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Handbook on Duty-Free Quota-Free and Rules of Origin

Part I: Quad Countries

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I. Introduction

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

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

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

- The Everything-But-Arms (EBA) initiative entered into effect on 5 March 2001, providing duty-free and quota-free market access to all products excluding arms, excluding bananas, sugar and rice, for which customs duties are phased out over a transitional period and subject to tariff quotas.
- A significant improvement in the United States scheme was recorded in 1997, when 1,783 new products originating in LDC beneficiaries were granted duty-free treatment In May 2000, the United States promulgated the African Growth and Opportunity Act (AGOA), whereby the United States GSP scheme was amended in favor of designated sub-Saharan African countries to expand the range of products, including textiles and clothing.
- In September 2000, the Canadian Government enlarged the product coverage of its GSP scheme to allow 570 products originating in LDCs to enter its market duty-free. In January 2003, the scheme was greatly improved by expanding product coverage to all products, including textiles and clothing, and new rules of origin with some minor exclusion of selected agricultural products.
- Following a review of the GSP scheme of Japan, conducted in December 2000, the scheme was revised to provide duty-free treatment for an additional list of industrial products originating in LDC beneficiaries. Following a second review in April 2003, an additional list of agricultural products was added for LDCs and duty-free access was granted for all products covered by the scheme for LDCs. A latest significant improvement was made in 2007.

[1] See for an analysis of the performances of the trade preferences for LDCs market access see: Erosion of trade preferences in the Post Hong Kong (China) framework: From trade is better then aid to aid for trade: UNCTAD, 2008, Trade Preferences for LDCs: An early assessment of benefits and possible improvements. UNCTAD/ITCD/TSB/2003/8. December 2003. *Market Access for Least Developed Countries*. UNCTAD/DITC/TCND/4, May 2001.

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

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

(a) *(i) Provide duty-free and quota-free market access on a lasting basis, for all products originating from all LDCs by 2008 or no later than the start of the implementation period in a manner that ensures stability, security and predictability.*

(ii) Members facing difficulties at this time to provide market access as set out above shall provide duty-free and quota-free market access for at least 97 per cent of products originating from LDCs, defined at the tariff line level, by 2008 or no later than the start of the implementation period. In addition, these Members shall take steps to progressively achieve compliance with the obligations set out above, taking into account the impact on other developing countries at similar levels of development, and, as appropriate, by incrementally building on the initial list of covered products.

(iii) Developing-country Members shall be permitted to phase in their commitments and shall enjoy appropriate flexibility in coverage.

(b) *Ensure that preferential rules of origin applicable to imports from LDCs are transparent and simple, and contribute to facilitating market access."*

The present handbook reviews the progress made to implement the Hong Kong (China) Ministerial Decision on the Duty-Free Quota-Free (DFQF) in the light of past initiatives and ongoing negotiations in the context of the Doha round of trade negotiations. It focuses on this first part on the special provisions in favour of LDCs and related rules of origin, as contained in the GSP schemes of the Quad countries, namely the European Community, Japan, the United States and Canada.

A second part of this handbook will focus on the implementation of the Hong Kong (China) Ministerial decision on Duty-Free Quota-Free (DFQF) by other developed countries and developing countries.

II. Historical background and the road leading to the Duty-Free and Quota-Free Initiatives

The foundations

Trade preferences for LDCs has been featuring since long time in the international trading system.

The concept 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):[2]

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

(a) to increase their export earnings;

(b) to promote their industrialization;

(c) to accelerate their rates of economic growth."

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

The Agreed Conclusions established *inter alia* the legal nature of the commitments assumed by the preference-giving countries. It is stated in paragraph 2 of Part IX of the Agreed Conclusions:

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

(a) The tariff preferences are temporary in nature;

(b) Their grant does not constitute a binding commitment and, in particular, it does not in any way prevent :

i. Their subsequent withdrawal in whole or in part; or

ii. The subsequent reduction of tariffs on a most-favoured-nation basis …;

(c) Their grant is conditional upon the necessary waiver or waivers in respect of existing international obligations, in particular the General Agreement on Tariffs and Trade." [3]

