apparent to the naked eye.
2. If the certificates have several copies, only the top copy (the original) shall be printed on a green guilloche-pattern background. The original copy is the one to be sent to the EC importer.
3. Each certificate must bear a serial number, printed or otherwise, by which it can be identified. This serial number must be assigned to the certificate by the issuing government authorities.
4. The GSP Form A must be made out in English or French. If it is completed by hand, entries must be in ink and in capital letters.
5. The use of English or French for the notes on the reverse of the certificate (Form B) is not obligatory.
6. The certificate of origin Form A is issued by the appropriate governmental authority of the beneficiary country if the products to be exported can be considered products originating in that country (article 81, paragraph 5).
7. It shall be the responsibility of the competent governmental authority of the exporting country to take any steps necessary to verify the origin of the products and to check the other statements on the certificate (article 83).
8. The completion of box 2 of the certificate of origin Form A is optional. Box 12 shall be duly completed by indicating "European Community" or entering the name of one of the member States (article 81, paragraph 8).
9. The signature to be entered in box 11 of the certificate must be handwritten (article 81, paragraph 9).

The certificate should be made available to the exporter as soon as exportation takes place or when it is certain that it will take place. For the purpose of verifying whether the conditions for issuance have been met, the appropriate governmental authority has the right to call for any documentary evidence or to carry out any check which it considers appropriate (article 81, paragraphs 5 and 6).

Supplementary provisions related to the issuance of certificate of origin Form A

According to article 82, paragraph 4, at the request of the importer and having regard to the conditions laid down by the customs authorities of the importing member State, a single proof of origin may be submitted to the customs authorities upon importation of the first consignment provided that:

a) The goods are imported within the framework of frequent and continuous trade flows of a significant commercial value;

b) The goods are the subject of the same contract of sale, the parties to which are established in the exporting country and in the Community;

c) The goods are classified in the same code (eight digits) of the Combined Nomenclature;

d) The goods come exclusively from the same exporter, are destined for the same importer and are made the subject of entry formalities at the same customs office in the Community.

This procedure shall be applicable for the quantities and a period determined by the competent customs authorities. However, this period cannot, in any circumstances, exceed three months.

Issue of duplicate certificates of origin Form A

In the event of theft, loss or destruction of a certificate of origin Form A, the exporter may apply to the competent governmental authority which issued it for a duplicate to be made out on the basis of the export documents in their possession (article 87). The duplicate Form A issued in this way must contain one of the following words: "DUPLICATE" or "DUPLICATA", printed in box 4. The duplicate, which must bear the date of issue and the serial number of the original certificate, will take effect as from that date.

Certificates of origin Form A issued retrospectively

A certificate of origin Form A may exceptionally be issued after exportation of the products to which it relates provided that (article 86):

1. The certificate was not issued at the time of exportation because of error, accidental omission or special circumstances; or

2. It is demonstrated to the satisfaction of the customs authorities that a certificate of origin Form A was issued but was not accepted on importation for technical reasons.

The competent governmental authority may issue a certificate retrospectively only after verifying that the particulars contained in the exporter's application agree with those contained in the corresponding export documents and that a certificate of origin Form A was not issued when the products in question were exported. Certificates of origin Form A issued retrospectively must bear the endorsement "issued retrospectively" or "délivré à posteriori", printed in box 4.

Time limit for presentation of certificates of origin Form A

According to paragraph 1 of article 82, a certificate of origin Form A must be submitted, within ten months from the date of issue, by the competent governmental authority of the beneficiary country to the customs authorities of the member State where the goods are presented.

Presentation of certificates of origin Form A, after expiry of the time limits

The second paragraph of article 82 states that certificates of origin Form A, submitted to the customs authorities or the member State of importation after expiry of the ten-month period of validity, may be accepted provided that the failure to observe the time limit is due to exceptional circumstances. In other cases of belated presentation, the competent customs authorities of the importing member State may accept the certificates provided that the products have been presented to them before expiry of the time limit (article 82, paragraph 3).

Discrepancies between statements made in certificates of origin Form A and those in other documents

The discovery of slight discrepancies between the statements made in the certificate of origin Form A, the EUR.1 movement certificate or an invoice declaration and those made in the documents presented to customs for the purpose of carrying out the formalities for importing

the products shall not *ipso facto* render the certificate null and void, provided that it is duly established that the document does correspond to the products concerned (article 92).

Issuance and acceptance of replacement certificates of origin Form A by the EC, Norway and Switzerland

By virtue of article 88, when originating products are placed under the control of a customs office in the EC, it shall be possible to replace the original proof of origin with one or more certificates of origin Form A, for the purpose of sending all or some of these products elsewhere within the Community, Norway or Switzerland. The replacement certificate of origin Form A shall be issued, on the basis of a written request by the re-exporter, by the customs office under whose control the products are placed and shall be regarded as the definitive certificate of origin for the products to which it refers. The top right-hand box of the replacement certificate shall indicate the name of the intermediary country where it is issued; box 4 shall contain the words "replacement certificate" or "certificat de remplacement", as well as the date of issue of the original certificate and its serial number. A photocopy of the original certificate Form A may be attached to the replacement certificate.

Invoice declaration

An invoice declaration may be made out by an approved Community exporter or by any exporter for any consignment consisting of one or more packages containing originating products whose total value does not exceed ECU 3,000 (article 90). An invoice declaration may be established if the goods concerned are considered as originating in the EC or in a beneficiary country. In the latter case, the beneficiary country shall assist the EC by allowing the customs authorities of member States to verify the authenticity of the document or the accuracy of the information regarding the true origin of the products in question.

Verification

The information provided on certificates of origin Form A and invoice declarations may be verified at random or whenever the customs authorities of the importing EC countries have reasonable doubt as to the authenticity of the document or the accuracy of the information regarding the true origin of the goods (article 94, paragraph 1). For these purposes, the customs authorities in the EC may return a copy of the certificate of origin Form A or the invoice declaration to the relevant governmental authority in the exporting beneficiary country, giving where appropriate the reasons of form or substance for an inquiry (article 94, paragraph 2).

When an application for subsequent verification has been made by the customs authorities, such verification has to be carried out and its results communicated to the customs authorities in the Community within six months. The governmental authorities who issued the certificate of origin Form A are responsible for carrying out this inspection and reporting the results to the EC customs authorities. The results must establish whether the certificate of origin Form A in question applies to the products actually exported and whether these products were in fact eligible to benefit from the tariff preferences (article 94, paragraph 3).

If in cases of reasonable doubt no reply has been communicated to the EC customs authorities in the above-mentioned six-month period or if the reply does not contain sufficient information to determine the authenticity of the document in question or the real origin of the products, a second communication shall be sent to the authorities concerned. If after the second communication, the results of the verification are not communicated to the requesting authorities as soon as possible or at the latest within four months, or if these results do not allow the authenticity of the document in question or the real origin of the products to be determined, the requesting authorities shall (unless there are exceptional circumstances) refuse entitlement to generalized preferences (article 94, paragraph 5).

Where the verification or any other available information appears to indicate that the provisions concerning the proof of origin are being contravened, the exporting beneficiary country shall, on its own initiative or at the request of the Community, carry out appropriate inquiries or arrange for such inquiries to be carried out with due urgency to identify and

prevent such contraventions. For this purpose, the Community may participate in the inquiries (article 94, paragraph 6).

For the purpose of subsequent verification of certificates of origin Form A, copies of the certificates as well as any export documents referring to them shall be kept for at least three years by the appropriate governmental authority of the exporting beneficiary country (article 94, paragraph 7).

In the case of replacement certificates of origin Form A issued by the customs authorities of Norway or Switzerland on the basis of a certificate of origin Form A issued by the competent authorities of the beneficiary country, Norway or Switzerland will assist the EC by allowing its customs authorities to verify the authenticity and accuracy of the said certificates. The verification procedure applies the principle of *mutatis mutandis*; the time limit is extended to eight months (article 89).

PART 2: Japan

A. The provisions of the Japanese GSP scheme for LDCs

The Japanese scheme of generalized preferences has been recently reviewed and extended for a new decade, until 31 march 2011. Under the new scheme,[23] the special treatment granted to LDC beneficiaries has been improved by adding a number of tariff items for duty/quota-free treatment for their exclusive benefit. In addition, all 49 LDCs will be able to benefit from this preferences. Zambia, Democratic Republic of Congo, Kiribati and Tuvalu have been added to the list of beneficiaries. Comoros and Djibouti are also eligible for duty/quota free treatment under the Japanese scheme, if they request it.

Selected agricultural, fishery and industrial products are not covered by the scheme (see the relevant annex to UNCTAD study on "Improving Market Access for LDCs, UNCTAD/DITC/TNCD/4, of 2 May 2001, also available on the website of the UN LDC III Conference). While the tariff cuts applicable to developing countries' exports range from duty–free to 20 per cent reduction of the MFN duties, including 81 industrial tariff items to which ceilings apply, LDCs enjoy the following special treatment for all products covered by the scheme:

(a) Duty-free entry;

(b) Exemption from ceiling restrictions; and

(c) Additional list of products to which preferences are granted only to LDC beneficiaries.

With regard to refined copper imported from the Democratic Republic Congo and Zambia, the normal GSP tariff rate, a 40 per cent tariff cut, is applied and the ceiling (37,658,982 Kg for fiscal year 20001/2002) will not be removed until the end of the fiscal year 2005.

For goods exported from a preference-receiving country to be eligible for preferential tariff treatment, country under the origin criteria of the Japanese GSP scheme, they must be recognized as originating in that and transported to Japan in accordance with its rules for transportation.

B. Rules of Origin under the Japanese GSP scheme

(i) Rules for transportation (direct consignment)

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

(i) In principle, the goods must be transported directly to Japan, without passing through any territory other than the exporting preference-receiving country.

(ii) However, with regard to goods transported to Japan through territories 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 trans-shipment or temporary storage exclusively on account of transport requirements, and

  (b) The trans-shipment 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.

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[23] For detailed information on the current scheme, please refer to the *Handbook on the Scheme of Japan 2000/2001* (document UNCTAD/ITCD/TSB/Misc.42/Rev.1), also available on the GSP website.