In line with the Agreed Conclusions, the prospective preference-giving countries concerned submitted a formal application to the contracting parties to the General Agreement on Tariffs and Trade (GATT) for a waiver in accordance with Article XXV (5) from their obligations under Article I (most favoured nation (MFN) principle) of the General Agreement, so as to permit the

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

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

implementation of a generalized system of preferences. By their decision of 25 June 1971, the contracting parties decided to waive the provisions of GATT Article I for a period of 10 years to the extent necessary to permit developed contracting parties to accord preferential tariff treatment to products originating in developing countries and territories without according such treatment to like products of other contracting parties.[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 Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries) as a supplementary rule which permits them, for an indefinite period of time, to derogate from the MFN clause in order to contribute to the economic development of the developing countries.

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

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

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

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

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

From Singapore to Hong Kong, China

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

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

access on an autonomous basis, aimed at improving the opportunities offered by the trading system for those countries.

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

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

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

However, a closer analysis of the preferential treatment provided under the Lomé/Cotonou Agreement and former GSP trade revealed that the comprehensive product coverage and preferential rates granted to LDCs were not necessarily equivalent to duty-free access.[5]

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

The detailed list of these agricultural products that were not provided duty-free access but selected reduction of duties was contained in an annex of joint declaration attached to the former Lomé Convention. The CPA was no exception to this rule, and the Declaration XXII titled – "Joint Declaration concerning agricultural products refereed to in Article 1(2)(A) of Annex V" – attached to the text of the CPA contains the details of the concession. These agriculture specific concessions concerned practically all products covered by the common agricultural policy. Some of these countries provided more favorable market access conditions to LDCs and sub-Saharan African countries (35 out of 48 LDCs are African).

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

[5] The market access conditions under former Lomé Convention and European Union GSP for LDCs were not equivalent. For decades, the preferences granted under Lomé conventions were more generous than those provided under the European Union GSP for LDCs. Only Council Regulation 602/98 (OJ L 80, 18.3.98, p.1) granted LDCs not party to the Lomé IV Convention preferences almost equivalent to those enjoyed by signatories.

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

In September 2000, the Canadian Government enlarged the product coverage of its GSP scheme to allow 570 products originating in LDCs to enter its market duty-free. In 2003 the Canadian Government launched the initiative to provide substantially[6] duty-free and quota-free to LDCs with favorable rules of origin.

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

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

Unless such conditions are met, the various initiatives to faithfully implement the Duty-Free Quota-Free commitment in the Hong Kong (China) Ministerial Declaration would constitute no more than a modest improvement of the market access that LDCs were already granted under the existing GSP schemes or other preferential arrangements.

An initial assessment of the Hong Kong (China) decision and progress to date

The LDC Group has been negotiating in WTO for duty-free quota-free market access (DFQFMA) with simple and transparent Rules of Origin since at least the start of the Uruguay Round of trade negotiations in 1995.[8] In the preparations for the Hong Kong (China) Ministerial Meeting, held in December 2005, the LDCs made a concerted effort to get an implementable decision passed by the Ministers. The decision that was obtained in Hong Kong (China) was better than had been obtained in past negotiations but still fell short of the expectations of the LDCs.

6 Dairy, poultry and egg products are not covered by the Canadian initiative.

7 See WT/COMTD/N/2/Add.14 of 12 April 2007.

8 See " Erosion of Preference in the Post Hong Kong Framework : from Trade is Better than Aid to Aid for Trade", UNCTAD 2008.

The Hong Kong (China) Ministerial Decision on DFQFMA is contained in Annex F: Special and Differential Treatment, which states:

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

(a) (i) Provide duty-free and quota-free market access on a lasting basis, for all products originating from all LDCs by 2008 or no later than the start of the implementation period in a manner that ensures stability, security and predictability.

(ii) Members facing difficulties at this time to provide market access as set out above shall provide duty-free and quota-free market access for at least 97 per cent of products originating from LDCs, defined at the tariff line level, by 2008 or no later than the start of the implementation period. In addition, these Members shall take steps to progressively achieve compliance with the obligations set out above, taking into account the impact on other developing countries at similar levels of development, and, as appropriate, by incrementally building on the initial list of covered products.

(iii)Developing-country Members shall be permitted to phase in their commitments and shall enjoy appropriate flexibility in coverage.