(iii) With regard to goods exported from a preference-receiving country, for temporary storage or display at exhibitions, fairs and similar events in another country, which have been exported by the person who has so exported the goods from the said other country to Japan, they are entitled to preferential treatment if:

(a) The transportation to Japan from the country where the exhibition (or similar event) has been held falls under (i) or (ii) above; and

(b) The exhibition (or similar event) has been held in a bonded area or any other similar place, under the supervision of that country.

(ii) Origin criteria

Goods are considered as originating in a preference-receiving country if they are wholly obtained in that country.

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 as 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 (4 digits) other than that covering each of the non-originating materials or parts used in the production. However, there are two exceptions to this rule. One is that some 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. The other is that 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 - 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).

In spite of a general explanation of origin criteria, the following minimal processes are not accepted as obtaining originating status:

1. Operations to ensure the preservation of products in good condition during transport and storage (drying, freezing, placing in salt water and similar operations);
2. Simple cutting or screening;
3. Simple placing in bottles, boxes and similar packing cases;
4. Repacking, sorting or classifying;
5. Marking or affixing of marks, labels or other distinguishing signs on products or their packaging;
6. Simple mixing of non-originating products;
7. Simple assembly of parts of non-originating products;
8. Simple making up of sets of articles of non-originating products;
9. A combination of two or more operations specified in 1-8.

(iii) Use of materials imported from Japan

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 (preference-giving country content rule):

1. 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 in that country.
2. Any goods exported from Japan which 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 1 above shall be regarded as wholly obtained in that country.

However, with regard to selected products listed in annex 8 to the UNCTAD Handbook on the Scheme of Japan 2001/2002, special treatment will not be granted.

(iv) Rules of cumulative origin

In the case of goods produced in two or more countries of South-East Asia, namely Indonesia, Malaysia, the Philippines, Thailand and Viet Nam, these countries are regarded as one preference-receiving country for the purpose of applying the origin criteria and preference-giving country content rule.

In detail, the group enjoys the following effects when the substantial manufacturing standards are applied:

1. Goods wholly obtained in the group or goods imported from Japan to the group are treated as originating in the group
2. Goods produced totally or partly from materials imported to the group or materials of unknown origin are treated as originating in the group if those materials used have undergone sufficient working or processing in countries involved in the production.

The origin of goods which are eligible for preferential tariff treatment according to the rules of cumulative origin is the country that produces and exports the goods to Japan. To make use of the cumulative origin system, the Certificate of Cumulative Working/Processing (annex 10 to the UNCTAD Handbook on the Scheme of Japan 2001/2002) should be presented to the customs at the time of import declaration in addition to the Certificate of Origin Form A.

(v) Documentary evidence

Evidence relating to origin of goods

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 (see Annex to this Handbook) must be submitted to the Japanese customs authorities up on importation of the goods into Japan. 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 yen or goods whose origins are evident, this certificate will not be required.

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 (see Annex 10 to the UNCTAD Handbook on the Scheme of

Japan 2001/2002) issued by the same competent authorities issuing the Certificate of Origin Form A.

Cumulative origin

When one or other of the special treatments under the rules of cumulative origin is sought in respect of goods produced in a country of the group, a Certificate of Cumulative Working/Processing must be submitted, on importation of the goods into Japan, to the Japanese customs authorities together with a Certificate of Origin Form A.

Evidence relating to transport

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

(a) A through bill of lading;

(b) A certification by the customs authorities or other government authorities of the transit countries; or,

(c) Failing these, any other substantiating document deemed sufficient.

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

HS heading number of products which are exempted from documentary requirements

04.10, 06.04, 07.09, 08.01, 08.02, 08.03, 08.04, 08.07, 09.01, 09.02, 09.04, 09.07, 09.08, 09.09, 09.10, 12.11, 13.02, 14.04, 15.05, 15.16, 15.18, 15.20, 22.01, 22.03, 25.09, 25.13, 25.20, 25.23, 27.01, 27.04, 27.07, 27.12, 27.13, 28.01, 28.03, 28.06, 28.07, 28.08, 28.09, 28.11, 28.12, 28.13, 28.14, 28.16, 28.17, 28.18, 28.19, 28.20, 28.21, 28.23, 28.24, 28.26, 28.28, 28.29, 28.30, 23.31, 28.32, 28.34, 28.35, 28.37, 28.38, 28.39, 28.41, 28.42, 28.47, 28.48, 28.50, 28.51, 29.01, 29.03, 29.04, 29.07, 29.08, 29.09, 29.10, 29.11, 29.12, 29.13, 29.14, 29.15, 29,16, 29.19, 29.20, 29.21, 29.23, 29.24, 29.25, 29.27, 29.28, 29.29, 29.30, 29.35, 29.38, 29.42, 32.01, 32.02, 32.04, 32.07, 32.09, 32.11, 32.12, 32.15, 33.03, 33.04, 33.05, 33.06, 33.07, 34.03, 34.04, 34.05, 34.06, 35.01, 35.04, 35.06, 35.07, 36.01, 36.02, 36.03, 36.05, 37.03, 37.07, 38.02, 38.05, 38.21, 38.23, 39.05, 39.07, 39.08, 39.09, 39.10, 39.12, 39.13, 39.15, 39.22, 39.23, 39.24, 39.25, 39.26, 40.03, 40.05, 40.06, 40.07, 40.08, 40.09, 40.10, 40.16, 43.01, 43.04, 48.02, 48.03, 48.04, 48.05, 48.06, 48.07, 48.08, 48.09, 48.10, 48.11, 48.15, 48.16, 48.17, 48.18, 48.19, 48.20, 48.21, 48.22, 48.23, 63.09, 65.01, 65.02, 65.05, 65.06, 65.07, 66.02, 67.01, 68.04, 68.05, 68.11, 68.12, 68.13, 69.02, 69.03, 69.05, 69.07, 69.08, 69.11, 69.12, 69.13, 71.14, 78.06, 79.07, 80.01, 80.07, 82.11, 82.13, 82.14, 82.15, 83.01, 83.02, 83.04, 83.06, 83.08, 83.09, 83.11, 94.05, 94.06, 95.01, 95.04, 95.05, 95.06, 95.07, 96.02, 96.04, 96.07, 96.13, 96.15, 96.16.

PART 3: The United States of America

A. The provisions of the U.S. GSP scheme for LDCs

The US GSP programme provides for duty-free entry to all products covered by the scheme from designated beneficiaries.[24] The scheme has been in operation since 1976, initially for two ten-year periods and then it has always been renewed every one or two years. The latest renewal, which did not introduce any amendment to the scheme, was approved in December 1999 and it reauthorized the scheme through September 2001, with retroactive effect from June 1999.[25]

A significant improvement in the US scheme was recorded in 1997, when 1'783 new products originating in LDC beneficiaries were granted duty-free treatment. The list of products eligible for GSP treatment includes selected dutiable manufactures and semi-manufactures and also selected agricultural, fishery and primary industrial products not otherwise duty-free. The US Government, through the GSP Subcommittee conducts annual review of the list of eligible articles and beneficiaries. Certain articles, such as textiles, watches, footwear, handbags, luggage, flat goods, work gloves are excluded from the list of eligible products. Furthermore, any article determined to be import sensitive cannot be made eligible. Such ineligible products include steel, glass and electronic equipment.

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

1. Determine what the Harmonized Tariff Schedule of the United States (HTSUS) number is for a product, and whether or not that product is eligible for the GSP.

   In order to determine whether a product is GSP-eligible, one should know how to read the HTSUS.[26] Part of a page from the U.S. schedule, together with an explanation of its structure and codes, is reproduced in Figure 1. 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 applied to many Communist countries during the Cold War, today only five countries remain subject to these rates. These are Afghanistan, Cuba, the Lao People's Democratic Republic, North Korea, and Vietnam (of which only the Laos and Afghanistan are LDCs). NTR agreements with Laos and Vietnam are currently pending. Countries that receive MFN treatment pay the tariffs that are shown in Column 1. Some of the countries that that receive NTR treatment also benefit from preferential trade agreements or program tariffs, as shown in the "Special" sub-column of Column 1. Products that are eligible for GSP treatment are identified by the letter "A" in this sub-column. This designation is further qualified in the case of products for which some GSP countries are denied duty-free treatment

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[24] For the basic U.S. legislation on the GSP programme (Title V of the Trade Act of 1974 as amended) and for further details, please refer to the text and appendices of the *Handbook on the GSP Scheme of the United States*, UNCTAD document ITCD/TSB/Misc.58, of June 2000, also available on the GSP website.

[25] The principal reason for these brief GSP reauthorizations is that the program is no longer cost-free from a budgetary standpoint. The United States adopted new budget rules in 1990 that required a "pay-as-you-go" (PAYgo) approach to any measures that affect the budget. Under the PAYgo rules, any bill that provides for an increase in government expenditures or (as is the case with tariff cuts) a decrease in government revenues must include offsetting measures. The PAYgo principle thus required that the NAFTA and the Uruguay Round implementing bills include new taxes, fees, spending cuts, or other measures in order to offset the effect of the foregone tariffs, and these same rules also apply to the GSP. These provisions created a new political complication for GSP. For every year that the GSP is renewed, legislators must approve hundreds of millions of dollars in spending cuts or tax increases. Proposals to liberalize imports from developing countries are already quite unpopular in many circles, and they do not become more politically attractive to legislators when they are associated with new taxes or spending cuts.

[26] The updated US tariff schedule is available on the Internet at http://dataweb.usitc.gov/.

(A*), and products that are eligible for GSP treatment only when imported from least-developed countries (A+).