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

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

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

However, progress on preparing modalities for the implementation of the DFQFMA decision made at Hong Kong (China) has been slow. The last position is given in the Revised Draft Modalities of the Agriculture and Non-Agricultural Market Access (NAMA) Chairs contained and TN/AG/W/4/Rev.3 of10 July 2008/MA/W/103 and in TN/MA/W/103/Rev.2 of 10 July 2008 respectively. These latest texts of the NAMA and Agricultural Revised Draft Modalities addressing market access for LDCs recorded in the case of NAMA some limited improvements with respect to the original Hong Kong (China) decision. In particular the NAMA text was articulated as follows:

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

(a) fully implement the Decision;

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

(c) progressively achieve compliance with the Decision referred to above, taking into account the impact on other developing countries at similar levels of development; and

(d) permit developing country Members to phase in their commitments and enjoy appropriate flexibility in coverage.

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

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

From the point of view of the LDCs this latest draft read in conjunction with the Hong Kong (China) Ministerial decision on DFQFMA still maintain a number of weaknesses as spelt out here below:

- Although the decision covers 100 per cent of products originating from all LDCs the loop-hole allowing developed countries to self-assess whether they are in a position to provide 100 per cent product coverage still remain. There is no direct reference on how and when the remaining 3 per cent is going to be implemented Given that the export bases of most LDCs are extremely limited and that developed countries have about 10,000 tariff lines, an exclusion of 3 per cent of tariff lines amounts to about 180 to 300 tariff lines.[9] This may not sound much but if the 3 per cent exclusions are of lines that constitute LDC exports, then the provision of 97 per cent DFQFMA to LDCs is commercially meaningless.

[9] For a detailed calculation of the tariff lines See UNCTAD (2008). Erosion of Preference in the Post Hong Kong (China) Framework : from Trade is Better than Aid to Aid for Trade".

- Paragraph 16 provides only for the notification of the products covered under the commitment to provide DFQF for 97 per cent of tariff lines. This commitment is restating the obvious since the QUAD countries are actually already complying with the 97 per cent requirement[10].

- The second paragraph concerning the dates may be read as a backtracking when compared with the original Hon Kong (China) text. Most strikingly the NAMA text does not contain or even mentioning the implementation date or process for the inclusion of the remaining 3 per cent or a time limit set for the implementation.

- Although the Hong Kong (China) Ministerial Declaration envisages developing country Members providing LDCs with DFQFMA, the language used in the Declaration and again in the NAMA text is not binding. This was intentional as the LDCs needed the support of the developing countries to get the decision on DFQFMA passed at Hong Kong (China). As it was, some developing countries, in particular Pakistan, objected strongly to the provision of DFQFMA to all LDCs on the grounds that this provision could adversely affect their exports. This is the reason for the inclusion of the phrase "*taking into account the impact on other developing countries at similar levels of development"* in the article and reiterated in the NAMA language.

- The only limited improvement that may be recorded in the NAMA text is the explicit reference, although of a not binding nature, to use the proposal on rules of origin tabled by the LDC when the Developing countries are designing rules of origin for DFQF.

- The monitoring mechanism contained in paragraph 17 although representing an improvement remains weak. No sanction can be imposed on developed countries that do not comply with the spirit and letter of the decision. Legally, one may argue that commitments entered into through Ministerial decisions are enforceable and LDCs can exercise their right to get these decisions enforced through the WTO's Dispute Settlement Understanding (DSU). However, even ignoring the strengths and weaknesses of such a legal case, the track record of LDCs' participation in DSU proceedings suggests that such a course of action is unlikely[11].

In terms of product coverage the value of the DFQFMA initiative is expected to derive from further concessions to be made by the United States in the GSP schemes for LDCs or extend AGOA benefits to non African LDCs[12]. The EBA Initiative of the EU more than fully satisfies

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[10] Some would object to such assertion. However a calculation of the tariff lines has been made in UNCTAD (2008). *Erosion of Preference in the Post Hong Kong (China) Framework : from Trade is Better than Aid to Aid for Trade*.In contrast one could consider the latest WTO report where the US is reported as granting a coverage of 82% of tariff lines.