Table 3 : Harmonized Tariff Schedule of the United States (2001)

Heading/ Subheading	Stat. Suf-fix	Article Description	Unit of Quan-tity	Rates of Duty		
				1		2
				General	Special	
0703		Onions, shallots, garlic, leeks and other alliaceous vegetables, fresh or chilled:				
0703.10		Onions and shallots:				
0703.10.20	00	Onion sets	kg	0.83¢/kg	Free (A*,CA,E,IL, 5.5¢/kg J,MX)	5.5¢/kg
0703.10.30	00	Other: Pearl onions not over 16 mm in diameter	kg	0.96¢/kg	Free (A,CA,E,IL,J, 5.5¢/kg MX)	5.5¢/kg
0703.10.40	00	Other 1/	kg	3.1¢/kg	Free (A,CA,E,IL,J) 5.5¢/kg See 9906.07.11-9906.07.13 (MX)	5.5¢/kg
0703.20. 00	 10 20 90	Garlic..... Fresh whole bulbs ..... Fresh whole peeled cloves..... Other	 kg kg kg	0.43¢/kg	Free (A*,CA,E,IL, 3.3¢/kg J,MX)	3.3¢/kg
0703.90.00	00	Leeks and other alliaceous vegetables	kg	20%	Free (A+,CA,D,E, 50% IL,J,MX)	50%

How to read the U.S. Tariff Schedule

- The numbers and nomenclature (product descriptions) used in the U.S. tariff schedule are identical to those used by all countries that adhere to the Harmonized Tariff System.
- The eight-digit tariff item number identifies the product. It is at this level of specificity that tariff rates are determined.
- The two-digit statistical suffix further distinguishes products for reporting purposes, but has no effect on the tariff rate.
- 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 most products shown above) rather than *ad valorem* terms (e.g., the 20 per cent for HTS item 0703.90.00)
- Column 1 applies to countries that receive normal trade relations (NTR), otherwise known as MFN treatment. It is subdivided into non-preferential ("General") and preferential ("Special") columns.
- Letters in the "Special" column indicate whether the product is eligible for duty-free or reduced-duty treatment under various preferential trade agreements or programs:

  A= Generalized System of Preferences (GSP)
  A*= GSP (certain countries are not eligible)
  A+= GSP (only least developed countries)
  CA= Canada (NAFTA)
  E= Caribbean Basin Initiative
  IL= U.S.-Israel Free Trade Area
  J= Andean Trade Preferences Act
  MX= Mexico (NAFTA)

- Column 2 applies to five countries that do not receive NTR treatment
- HTS item 0703.10.20 would face a tariff of 0.83 cents per kilogram if imported from a country that receives NTR treatment, or 5.5 cents per kilogram from a country that does not. It can be imported duty-free under the GSP, but the asterisk indicates that one or more countries are excluded.
- HTS item 0703.10.40 can be imported duty-free from any GSP beneficiary country.
- HTS item 0703.90.00 can be imported duty-free only from least developed beneficiary countries of the GSP.

2. Look up whether or not the U.S. 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 U.S. International Trade Commission (USITC), accessible on the Internet at http://dataweb.usitc.gov/.

3. If the data show 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 or origin are already being met, the GSP privileges should be claimed.

The granting of duty-free access to eligible products under the US GSP program is subject to the so-called "competitive need limits". The US scheme provides for ceilings for each product and country. A country will automatically lose its GSP eligibility with respect to a product if competitive need limits are exceeded.[27] However competitive needs can be waived under several circumstances. More importantly, all competitive limitations are automatically waived for the GSP beneficiaries which are designated as LDCs.

The US 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: (1) the country's general level of development, (2) its competitiveness in the particular product, (3) the country's practices relating to trade, investment and workers' rights and (4) the overall economic interests of the US.

B. Rules of Origin under the U.S. GSP scheme

The US 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 in route to the United States.[28] In all cases, the invoices must show the United States as the final destination.

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[27] The "upper" competitive limits are exceeded if, during any calendar year, US imports of that product from that country: (1) account for 50 percent or more of the value of total US imports of that product; or (2) exceed a certain dollar value, which is annually adjusted in proportion to the change in the nominal GNP of the US. In addition, products which are found "sufficiently competitive" when imported from a specific beneficiary country are subject to the "lower" competitive limit. In this case, eligibility is terminated if imports exceed 25 percent or a dollar value set at approximately 40 percent of the "upper" competitive need level.

[28] Articles transshipped between the beneficiary country and the United States are eligible for GSP under certain circumstances. Eligible articles shipped from a beneficiary developing country through a free trade zone in any other beneficiary will qualify for GSP if: (1) the merchandise does not enter into the commerce of the country maintaining the free trade zone; and (2) the eligible articles do not undergo any operations other than sorting, grading or testing, packing, unpacking, changing or packing, decanting, or repacking, affixing marks, labels, or any other distinguishing signs, or operations necessary to ensure the preservation of the merchandise in its condition as introduced into the free trade zone. Shipments may also be made through free trade zones in non-beneficiaries and still qualify for GSP if: (1) the merchandise remained under the customs authority of the intermediate country; (2) the merchandise does not enter into the commerce of the country maintaining the free zone, except for purchases or sale other than at retail; (3) the eligible articles do not undergo any operations other than loading and unloading, or other operations necessary to ensure the preservation of the merchandise in the condition as introduced into the free trade zone; and, (4) for articles transshipped through former beneficiaries who are members of regional associations (see below), the processing described in (2) above is permitted. This exception currently applies to goods of ASEAN beneficiaries transshipped through Singapore or Brunei Darussalam. If merchandise is purchased and resold, other than at retail, for export within the free trade zone, two Certificates of Origin are required: one from the original beneficiary noting that the goods are eligible for the United States GSP and containing the name of the consignee in the United States or the free trade zone, and one from the person responsible for the articles in the free trade zone, or any other person having knowledge of the facts, declaring what operations were performed within the zone.

The rules further provide that the sum of the cost or value of materials produced in the beneficiary country plus the direct costs of processing[29] must equal at least 35 per cent of the appraised value of the article at the time of entry into the United States. Imported materials can be counted toward 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 percent 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.

The 35 percent 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 five associations that may benefit from this provision: the Andean Group, the Association of Southeast Asian Nations (ASEAN) excluding Singapore and Brunei Darussalam, the Caribbean Common Market (CARICOM), the Southern Africa Development Community (SADC), and the West African Economic and Monetary Union (WAEMU).

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: (1) the packing costs incurred by the buyer; (2) any selling commission incurred by the buyer; (3) the value of any assist; (4) any royalty or license fee that the buyer is required to pay as a condition of the sale; and, (5) the proceeds, accruing to the seller, of any subsequent resale, disposal, or use of the imported merchandise. As a general rule, shipping and other costs related to the transport of the GSP articles from the port of export to the United States are neither included in the value of the article, nor in the value-added calculation.

It should be noted that the U.S. program 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.[30] Today an importer requests GSP treatment simply by placing the prefix "A" before the HTSUS tariff number on the entry documentation. 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.

C. The African Growth and Opportunity Act

The African Growth and Opportunity Act (AGOA)[31] is the most recent U.S. initiative authorizing a new trade and investment policy toward Africa. Under Title I-B of the Act,

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[29] 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, including: 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, blue-print costs and engineering; and inspection and testing costs. The following may not be included in the direct cost of processing: Those items which are not directly attributable to the merchandise under consideration or are not "costs" of manufacturing, including profit and general expenses and business overhead (such as administrative salaries, casualty and liability insurance, advertising, and the salesman's salaries, commissions or expenses.

[30] One artifact of the defunct Form A is that the letter "A" is still used in the U.S. tariff schedules to identify products that are eligible for the GSP.

[31] The AGOA, which is part of the Trade and Development Act of 2000, was signed into law by the U.S. President on 18 May 2000. All AGOA related documentation is available online at Internet: www.agoa.gov .

beneficiary countries in sub-Saharan Africa that are designated by the President as eligible for the AGOA benefits are granted what could be called a "super GSP".

While the current "normal" GSP programme of the United States will expire in September 2001 and contains several limitations in terms of product coverage, the AGOA amends the GSP by providing duty-free treatment for a longer period of time and for a wider range of products. This includes, upon fulfillment of specific origin and customs requirements, certain textile and apparel articles that have been heretofore considered import-sensitive and thus statutorily excluded from the programme.

The "AGOA-enhanced" GSP benefits will be in place for a period of 8 years and this longer than usual period of time is expected to provide additional security to investors and traders in designated African countries. This element of security of the preferences is further strengthened by the decision by the Office of the U.S. Trade Representative responsible for GSP matters not to carry out the usual annual reviews of product coverage for AGOA products.

Although at first glance the Act reads as a one-way grant to sub-Saharan African countries, a more thorough reading reveals that some elements of reciprocity have been included. First, the U.S. has tied the trade preferences under AGOA to several non-trade conditionalities; second, the trade benefits for the textile and clothing arrangement are, except for the first four years of implementation, contingent on purchases of inputs from U.S. textile firms.

The following paragraphs provide a detailed overview of the provisions of the AGOA.

Product eligibility

The AGOA authorizes the U.S. President to provide duty-free treatment for selected products from designated sub-Saharan African countries if, after receiving the advice from the U.S. International Trade Commission (USITC), he determines that the products are not "import sensitive" in the context of imports from these countries.

After an extensive process of public comment and special review of GSP-eligible and non-eligible products, on 21 December 2000, the President extended GSP treatment to AGOA eligible countries for more than 1,800 tariff line items, of which 214 are products such as footwear, luggage and handbags that were previously statutorily excluded. These latter 214 products represent the real improvement in product coverage for AGOA LDC beneficiaries. As a matter of fact, all designated AGOA beneficiaries, including non-LDCs, have been granted duty-free treatment on all GSP-eligible products, including those on which only least developed beneficiary countries used to enjoy GSP treatment. This implies that former special GSP LDCs' preferences have been somewhat diluted since other sub-Saharan non-LDC African countries can now benefit from them.

Country eligibility

In order to benefit from the preferential market access conditions under the AGOA, sub-Saharan African countries must be designated by the U.S. President as eligible.

First of all, any AGOA beneficiary country must already be eligible under the "normal" GSP programme. Additional eligibility requirements are as follows[32]:

The country must have established, or be in the process of establishing:

(a) A market-based economy that protects private property rights, incorporates an open rules-based trading system, and minimises government interference in the economy...;

[32] According to the USTR, these country eligibility requirements should be read as best practice benchmarks for countries that want to attract trade and investments. In making his determinations, the President has some discretionary power. In order to determine the current or potential eligibility of each sub-Saharan African country, the President shall monitor, review and report to Congress annually on the process of such countries in meeting the above-mentioned eligibility requirements. Should it be determined, that the sub-Saharan African country is not making continual progress in meeting those requirements, the President has the authority to terminate the designation of the country.

(b) The rule of law, political pluralism, and the right to due process, a fair trial and equal protection under the law ...;

(c) The elimination of barriers to U.S. trade and investment, including by:

(d) The provision of national treatment;

(e) The protection of intellectual property rights; and

(f) The resolution of bilateral trade and investment disputes;

(g) Economic policies to reduce poverty, increase the availability of health care and educational opportunities ...;

(h) A system to combat corruption and bribery ...;

(i) Protection of internationally recognised worker rights ...;

(j) The country must not engage in activities that undermine U.S. national security or foreign policy interests ...;

(k) The country must not engage in gross violations of internationally recognised human rights;

(l) The country must have implemented its commitments to eliminate the worst form of child labour (ILO Convention n°182).

The President has so far designated the following 35 sub-Saharan African countries as AGOA beneficiaries, subject to compliance with the provisions on protection from illegal transshipment (the asterisk indicates that the country is an LDC, according to the UN classification):

Republic of Benin*	Republic of Guinea*	Federal Republic of Nigeria*
Republic of Botswana	Republic of Guinea-Bissau*	Republic of Rwanda*
Republic of Cape Verde*	Republic of Kenya*	Dem. Rep. of Sao Tome and Principe*
Republic of Cameroon*	Kingdom of Lesotho*	Republic of Senegal*
Central African Republic*	Republic of Madagascar*	Republic of Seychelles
Republic of Chad*	Republic of Malawi*	Republic of Sierra Leone*
Republic of Congo*	Republic of Mali*	Republic of South Africa
Republic of Djibouti*	Islamic Republic of Mauritania*	Kingdom of Swaziland*
State of Eritrea*	Republic of Mauritius	United Republic of Tanzania*
Ethiopia*	Republic of Mozambique*	Republic of Uganda*
Gabonese Republic*	Republic of Namibia	Republic of Zambia*
Republic of Ghana*	Republic of Niger*	

To date, the only LDCs that have been declared eligible for preferences under the apparel provisions are Madagascar and Lesotho.[33]

Preferential treatment for certain textiles and apparel and applicable rules of origin

Subject to the provisions on protection from illegal transshipment, the Act provides duty-free, quota-free access for certain textile and apparel articles that are imported directly into the U.S. from a designated sub-Saharan African country.

According to USTR's calculations, the Act offers an average 17.5% duty advantage on apparel imports in the U.S. market, thus providing beneficiary African countries with a significant competitive price advantage over many other major international suppliers.

An overview of the products covered by AGOA with the applicable preferential treatment depending on the origin of the fabric/yarns is provided below.

[33] See the AGOA web site: www.agoa.gov .

- Apparel articles made in one or more designated sub-Saharan African countries from U.S. yarn or fabric: **DUTY/QUOTA FREE**;
- Sweaters knit-to-shape from cashmere or merino wool[34] in one or more designated sub-Saharan African countries: **DUTY/QUOTA FREE**;
- Apparel articles both cut and sewn or otherwise assembled in one or more designated sub-Saharan African countries from third-country fabric or yarn of silk, velvet, linen and other fabrics that are not available in commercial quantities in the U.S. or Africa: **DUTY/QUOTA FREE** (see below on applicable rules of origin and possible designation of additional yarns or fabrics);
- Apparel articles made in one or more designated sub-Saharan African countries from African/regional fabric, subject to specific limitations on benefits and a surge mechanism: **DUTY/QUOTA FREE within cap**;
- **Special Rule for Apparel Applying to Lesser Developed AGOA eligible countries:** Apparel articles made in one or more designated Lesser Developed sub-Saharan African countries regardless of the country of origin of the fabric used: **DUTY FREE within cap for 4 years**.

As far as the last two categories of products are concerned, the Act allows only a limited amount of duty-free access for apparel made in designated beneficiary countries from African/regional fabric. This cumulation provision is only applicable if the fabric is imported from another sub-Saharan country that has been selected as AGOA beneficiary. Imports of apparel articles made from African/regional fabric are subject to an annual cap[35] of 1.5 per cent in the first year, which is increased annually over an 8-year period by equal increments, rising ultimately, in the period starting in September 2007, up to a maximum of 3.5 per cent of total annual apparel shipments to the U.S.. The U.S. administration estimates that African apparel imports made with African fabric or yarn currently total about $250 million: under the cap, these imports could increase, over period of eight years to $4.2 billion.[36] Normal MFN duties would be levied on apparel imports made from African fabric over the cap.

A special provision of the bill encourages exports of apparel from Lesser Developed AGOA beneficiaries. It is worth noting that the category of Lesser Developed sub-Saharan African countries does not exactly correspond to the UN classification of LDCs. 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 $1.500 a year in 1998, as measured by the World Bank. On the basis of the data contained in the World Bank's 1999/2000 World Development Report, all sub-Saharan countries except Botswana, Equatorial Guinea (an LDC), Gabon, Mauritius, Namibia, Seychelles, and South Africa fall below this per capita threshold and, thus, have been declared eligible to use third-country fabric (non-U.S. and non-African) in their duty-free apparel exports to the United States through 30 September 2004. However, even this special treatment is subject to the same quantitative limitations as above. From October 2004 until September 2008, the Act requires Lesser Developed sub-Saharan beneficiaries to manufacture their apparel using U.S. fabric, setting aside only the limited amount allowed for African/regional fabric as described above.

The U.S. Secretary of Commerce is charged with monitoring imports of apparel articles made from African/regional fabric on a monthly basis in order to determine whether there has been a potentially disruptive surge in such imports. Whenever, on the basis of international trade

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[34] The sweaters must be in chief weight of cashmere or 50% or more by weight of merino wool measuring 18.5 microns in diameter.

[35] The word "cap", as utilized by the USTR, is *de facto* a tariff quota.

[36] These data were collected at the "AGOA Seminar" held in Durban, South Africa, on June 22, 2000, under the auspices of the Office of the United States Trade Representative and the Ministry of Trade and Industry of South Africa.

data or pursuant to a written request by an interested party,[37] the Secretary of Commerce determines that an apparel (regional fabric) article from an AGOA beneficiary country is being imported in such increased quantities as to cause serious damage, or threat of, to the domestic industry producing a like or directly competitive article, the President is authorized to suspend the duty-free treatment provided under the Act.[38]

Apparel articles that are made in one or more AGOA beneficiary countries from third-country fabric or yarns of silk, velvet, linen and other fabrics that are not available in commercial quantities in the U.S. or sub-Saharan Africa are admitted duty-free, quota-free to the extent that such articles would be eligible for preferential treatment under Annex 401 to the NAFTA Treaty. Annex 401 to the NAFTA contains the applicable preferential rules of origin for intra-NAFTA trade. Generally speaking, for apparel articles of Chapters 61 and 62, the NAFTA rules of origin lay down a "triple jump" working or processing requirement.[39]

At the request of any interested party, the President can extend the duty-free, quota-free treatment to apparel made from other yarns or fabrics if, after having received the advice of the USITC, he determines that such yarns and fabrics cannot be supplied by the U.S. domestic industry in commercial quantities in a timely manner.[40]

Finally, the use of findings, trimmings or interlinings of foreign origin is tolerated up to a value of 25% of the cost of the components of the assembled article. The use of fibres or yarns of foreign origin (non-U.S. and non-African) will not *per se* make the article ineligible if the total weight of all such fibres or yarns is not more than 7 percent of the total weight of the article.

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[37] The term "interested party" means any producer of a like or directly competitive article, a certified union or group of workers representative of an industry producing like or directly competitive article, a trade or business association representing sellers or producers of a like or directly competitive article, etc. .

[38] See Section 112 (b)(3.A) of the AGOA.

[39] See the relevant provisions in Annex 401 to the NAFTA Treaty, available at:

http://www-tech.mit.edu/Bulletins/Nafta/annex.401

[40] See Section 112 (b)(5.B) of the AGOA.

PART 4: Canada

A. The 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.

The General Preferential Tariff (GPT, which is the Canadian designation of the GSP scheme) rates and coverage 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 for normal developing country beneficiaries GPT rates range from duty-free to reductions in the most-favoured-nations (MFN) rate, 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, specialty steels and electron tubes are excluded from the scheme.[41]

Recently, the Canadian government announced a product coverage extension to allow 570 additional products originating in LDCs to enter its market duty-free. However, such extension of product coverage, which took effect on 1 September 2000, does not include any textile and clothing product.

B. Safeguard provisions

In accordance with Article XIX of the General Agreement on Tariffs and Trade (GATT - 1994), Canada may take emergency action in respect of products that are imported in such quantities and under such conditions as to cause or threaten to cause serious injury to domestic procedures of like or directly competitive products by withdrawing or modifying it's preferential concession. Under the legislation, the Canadian International Trade Tribunal (CITT) may be directed by the Minister of Finance to conduct an inquiry into any complaint submitted by a Canadian producer claiming that he has suffered or may suffer injury as a result of factors connected with the Anti-Dumping code and the Code on Subsidies and Countervailing Duties of the World Trade Organization (WTO) (GATT - 1994). If it is satisfied that there is a *prima facie* case of injury, and it judges the removal of the GPT concession would remove the injury, it will conduct a public inquiry and make recommendations to the Government. According to the recommendation of the CITT, the Government may withdraw the GPT concession or establish tariff rate quotas.

C. The rules of origin under the Canadian GSP scheme for LDCs

(i) Origin criteria

In order to be eligible for LDC GPT treatment, products must be originating in an LDC beneficiary country. The basic rule of origin for products exported by LDC beneficiaries under the Canadian GPT is based on a 60% maximum import content allowance (instead of the 40% permitted for other developing country GPT beneficiaries).

This means that to qualify for the LDC duty-free treatment, at least 40% of the ex-factory price of the goods packed for shipment to Canada must originate in one or more LDC beneficiary countries or Canada.

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[41] For further details on the list on excluded products, see the *Handbook on the Scheme of Canada* (document UNCTAD/ TAP/247/Rev.3, March 1998) also available on the Internet.

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 and taxes paid on materials imported into a beneficiary country and not refunded when the goods were exported; and

(f) a reasonable profit.

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

(ii) Global cumulation and donor country content

As mentioned above, the LDC 40% qualifying domestic content may be cumulated from various LDC beneficiary countries or Canada. However, goods, parts, or materials used in the production of the goods that enter the commerce of any country other than an LDC beneficiary country lose LDC status.