[11] See Inama S Mavroidis P and Horn H *What should developing countries be requesting in the Doha Round with regard to Dispute Settlement Understanding*? Mimeo.

[12] As mentioned above, on a gross estimate average of 10,000 tariff lines for the United States and Japan, the 97 per cent figure allows for the exclusion of about 300 tariff lines. Given the concentration of exports from LDCs into a few tariff lines, the exclusion of 300 tariff lines will exclude most, if not all, exports from LDCs. According a calculation contained in the UNCTAD study *Erosion of Preference in the Post Hong Kong Framework : from Trade is Better than Aid to Aid for Trade*" (UNCTAD, 2008), in the case of the United States market, the trade flows of products from LDCs in the 3 per cent of tariff lines not covered by the GSP scheme was, in 2004, slightly higher than $5 billion, which is almost the same value of exports from LDC not covered in the GSP scheme. This means that actual market access under the current United States GSP scheme is already complying with the commitment to achieve the 97 per cent requirement at the tariff-line level. From a cursory glance at the top 300 most exported items from LDCs to the United States, it is evident that almost all products are textiles and garments.

the 97 per cent requirement and, with the improvements made by the Japanese in April 2007, Japan also satisfies the 97 per cent requirement.

With the initiative of 2003 Canada also fulfill the 97 per cent requirements. By contrast, in the case of the United States, there remains considerable scope for improvement to achieve the 97 per cent requirement. This could be done by expanding product coverage for textiles and clothing.

In terms of rules of origin, there is much that could be done to improve the existing rules of origin under the respective initiative for LDC by Quad countries. With the notable exception of the Canada that in 2003 revised its rules of origin for textile and clothing as contained in this handbook, the remaining rules of origin under the other Quad countries are virtually unchanged since the inception of the first GSP schemes back in the early seventies.

It follows that the implementation of the commitments contained in the Hong Kong (China) Ministerial, as well as its timing, needs to be closely monitored, as the definitions of duty- and quota-free for 97 per cent at the tariff-line level are not always clear and are open to different interpretations as demonstrated by the various NAMA texts.

It is clear from this analysis that the main market where progress is needed, in terms of the DFQFMA decision, is the United States, especially in textiles and clothing. In the case of the EU and Japan, progress has been made in case of market access but nothing has been achieved in terms of making the Rules of Origin that apply to the DFQFMA provision more transparent and simple in a way that will contribute to facilitating market access.

On 18th January 2007, the Office of the United States Trade Representative (USTR) issued a request for comments from the public on the 2005 WTO Ministerial Decision on Duty-Free Quota-Free Market Access for the Least Developed Countries. However, it is not clear at this point what kind of follow up has taken place since. The discussions over the extension of the current United States GSP during 2008 may represent a significant opportunity for LDCs to resume such discussions[13]. The USTR also asked the U.S. International Trade Commission to conduct a study at that time of the issue, but the results of this report were confidential to the USTR; neither the USTR nor the USITC has released even a summary of the report's observations and conclusions.

Canada has revised its rules of origin in 2003 and, more recently, the EC is planning to review its GSP Rules of Origin[14]. The LDCs made their own proposal[15] that is still to be discussed in a satisfactorily manner with the Quad counterparts.

The Hong Kong (China) decision provides that developing countries "in a position to do so" should also provide duty- and quota-free treatment to LDCs. Annexes to a WTO secretariat report[16] on market access to LDCs listed a number of developing countries as granting trade preferences to LDCs under different trade arrangements such as the Global System of Trade Preferences (GSTP) and other regional South–South trade agreements.

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13 For latest development see WT/COMTD/W/149/Add.5 of 24 November 2008.

14 See DG TAXUD (2005). The rules of origin in preferential trade arrangements: Orientations for the future. COM (2005) 100 final, Brussels, 16 March 2005.

15 See WTO document TN/CTD/W30 presented by Zambia on behalf of the LDC group.

16 WTO document WT/CMTD/LDC/W/35.

In this context, it may be noted that as early as June 1999, WTO members agreed to a waiver[17] to provide an instrument for developing country members to offer preferential tariff treatment to LDCs' products. As it emerged from paragraph 2 the waiver, trade preferences granted to LDCs by developing countries were designed to be of a non-discriminatory and non-reciprocal nature as in the GSP: "Developing country Members wishing to take actions pursuant to the provisions of this Waiver shall notify to the Council on Trade in Goods the list of all products of least developed countries for which preferential tariff treatment is to be **provided on a generalized, non-reciprocal and non-discriminatory basis** (emphasis added**)** and the preference margins to be accorded. Subsequent modifications to the preferences shall similarly be notified."

By their very nature, trade preferences granted under the GSTP and other South–South regional initiative arrangements are available only to countries that are members of the GSTP or other South–South agreements. It follows that preferences granted under those initiatives are not unilateral as specified in the Hong Kong (China) Declaration.

As of January 2007, this waiver had been utilized only by the Democratic People's Republic of Korea.

It is clear from the annexes of the above-mentioned WTO report that South–South preferences have been implemented under regional initiatives or using the GSTP, rather than a non-discriminatory, non-reciprocal instrument as envisaged in the 1999 waiver. This may be a legitimate choice. However, further efforts may be devised to further improve trade preferences in accordance with the spirit and letter of the 1999 waiver.

In monitoring the implementation of the Hong Kong (China) Ministerial the following issues need to be addressed and closely monitored:

(a) The timing, form and legal modalities to faithfully implement the Decision to grant DFQF especially for the remaining 3 per cent of the products in the United States market and the need to impart stability to trade preferences granted under this initiative;

(b) The identification of products where an expansion of product coverage would be required from Developing countries to LDCs and inclusion of such product coverage in a preferential tariff treatments to be provided on a generalized, non-reciprocal and non-discriminatory basis;

(c) The establishment of a mechanism to implement the commitment to "Ensure that preferential rules of origin applicable to imports from LDCs are transparent and simple, and contribute to facilitating market access". The LDC group has tabled a proposal that need to be seriously discussed in the framework of a dialogue leading to commercially meaningful rules of origin moving away from obsolete requirements and administrative procedures dating back to the seventies.

As far as rules of origin are concerned it has been amply demonstrated that the mere granting of tariff preferences or duty-free market access to exports originating in LDCs does not automatically ensure that the trade preferences are effectively utilized by beneficiary countries[18]. Preferences are conditional upon the fulfillment of an array of requirements which, in many instances, LDCs may not be able to comply with. Similarly, the design and structure of the legal

[17] WTO document WT/L/304 of 17 June 1999.

[18] See *Market Access for Least Developed Countries*. UNCTAD/DITC/TCND/4. May 2001 and S.Inama *Market access for LDC Market Access for LDCs: Issues to be addressed*, Journal of World Trade, January 2002.

framework through which these preferences are made available to LDCs might not properly reflect LDCs' interest of stability and security necessary to attract the necessary export-oriented investments to generate supply capacity.

As a result, even when wide product coverage, such as those granted under the DFQF initiative, suggests potential benefits in terms of preferential market access to LDCs, the actual utilization of such preferences could be limited. A clear indicator of the effectiveness of trade preferences is the utilization rate. Such an indicator is the ratio of the amount of imports, which actually received trade preferences at the time of customs clearance in the preference giving country, to the amount of dutiable imports eligible for preferences. This is the most realistic measurement of the effectiveness of trade preferences.

The GSP rules of origin exist to identify the goods produced in the beneficiary countries and to ensure that the benefits provided are strictly confined to the products originating in those countries. One of the main purposes of the rules of origin is, on one hand, 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. On the other hand, an excessively stringent rule of origin may lead to under utilization of trade preferences or even worse, to import substitution policies and investments.[19]

During the debates in the UNCTAD committees, the shortcomings of the GSP origin systems and consequent obstacles to full GSP utilization were 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 been made regarding some specific provisions of individual schemes, major problems in fulfilling the origin requirements still persist after almost 30 years since the inception of the GSP. At present, the main shortcomings encountered by preference-receiving countries with regard to rules of origin requirements remain almost the same as those encountered and discussed in the first UNCTAD Working Groups on rules of origin in the late 1970s and can be grouped under the following main headings:

(a) Over-restrictiveness of the basic origin criteria to permit the use of imported materials and components in relation to the industrial capacity of the least developed beneficiary countries;