As of 1 September 2000, the existing 40% of the ex-factory price of the goods packed for shipment to Canada, mentioned above, can now include a value of up to 20% of the ex-factory price of the goods from GPT eligible countries. For example, if 40% of the total ex-factory price of a radio receiver has been incurred in Bangladesh (LDC), even though 20% of that 40% was incurred in the People's Republic of China (GPT), then the goods, when imported into Canada, are now deemed to contain qualifying content for LDC duty-free purposes.

To calculate the qualifying content, all beneficiary countries are regarded as one single area. All value-added and manufacturing processes performed in the area may be integrated to meet the qualifying content requirement. Likewise, to calculate the qualifying content of goods, Canadian content used in the production of the goods is regarded as content from the beneficiary country.

The goods must be finished in the beneficiary country in the form in which they were imported into Canada.

In calculating the value of the import content, any materials used in the manufacture or production of the goods, originating from any other beneficiary country (global cumulation) or from Canada (preference-giving country content rule) and any packing required for the transportation of the goods, but not including packing in which the goods are ordinarily sold for consumption in the beneficiary country, shall be deemed to have originated in the beneficiary country.

Example for calculating the percentage of import content under global cumulation and the preference-giving country content rule

Radio set manufactured in Bangladesh, ex-factory price per unit C$100, with the following imported materials, parts and components:

(i) Integrated circuits and diodes made in Japan, value per radio set C$45; and,

(ii) Speakers made in India, value per radio set C$15.

The imported inputs in this case amount to C$45 accounting for 45 per cent of the ex-factory price. Since Bangladesh is designated as a least developed country, the import content does not exceed the 60 per cent allowed and the product qualifies as an originating product.

(iii) Documentary Evidence

As of September 1997, the Canadian Customs and Revenue Agency (CCRA) accepts as proof of origin either the GSP Certificate of Origin, Form A, or the Exporter's Statement of Origin. Proof of origin must be completed by the exporter of the goods in the beneficiary country in which the goods were finished. In most cases, exporters should find the Exporter's Statement of Origin easier to complete and provide than the alternate Form A.

The proof of origin is not required to be an original. In all cases, proof of origin must cross-reference the applicable invoice number. The invoice must list the goods for which the preferential treatment is claimed separately from the non-preference receiving goods. However, separate invoices are not required.

For goods accounted for on or after March 1996, Canada no longer requires Form A to be stamped and signed by an authority designated by the beneficiary country. Therefore, Form A no longer needs to be an original and Field No. 11 may be left blank.

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% 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%) produced in the beneficiary country;
>
> **F** means, for GPT treatment, at least 60% of the ex-factory price was produced in the GPT beneficiary country;
>
> **F** means, for LDC treatment, at least 40% of the ex-factory price was produced in the LDCT country. As of 1 September 2000, the existing 40% of the ex- factory price of the goods packed for shipment to Canada can now include a value of up to 20% of the ex-factory price of the goods from other GPT eligible developing countries;
>
> **G** means, for LDC treatment, at least 40% of the ex-factory price was cumulatively produced in more than one LDC beneficiary country or Canada.

A specimen of the Exporter's Statement of Origin is reproduced below. 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.

EXPORTER'S STATEMENT OF ORIGIN

I certify that the goods described in this invoice or in the attached invoice No._____ were produced in the beneficiary country of _____ and that at least _____ per cent of the ex-factory price of the goods originates in the beneficiary country/countries of _____.

_____

Name and title

_____

Corporation name and address

_____

Telephone and fax numbers

_____

Signature and date (day/month/year)

The proof of origin must be presented to the CCRA 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 CCRA 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 CCRA is an offence under section 153 of the *Customs Act* and may be subject to sanctions under section 160 of that Act.

(iv) Direct consignment

The goods must be shipped directly on a TBL to a consignee in Canada from the beneficiary country 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 CCRA upon request.

Transshipment through an intermediate country is allowed provided that:

(a) the goods remain under customs transit control in the intermediate country;

(b) the goods do not undergo any operation in the intermediate country other than unloading, reloading, splitting up of loads, or operations required to keep the goods in good condition;

(c) the goods do not enter into trade or consumption in the intermediate country; and

(d) the goods do not remain in temporary storage in the intermediate country for a period exceeding six months.

D. Handicraft products

Canada grants duty-free entry for handicraft products classified under Tariff Item 9987.00.00 of the Canadian Customs Tariff. This treatment is granted on conditions that the products concerned:

(i) Qualify for GPT treatment;

(ii) Are listed in the schedule of handicraft goods;

(iii) Meet the definition laid down for that purpose; and,

(iv) Are covered by special documentary evidence

The following handicraft goods, originating in a country entitled to the benefits of the General Preferential Tariff, having forms or decorations that are traditionally used by the indigenous people or representing any national, territorial or religious symbols of the geographical region where produced, having acquired their essential characteristics by the handiwork of individual craftsmen using tools held by hand or tools not powered by machines other than those powered by hand or foot, being non-utilitarian and not copies or imitations of handicraft goods of any country other than the country in which they originate, and not produced in large quantities by sophisticated tools or by moulding:

- Puppets, musical instruments (other than guitars, viols, harpsichords or copies of antique instruments), gourds and calabashes, incense burners, retablos, fans, screens, lacquer ware, hand-carved picture frames, hand-carved figurines of animals, and religious symbols and statuettes, composed wholly or in chief part by value of wood, if not more than their primary shape is attained by mechanically powered tools or machines;
- Ornaments, mirrors and figurines, composed wholly or in chief part by value of bread dough; Hookahs, nargiles, candelabra and incense burners, composed wholly or in chief part by value of clay;
- Figurines, fans, hats, musical instruments, toys, sitkas, greeting cards and wall hangings, composed wholly or in chief part by weight of vegetable fibres or vegetable materials other than linen, cotton or corn husks;
- Figurines, masks, baskets and artistic cut-outs, composed wholly or in chief part by value of paper or papier maché;
- Puppets, bellows, pouffes, bottle cases, and wine or water bottles and jugs, composed wholly or in chief part by value of hide or of leather that has not been finished beyond tanning other than by individual craftsmen;
- Figurines, costume jewellery, beads, belts, hair pins, buttons, lamp bases and key holders, composed wholly or in chief part by value of coconut shell;
- Musical instruments, chimes, combs, fans, costume jewellery, beads, belts, hair pins, wall and table decorations, buttons, lamp bases and key holders, composed wholly or in chief part by value of mother of pearl, horn, shell including tortoiseshell, or coral;
- Hookahs, nargiles, musical instruments, bells, gongs, incense burners, masks, adzes, mattocks, finger and keyhole plates, door handles and locks, hinges and latches, samovars, kukris and machetes, composed wholly or in chief part by value of base metals, if not more than their primary shape is attained by mechanically powered tools or machines;
- Bracelets, nargiles and hookahs, composed wholly or in chief part by value of glass;
- Fabrics decorated with crewel embroidery, hand-woven semi-finished wall hangings on back strap looms, reverse hand-sewn appliqué wall hangings, and dhurries, composed wholly or in chief part by weight of wool or cotton;
- Lanterns, composed wholly or in chief part by value of stone.

Under this Act, the Governor in Council may amend the list of goods in this tariff item. Goods may be classified under this tariff item on production of a certificate in duplicate in the prescribed form with the information required to be provided with the form, and signed by a representative of the government of the country of origin or any other authorized person in the country of origin recognized by the Minister of National Revenue as competent for that purpose.

The following articles products are not accepted as handicrafts:

(i) Utilitarian goods with no distinguishing form or decoration;

(ii) Copies, imitations, by whatever means of traditional, decorative, artistic or indigenous products of any country other than the country of production; or

(iii) Products which were produced in large quantities by sophisticated tools or by moulding

The use of tools in the manufacture of handicraft products is admitted as long as the tools are held in the hand, or are not powered by machine other than those powered by hand or foot power. Products made from wood or from certain base metals as listed in the schedule are accepted as handmade if not more than their primary shape is attained by mechanically powered tools or machines. In the case of leather products listed in the schedule, the leather cannot be finished beyond tanning other than by individual craftsmen.

A claim for duty free entry of handicraft products is to be supported by a special Certificate of Handicraft Goods.[42] In addition, it would be useful for importers to have on hand a GSP Certificate of Origin Form A or an Exporter's Statement of Origin required for GPT qualification; the products that do not qualify for entry as handicraft products may be eligible for entry at GPT rates of duty. It is therefore recommended that exporters of handicraft articles complete both a special Certificate of Handicraft Goods and a GSP Certificate of Origin Form A or an Exporter's Statement of Origin.

Certificate of Handicraft Goods

The undersigned hereby declares that the following goods originated in ..... (Name of country) which is entitled to the benefit of the General Preferential Tariff: .....(Description of goods)

and certifies that the above-described goods are handicraft products with traditional or artistic characteristics that are typical of the geographical region where produced, namely, ...(Name of region)

and have acquired their essential characteristic by the handiwork of individual craftsmen by means of the following process .....(e.g. carving, knitting, hand weaving).

[42] The Certificate of Handicraft Goods does not exist as an already printed form, and the Certificate produced for this purpose must have the same layout and contain verbatim the same information as the Exporter's Statement of Origin. The certifying authorities can be a governmental body of the beneficiary country or any other body approved by the Government of that country and recognized by the Minister of National Revenue for that purpose.

PART 5: The GSP Rules of Origin

A. Purpose of Rules of Origin

The main purpose of rules of origin is to ensure that the benefits of preferential tariff treatment under the Generalized System of Preferences (GSP) are confined to products which have *bona fide* been taken from, harvested, produced or manufactured in the preference-receiving countries of export. Products which originate in third countries that are not GSP beneficiaries and merely pass in transit through, or undergo only a minor or superficial process in, a preference-receiving country, are not entitled to benefit from GSP tariff treatment.

The role of the rules of origin in international trade is not limited to preferential trade agreements. In fact, the notion of the origin of goods is an essential instrument in the implementation of any commercial policy, ranging from the negotiation of a free-trade area or the constitution of a regional economic grouping to the application of an anti-dumping duty or in the issuance of an import license.

B. The WTO Agreement on Rules of Origin: The "Common Declaration"

The core text of the WTO Agreement on Rules of Origin deals exclusively with non-preferential rules of origin applicable to all MFN commercial policy instruments, such as anti-dumping duties, quantitative restrictions, safeguards, marks of origin, trade statistics and government procurement. The Agreement makes very little reference to preferential rules of origin, which, conversely, are those applying in the context of preferential tariff regimes (such as the GSP, free trade areas and other regional integration agreements). In this regard, WTO members limited themselves to a "Common Declaration" on preferential rules of origin,[43] contained in Annex II to the Agreement.

The Declaration reiterates the call for transparency, predictability and user-friendliness in application of preferential rules of origin. Most of these requirements, such as the positive determination of preferential origin, the general obligation of publication of laws and regulations concerning rules of origin, the non-retroactivity of changes in those regulations and the principle of confidentiality, had already been incorporated in national legislation relating to the GSP rules. Also the final provision of the Declaration, concerning the agreement of Members to notify the WTO of the existing preferential rules of origin, cannot be considered as a totally new element. Since the 1970s, preference-giving countries have notified the UNCTAD secretariat of the changes introduced in their GSP schemes and rules of origin.

In comparison with the detailed work programme for harmonizing non-preferential rules of origin and the clear undertakings contained therein, the text of the Common Declaration only contains "best endeavours" commitments. Overall, the whole declaration appears to be a kind of wishful thinking. The main practical outcome of the Declaration has been the establishment of an advance origin ruling procedure for concerned parties. Paragraph 3(d) of Annex II provides that Members agree to ensure that:

> *"Upon request of an exporter, importer or any person with a justifiable cause, assessments of the preferential origin they would accord to a good are issued as soon as possible but no later than one hundred and fifty days after a request for such an assessment, provided that all necessary elements have been submitted. Requests for*

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[43] Article 2 of the Common Declaration defines preferential rules of origin as follows: *"... those laws, regulations and administrative determinations of general application applied by any Member to determine whether goods qualify for preferential treatment under contractual or autonomous regimes leading to the granting of tariff preferences going beyond the application of paragraph 1 of Article I of GATT 1994."*

such assessments shall be accepted before trade in the good concerned begins and may be accepted at any later point in time. Such assessments shall remain valid for three years provided that the facts and conditions, including the preferential rules of origin, under which they have been made, remain comparable. Provided that the parties concerned are informed in advance, such assessments will no longer be valid when a decision contrary to the assessment is made in a review as referred to in subparagraph (f). Such assessments shall be made publicly available subject to the provisions of subparagraph (g).

This procedure which, before 1995, already existed at least informally in the customs procedures of GSP preference-giving countries, represents the only new provision introduced by the Declaration and is currently broadly applied.

The harmonization of preferential rules of origin have been extensively discussed in GATT within the context of Agreements under Article XXIV[44] as well as in UNCTAD in connection to the Generalized System of Preferences[45]. The results of this work have been meager. In particular, as it has been shown above, the Agreement on Rules of Origin failed to regulate preferential rules of origin and no provision for further work in this area was envisaged. The debate on the possible harmonization and simplification of the GSP rules of origin has being going on for many years under the auspices of UNCTAD. However, these discussions did not lead to meaningful results, mainly because of the following reasons: (1) as preferences were being granted unilaterally and non-contractually, donor countries were free to decide on the rules of origin they deem appropriate, and (2) it was not considered feasible to arrive at common views on a single set of uniform criteria for the definition of "substantial transformation".

In 1995, during an intergovernmental group of experts on rules of origin on GSP, preference-giving countries showed a certain degree of willingness to examine the issue of harmonization of GSP rules of origin[46] to facilitate and enhance GSP utilization.

Whereas the negotiations on the harmonization of non-preferential rules of origin have not been concluded yet[47], the clear adoption of the process criterion (CTH) as the basic rule for origin determination, and strenuously supported by some delegations, pursuant to the Agreement, could contribute to resolving the above-mentioned dispute. Some countries have already put forward a proposal aiming at utilizing the harmonized set of non-preferential rules of origin as a platform for the future harmonization of the preferential rules.

C. Overview of main problems related to GSP rules of origin

Throughout the three decades of existence of the GSP, the UNCTAD Working Group on Rules of Origin and then the Special Committee on Preferences have been addressing the GSP rules of origin with first a view of harmonizing the different origin systems and then simplifying them. During these debates, the shortcomings of the origin systems and consequent obstacles to full utilization of the GSP benefits have been identified and discussed. In addition, other findings related to the difficulties in fulfilling origin requirements emerged in the course of technical cooperation activities.

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[44] See WTO, Guide to the GATT Law and Practice, WTO, Geneva, 1995, pp. 802-803.

[45] See "Compendium of the Work and Analysis conducted by UNCTAD Working Groups and analysis conducted by UNCTAD Working Groups and Sessional Committees on GSP Rules of origin", UNCTAD/ITD/GSP/31, February 1996.

[46] See Agreed Conclusions of the Intergovernmental Group of Experts on Rules of Origin, UNCTAD document TD/B/SCP/14 of 24 August 1995.

[47] In accordance with article 9.2(a) of the WTO Agreement on Rules of Origin, the harmonization work programme on non-preferential rules of origin was officially launched on 20 July 1995, and was scheduled for completion within three years of its initiation. However, given the complexity of the issues involved, the work has not been completed as scheduled. A new deadline for completion has been set for the Fourth WTO Ministerial Conference in Doha in November 2001.

Although the need for improvements was recognized and some progress has effectively been made regarding some specific provisions of individual schemes, major problems in fulfilling the origin requirements still persist after almost thirty years since the inception of the first set of GSP rules of origin.

Thus, it may be said that in an era of globalization and fast moving changes in the world economy where revolutionary changes in the production processes and technological progress have taken place, the GSP and other preferential rules of origin have virtually remained unchanged and untouched by these events, making one of the few trade instruments passing through several rounds of trade talks unscathed.

At present, the main shortcomings encountered by preference-receiving countries with rules of origin requirements remain almost the same as those encountered and discussed in the first Unctad Working Groups on rules of origin of late seventies and can be grouped under the following main headings:

(1) over restrictiveness of the basic origin criteria to permit the use of imported materials and components in relation with the industrial capacity of the beneficiary countries;

(2) the frequent additional requirements further restricting the use of third-country inputs attached to process and percentage criteria, such as requirements for "double jumps" instead of a simple change in tariff positions, the specification of components or additional inputs, which have to originate in the beneficiary country, and the like;

(3) the diversity of rules applied by preference-giving countries with respect to the basic criteria (e.g. process and percentage criteria); the differing versions of the percentage criteria or requirements in virtually all GSP origin system; the difficulties in calculating allowable and non allowable costs incurred in the production as well as the substantial differences between individual schemes regarding additional origin requirements. They create difficulties for exporters, as products may qualify in one preference-giving country, but not in a neighboring market, and this may cause additional administrative adjustments;

(4) the limited recognition of rapidly expanding economic co-operation and trade among developing countries generally and sub-regional integration in particular, which would require generalization of cumulation; the limited qualitative scope of cumulation allowing not a full cumulation but, in some cases, only a partial or diagonal cumulation; the geographically limited scope of cumulation sometimes restricting cumulation to few countries;

(5) the detailed and complex ancillary origin criteria, direct consignment requirements, administration, documentation and verification, which may imply substantial additional cost for GSP transactions.

(i) Addressing the problem of excessively stringent rules of origin by harmonizing and matching origin requirements with the industrial capacity of LDCs as well as simplifying ancillary requirements

The capital importance and the role played by rules of origin in determining market access in preferential trade has recently been reconfirmed during the negotiations of major free trade areas in North America, Africa, as well as in Latin America demonstrating that rules of origin in preferential trade agreements are an independent trade policy instrument regulating market access as much as tariff concessions.[48] Generous product coverage and duty free access concessions granted under unilateral preferences or negotiated under RTAs may be simply nullified if rules of origin requirements do not tally the industrial development of the beneficiary countries.

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[48] See UNCTAD document "Globalization and the international trading system – Issues related to rules of origin", UNCTAD/DITC/TSB/2, 24 March 1998.

In the case of LDCs, rules of origin have largely demonstrated to be, at both the analytical and empirical level, the main obstacle to a better utilisation rate of the available trade preferences on industrial products. Rules of origin that are overly strict and unsound from the point of view of industrial development represent the main market access constraint for LDCs' industrial products and processed foodstuff. In some cases and for certain categories of products an analysis of the utilisation rate of some GSP schemes suggests that the origin requirements are largely responsible for the nullification of the trade preferences and the application of MFN rate for at least three quarters of the exports of LDCs.

In addition, the implications of their requirements may have acted as disincentives to foreign direct investments (FDI) that trade preferences were originally designated to boost. For example, current origin rules require a vertical model of multi-processing manufacturing stages to be conducted in the same country. This may have the perverse effect of discouraging potential investors that, in order to comply with such rules, should invest in production lines and range of products no longer remunerative or having a comparative advantage.

As pointed out earlier, in some cases the requirements of the GSP rules of origin have remained unchanged since the seventies when they were conceived with an industry policy and production technique, based on vertically integrated structure of the manufacturing chain. At present, the production of competitive products on a global scale demands a combination of production factors and inputs from a variety of sources so as to produce an output that is optimal in terms of cost, quality and suitability for different markets. Existing rules of origin, by limiting the capacity of outsourcing inputs and demanding vertically integrated production chains may reflect uncompetitive and inefficient industrial models.

Paradoxically, while tariff preferences were originally conceived to promote industrialization, at present the rules of origin attached to them may have the perverse effects of promoting obsolete models of industrialization applicable in the preference giving countries at the time when such origin requirements were first conceived.

(ii) Rules of Origin in the Clothing Sector

A valuable example of such a paradox may be drawn from the rules of origin requirements applicable in textile and clothing sector. Generally, the rules of origin in this particularly sensitive sector require specific working and processing operations to be carried out on imported inputs in order for the final product to acquire originating status. The following table contains an overview of the various origin criteria applied under different trade arrangements by major trading partners, which are explained in detail in the paragraphs below.

Table 4: Origin requirements for apparel articles ex HS Chapter 62

COUNTRY	PROGRAM	ORIGIN REQUIREMENTS for Chapter 62	SPECIAL PROVISIONS FOR LDCs
EUROPEAN UNION	**GSP (EBA)** **ACP**	Manufacture from yarn (**"double jump"**: from yarn to fabric and from fabric to apparel) *Partial Regional Cumulation* under GSP (ASEAN, SAARC, CACM, Andean Group) *Full cumulation for ACPs under Lomé/Cotonou*	**GSP Derogation** (Laos, Nepal, Cambodia, for selected products, within quotas, subject to annual review): Manufacture from fabric (**"single jump"**) *originating* in ASEAN, SAARC, ACP countries
UNITED STATES	**AGOA**	Manufacture from **US fabrics and yarns** (Duty/Quota-Free) **Manufacture from** sub-Saharan African fabrics wholly formed from US or sub-Saharan African yarn **(Duty-Free within CAP)**	Manufacture from fabric (**"single jump"**): – until 30.09.2004 – Duty-Free within CAP
	NAFTA	Manufacture from fibres (**"triple jump"**: from fibres to yarn, from yarn to fabric, from fabric to apparel)	
JAPAN	**GSP**	Manufacture from fabrics ("single jump")	
SADC	**Free Trade Area**	Manufacture from yarn (**"double jump"**: from yarn to fabric and from fabric to apparel)	**Laying out and cutting of uncut fabric; assembly of cut components by stitching or other appropriate methods; necessary finishing, including addition of trim and other findings, washing and pressing etc.; and packaging of finished items** – For exports from MMTZ to SACU – within quotas – until 2005

The production chain for articles of apparel of cotton, not knitted or crocheted of HS chapter 62 (from the raw material to the finished product) may be summarized as follows:

- carding and combing of raw cotton (HS 5201) ® carded or combed cotton (HS 5203);
- spinning of carded or combed cotton ® cotton yarn (HS 5205-5207);
- weaving of cotton yarn ® woven fabrics of cotton (HS 5208-5212);
- making up e.g. cutting, stitching and finishing operations ® apparel article (ex HS 62).

The rules of origin for products classified under HS Chapters 62 (clothing articles) under the EC current preferential trade arrangements require that when imported input are utilized, the manufacturing process of apparel should start from yarn. Thus, two processing operations (weaving and making up – "double jump") are required to be carried out in the exporting preference-receiving country.

Textile and clothing products have been statutorily excluded from the coverage of the GSP scheme of the United States of America until the recent adoption of the AGOA initiative in favor of designated sub-Saharan African beneficiaries. The rules of origin applicable to apparel articles under AGOA are rather strict, since the trade benefits are substantially contingent on purchases of inputs from U.S. textile firms. Only for LDC beneficiaries and for the first four years of implementation, a "single jump" rule apply, subject to annual

quantitative limitations, whereby the fabric can be imported from non-US, non sub-Saharan African countries.

The difficulties encountered by developing countries and especially LDCs in fulfilling the double transformation rule for textiles and clothing products have been widely debated since the inception of the first set of preferential rules of origin[49]. Any initiative by preference-giving countries directed at improving market access for LDC products can only trigger more effective results in terms of utilization if, among other things, the double-stage processing origin rules for such a relevant industrial sector are amended by adopting modern and appropriate rules of origin.

The most recent negotiations on non-preferential rules of origin in the context of the WCO/WTO and recent initiatives in the field of preferential rules of origin have demonstrated that, in the textile and clothing sectors besides the mere production stages there are other significant manufacturing operations that may be origin-conferring alone or taken in combination.

For instance, manufacturing processes like bleaching, printing, dying, coating, laminating, preparing for spinning, mercerising, texturing or bulking, production of mixed or rubberised fabrics with cotton and man made fibres, are a number of processes which have developed over the years according to trend in fashion and technological progress to produce new and competitive fabrics and clothing. Some of these processes may not be qualified as minimal processing since they may require sophisticated production techniques and should not disregarded when considering origin conferring requirements

As pointed out above, the current preferential rules of origin require double or even triple manufacturing stages to achieve substantial transformation. It is however striking to find that the same concept of substantial transformation lying at the core of the current negotiations on non-preferential rules of origin is not translated into manufacturing stages but rather in assembly operations. In fact, the current text of non-preferential rules of origin for clothing articles ex Chapter 62 provides for the goods to undergo assembly in a single country, i.e. all of the assembly operations following the cutting of the fabric of the parts must be performed in that single country. The rule in this case provides for the manufacture to start from parts, i.e. from cut fabrics or part of garments knitted to shape.

Such a wide difference in origin-conferring operations between preferential and non-preferential origin systems can only partly be explained by their different purpose, since they have been conceived and negotiated starting from the same concept of substantial transformation and, in the case of non preferential rules of origin, neutrality.

In any case, taking into account the wealth of technical and innovative work carried out on rules of origin during the negotiations in the WCO technical committee on rules of origin, the vision of single, double or triple processing stages is simplistic and may, in certain cases, not take into account processing which may imply significant value added and labor skills. An industrial vision centered on such production stages may not fully reflect the interests of the LDCs' textile industry in concentrating their efforts in certain market segments when certain specific manufacturing operations may bring higher value added. Rules of origin should follow to the extent possible a modern vision of the textile and clothing industry which may take into account other production techniques, without being exclusively based on a vertical concept of spinning-weaving-making up.

The necessity to ease the origin rules for textiles and clothing was first recognized in 1993 under the Japanese GSP scheme where the rules were modified by switching from a two-stage requirement to a single manufacturing one.

Another relevant and recent example of the recognition of the need to grant special treatment in this area to LDCs can be found in the amended Protocol on Trade of the Southern African Development Community, whereby SACU has agreed to apply, for the first

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[49] See UNCTAD document "Compendium of the work and analysis conducted by UNCTAD working groups and sessional committees on GSP rules of origin", part I, UNCTAD/ITD//GSP/34, 24 February 1996.

five years from the implementation of the Protocol[50], a "single jump" rule to selected textile and dothing products exported by the LDC members, namely Malawi, Mozambique, Tanzania and Zambia, subject to annual quota limits. The SADC special origin requirement for LDCs differs from the one under the EC non-preferential rules because it includes the process of laying out and cutting of uncut fabrics.

Some flexibility was also shown in the context of the EC GSP and Lomé/Cotonou arrangements, which include statutory provisions on the possibility of granting temporary derogations from the double stage transformation rule in favor of LDC beneficiaries when such a concession is justified by the development of existing industries or the creation of new industries. In the last 4 years, in the context of its GSP scheme, the EC has granted selected Asian LDCs a special derogation from rules of origin. One practical effect of such derogation is to enlarge the geographical application of cumulation (see below for further details on the concept of cumulation) and allow such LDCs to start the manufacture from imported fabrics *originating* in an ASEAN, SAARC or ACP country.

(iii) Different Cumulation Systems and their implications for LDCs

Normally, rules of origin, in the context of autonomous or unilateral contractual preferences, must be complied with within the customs territory of a single beneficiary country. The concept of cumulative origin introduces an element of liberalization by enlarging the customs territory of a beneficiary country to the territories of other countries, e.g. materials or parts imported from other beneficiary countries are considered domestic input and not foreign input.

As far as qualitative aspects are concerned, three kinds of cumulation are used in autonomous or unilateral trade preferences: (i) full cumulation; (ii) diagonal or partial cumulation; (iii) bilateral cumulation or donor-country content.

As far as quantitative aspects are concerned, the concept of cumulation is linked to geographical extension of its scope of application, e.g. all beneficiary countries under the Canadian GSP scheme, or only selected regional associations under the GSP schemes of the US and EC.

The most delicate and complex differences relating to the concept of cumulation belong to the distinction between full and partial cumulation. This distinction has decisive economic effects on the functioning and utilization of trade preferences. Some relevant examples might better clarify the existing possibilities and differences among cumulation systems.

FULL CUMULATION

Generally, full cumulation of origin allows more scattered and divided-labor operations among the beneficiary countries since, in order to fulfill the origin criteria, the distribution of manufacturing operations may be carried out in any beneficiary country (either all beneficiaries or selected regional groupings) according to business exigencies, e.g. working or processing may start in A, continue in B and finish in C according to a cost/benefit analysis. This approach seems to match the globalization and interdependence of production.

The Cotonou trade regime maintains the Lomé donor-country content and *full* cumulation system,[51] which allow an ACP State to regard products that are wholly obtained in the Community, in the overseas countries and territories (OCT) or in any other ACP State as having been wholly obtained in the exporting ACP State. In addition, any working or processing carried out in the Community, in the OCT or in any other ACP State is regarded as

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[50] The implementation of the SADC Trade Protocol containing, *inter alia*, the schedules of tariff reduction, a revised set of rules of origin, an agreement on trade in sugar and a detailed regulation on the settlement of trade disputes among SADC Members, started on 1st September 2000.

[51] See articles 2 and 6 of Protocol 1 on rules of origin to the CPA Agreement.

having been carried out in the exporting ACP State. Under full cumulation, all ACP States are considered, for the purposes of origin determination, as being one single customs territory.[52]

Under the US and Japanese GSP schemes, a system of *full regional* cumulation apples. Member countries of ASEAN, for example, are considered as a single customs territory for origin purposes[53]. Therefore, all processing and manufacturing operations performed in an ASEAN country, irrespective of whether the inputs acquire origin or not, will be counted as local content.

PARTIAL REGIONAL CUMULATION

Under its GSP scheme, the EC applies a system of *partial regional* cumulation to countries belonging to the following regional associations: ASEAN, SAARC, CACM and Andean Group. Under these rules,[54] materials or parts imported by a member country (A) of one of these four groupings from another member country (B) of the same grouping for further manufacture are considered as domestic inputs of member country (A) and not as third-country inputs, provided that the materials or parts are already "originating products" of member country (B). Originating products are those that have acquired origin by fulfilling the individual origin requirements under the EC product-specific rules of origin for GSP purposes.

Under this kind cumulation, only those parts or materials that have already acquired originating status in one member country of a regional grouping can be considered local content when utilized for further manufacturing or incorporated into the finished product manufactured in the final member country.

A system of partial cumulation requires higher valued-added or more complicated manufacturing processes to be performed in one single country in order for cumulation with other beneficiaries to be granted. In the view of preference-giving countries, a partial cumulation system may be able to attract more capital-intensive investments, accompanied by improved technical know-how and labor skills.

Notwithstanding the cumulation facility, compliance with the double stage transformation rule for textile and clothing products under the GSP scheme of the EC remains difficult. In fact, the rule applied by the EC to determine which of the regional partners contributing to the manufacture of the final product is to be considered the country of origin, is based on a value-added criterion (article 72*a* of the ECCC). This implies that the origin is conferred to the exporting beneficiary only if the value-added there is greater than the highest customs value of the inputs originating in any other regional partner.

With a view to simplifying compliance with the double stage transformation rule, the EC has granted three LDCs, namely Cambodia, Laos and Nepal, a special derogation from the rules of origin. The derogation waives the application of the above-mentioned value-added rule in the allocation of the origin among regional partners. It also extends the geographical coverage of the cumulation facility to include, at the same time, all ACP, ASEAN and SAARC countries.

Under the normal cumulative origin rules, Laos, for instance, could only partially cumulate with its ASEAN counterparts. Moreover, to retain the origin, Laos had to carry out making-up operations that resulted in substantial value-added. Thanks to the derogation, Laos is now allowed to import fabric from any country in the ACP, SAARC and ASEAN groupings, without

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[52] ACP countries are also granted an expansion of the concept of regional cumulation through the inclusion of *"neighbouring developing countries belonging to a coherent geographical entity"* (Article 6, paragraph 11, of Protocol 1). In addition, a qualified cumulation system is allowed with South Africa. According to the discipline provided in Article 6, paragraphs 3 to 10, whenever materials *originating* in South Africa are used in the manufacture of a product in an ACP State, such materials are regarded as originating in the ACP only if the value added there exceeds the value of the South African materials. If this is not the case, the product concerned shall be considered as originating in South Africa.

[53] Except that Brunei Darussalam and Singapore have been graduated out of the US GSP program.

[54] See articles 72, 72*a* and 72*b* of the European Community Customs Code (ECCC), as last modified by Commission Regulation 1602/2000 (OJ L 188, 26.07.2000).

having to create the substantial value-added required under the normal rules. Specific operations are, however, still considered minimal and would not, *per se,* be sufficient to retain the origin (see Annex 16 of the ECCC).

The derogation still suffers from certain limitations. First of all, the derogation is subject to annual quantitative limitations. Secondly, it is subject to annual renewal. Thirdly, even though extended in terms of geographical coverage, the cumulation system applicable under the derogation is still a partial one. The three LDCs may import woven fabric or yarn from ACP, ASEAN or SAARC countries, but such woven fabric or yarn must already be originating in those countries**.**

As mentioned-above, the distinction between full and partial cumulative origin has significant economic effects on the functioning and utilization of trade preferences. For instance, an important implication for LDCs deriving from the implementation of the EBA amendment to the EC GSP scheme is actually linked to the different cumulation systems available under the GSP and under the Cotonou Agreement. If an ACP LDC desires to take advantage of the EBA duty/quota-free treatment, it would do so as a GSP beneficiary thus losing the opportunity of fully cumulating with its ACP partners. In fact such opportunity is only available as a party to the Cotonou Agreement. Conversely, if an ACP LDC desires to take advantage of the more favorable Cotonou cumulation system, it would face Cotonou customs duties and quantitative limitations where applicable.

Finally, and as amply described above, while cumulation may be considered a liberalizing principle, if substantial changes and innovations have to be introduced in the field of rules of origin, there is no alternative but changing the product-specific origin requirements. The complex technicalities and paperwork required by the various forms of cumulation represent a burden for exporters, producers and certifying authorities. Experience has shown that in some cases cumulation, both at the regional and bilateral level, cannot be applied in practice. If a certain input is simply not manufactured in the region or in any LDC, cumulation may not serve any purpose.

(iv) Conclusions

Preference-giving countries have in some instances recognized that rules of origin may be restrictive. However, rather than introducing the necessary changes in the product-specific requirements, they have often introduced an element of liberalization by enlarging the scope of the "cumulation" of origin, often taking into account the regional trade initiatives taking place among beneficiary countries.

Beside the case of textiles and clothing products, there other areas where rules of origin remain an obstacle to a better utilization of trade preferences. Raw agricultural products grown and harvested in one country normally do not encounter or experience any origin problems provided they are accompanied by the necessary administrative and documentary evidence. Other relevant examples of products that are affected by the application of strict rules of origin may be drawn from the case of agricultural products like fish, processed agricultural products and foodstuffs, where LDCs may have a comparative advantage and MFN tariff peaks are concentrated. As mentioned above, substantive rules of origin requirements, that do not match the industrial capacity of LDCs and reflecting a vertical view of the production stages of the food industry, are still required under the EU and Japanese GSP rules. The high percentages and method of calculations required by the rules of origin under the GSP schemes of the USA and Canada demonstrate that they have a substantial impact on the utilization of trade preferences.

Intergovernmental debates and discussion on improvements and harmonisation of preferential rules of origin contained in unilateral preferences have yet to result in a pragmatic approach. The common declaration of non-preferential rules of origin contained in the WTO agreement on rules of origin did not bring any substantial progress or discipline in this area.

Since the outset of the GSP rules of origin, historical inertia and the difference in product coverage among the various schemes were the reasons for the lack of progress recorded by the international community in this area.

In the post Uruguay Round era, and bearing in mind the progress registered by the WTO Agreement on Rules of Origin, the conclusions of the last UNCTAD intergovernmental group of experts on rules of origin provided a workable way forward towards a common set of preferential rules of origin for unilateral trade preferences. The conclusions indicated that harmonisation of GSP rules of origin could be conducted on the basis of the work carried out by the World Customs Organisation under the harmonisation work program of the non-preferential rules of origin. While the WCO Technical Committee on Rules of Origin in Brussels has completed most of its technical work, the conclusion of the harmonisation work programme is currently impeded by lack of agreement. During the negotiations conducted in the WCO Committee, the international community has been able to give a fresh and highly technical consideration to the whole issue of origin. A number of technical innovations to old problems have been found, new production methods have been taken into account during the process. This wealth of experience and achievements should provide the substantial technical background for progressing towards a harmonised and updated set of preferential rules of origin to be applied in the context of the initiative for duty/quota free market access in favour of LDCs.

ANNEX: CERTIFICATE OF ORIGIN FORM A

1. Goods consigned from (Exporter's business name, address, country)	Reference No A 83381 **GENERALIZED SYSTEM OF PREFERENCES** **CERTIFICATE OF ORIGIN** **(Combined declaration and certificate)** **FORM A** Issued in _____ (country) See Notes overleaf
2. Goods consigned to (Consignee's name, address, country)	
3. Means of transport and route (as far as known)	4. For official use

5. Item number	6. Marks and numbers of packages	7. Number and kind of packages; description of goods	8. Origin criterion (see Notes overleaf)	9. Gross weight or other quantity	10. Number and date of invoices

11. Certification	12. Declaration by the exporter
It is hereby certified, on the basis of control carried out, that the declaration by the exporter is correct. _____ Place and date, signature and stamp of certifying authority	The undersigned hereby declares that the above details and statements are correct; that all the goods were produced in _____ (country) and that they comply with the origin requirements specified for those goods in the Generalized System of Preferences for goods exported to _____ (importing country) _____ Place and date, signature of authorized signatory

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NOTES (1996)

I. Countries which accept Form A for the purposes of the generalized system of preferences (GSP):

Australia*
Canada
Japan
New Zealand**
Norway
Switzerland
United States of America***

European Union:
Austria
Belgium
Denmark
Finland
France
Federal Republic of Germany
Greece
Ireland
Italy
Luxembourg
Netherlands
Portugal
Spain
Sweden
United Kingdom

Republic of Belarus
Republic of Bulgaria
Czech Republic
Republic of Hungary
Republic of Poland
Russian Federation
Slovakia

Full details of the conditions covering admission to the GSP in these countries are obtainable from the designated authorities in the exporting preference-receiving countries or from the customs authorities of the preference-giving countries listed above. An information note is also obtainable from the UNCTAD secretariat.

II. General conditions

To qualify for preference products must:

(a) Fall within a description of products eligible for preference in the country of destination. The description entered on the form must be sufficiently detailed to enable the products to be identified by the customs officer examining them;

(b) Comply with the rules of origin of the country of destination. Each article in a consignment must qualify separately in its own right; and

(c) comply with the consignment conditions specified by the country of destination. In general, products must be consigned direct from the country of exportation to the country of destination but most preference-giving countries accept passage through intermediate countries subject to certain conditions. (For Australia, direct consignment is not necessary).

III. Entries to be made in box 8

Preference products must either be wholly obtained in accordance with the rules of the country of destination or sufficiently worked or processed to fulfil the requirements of that country's origin rules.

(a) Products wholly obtained: for export to all countries listed in Section I, enter the letter "P" in box 8 (for Australia and New Zealand box 8 may be left blank).

(b) Products sufficiently worked or processed: for export to the countries specified the entry in box 8 should be as follows:

(1) United States of America: for single country shipments enter the letter "Y" in box 8, for shipments from recognized associations of countries the letter "Z", followed by the sum of the cost or value of the domestic materials and the direct cost of processing, expressed as a percentage of the ex-factory price of the exported products; (example "Y" 35% or "Z" 35%).

(2) Canada: for products which meet origin criteria from working or processing in more than one eligible least developed country enter letter "G" in box 8; otherwise "F".

(3) Japan, Norway, Switzerland and the European Union: enter the letter "W" in box 8 followed by the Customs Co-operation Council Nomenclature (Harmonized System) heading of the exported product; (example "W" 96.18).

(4) Bulgaria, Czech Republic, Hungary, Poland, the Russian Federation and Slovakia: for products which include value added in the exporting preference-receiving country enter the letter "Y" in box 8 followed by the value of imported materials and components expressed as a percentage of the f.o.b. price of the exported products (example "Y" 45%); for products obtained in a preference-receiving country and worked or processed in one or more other such countries, enter "PK".

(5) Australia and New Zealand: Completion of the box 8 is not required. It is sufficient that a declaration be properly made in box 12.

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* For Australia, the main requirement is the exporter's declaration on the normal commercial invoice. From A, accompanied by the normal commercial invoice, is an acceptable alternative, but official certification is not required.

** Official certification is not required.

*** The United States does not require GSP Form A. A declaration setting forth all detailed information concerning the production or manufacture of the merchandise is considered sufficient only if requested by the District Collector of Customs.