(b) 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;

(c) The diversity of rules applied by preference-giving countries with respect to the basic criteria (e.g. process and percentage criteria); the differing percentage criteria or requirements in virtually all GSP origin systems; the difficulties in calculating allowable and non-allowable costs incurred in production; and the substantial differences between individual schemes regarding additional origin requirements. These differences create difficulties for exporters, as products may qualify in one

[19] For a detailed discussion on the pros and cons of rules of rules of origin see "Lessons learned in drafting rules of origin under DFQF and EPA negotiations" (UNCTAD, 2009).

preference-giving country, but not in a neighbouring market, and this may cause additional administrative adjustments;

(d) The limited recognition of rapidly expanding economic cooperation and trade among developing countries generally and subregional integration in particular, which would require generalization of cumulation; the limited qualitative scope of cumulation allowing not full cumulation but, in some cases, only partial cumulation; and the geographically limited scope of cumulation sometimes restricted to countries belonging to selected regional groupings;

(e) The detailed and complex ancillary origin criteria, direct consignment requirements, administration, documentation and verification, which may entail substantial additional costs for GSP transactions.

Chapter 5 of this handbook contains the proposal on rules of origin in the context of the DFQF initiative put forward by the LDC with some introductory notes.

The provision of DFQFMA to LDCs by developed and developing countries, using simple and transparent Rules of Origin, coupled with meaningful assistance provided to remove supply-side constraints, has the potential of making a significant impact on increasing economic growth and reducing poverty in the poorest countries of the world.

Table 1. Summary comparative tables of the Quad preferences and rules of origin in favour to LDCs

1A. Market access

Country / group of countries	Product coverage	Depth of tariff cut	Exceptions	Safe-guards	Validity	Other requirements /Conditionalities
European Community (EBA) Japan	ALL products except arms 8,859 tariff lines	Duty free Duty-free	HS chapter 93 (Arms), bananas, rice and sugar for which some duty-free tariff quotas were opened since 2001.In the course of 2009 all products will also be covered with no quotas[20]. Rice	Yes Yes	Indefinite	Temporary suspension of preferences possible if certain conditions are not met.
Former EU-Cotonou Partnership Agreement	All products.	Duty-free except for products covered by the Common Agricultural policies where specific reduction applied	Products covered by the Common Agricultural policy were object of specific concessions	Yes	Expired on 31/12/2007	Only available to ACP LDCs.
Canada	All products except some diary	Duty-free	Some diary products	Yes		
United States GSP	Around 4800 articles defined at eight digit tariff line level[21]	Duty-free	Most textiles, watches, footwear, handbags, luggage, flat goods, work gloves, and other leather apparel., steel, glass, and Electronics.	Yes	31/12//2008	.Some conditionalities requirements on eligibility
AGOA	Around 6700 l products [22]	Same as above	Some products still excluded	Same as above	2015	Some conditionalities requirements on eligibility

[20] See for specific phasing out of the remaining quotas article 11 of EC regulation 738/2008 in Official Journal L-211 of 06/08/2008.

[21] Figures calculated from United States guidebook, march 2008 available at http://www.ustr.gov/ assets/Trade_Development/Preference_ Programs/GSP/asset_upload_file666_8359.pdf

[22] The United States reports that in 2006, over 98 percent of United States imports from AGOA-eligible countries entered the United States duty-free. For product-specific rules of origin see below in the corresponding section.

1B. Rules of origin

Country / group of countries	Origin criteria	Requirements	Numerator	Denominator	Percentage Level	Administrative requirements
European Community (EBA) Japan	Product-specific rules for all products. CTH as a general rule and single list of product specific rules .	Change of HS heading with or without exemptions, specific working or processing requirements and/or maximum percentage of imported inputs or combinations of requirements	Customs value of imported inputs, or the earliest ascertainable price paid in the case of materials of unknown, undetermined origin	Ex-works price (FOB price in the case of Japan)	Maximum imported inputs 5%, 20%, 25%, 30%, 40%, 47.5%, 50% where used in the single list.	GSP- Form A compulsory for all products (EBA). Form A to be stamped by officially designated government authority. (Chamber of Commerce accepted in the case of Japan.) GSP – Form A needed only for certain products (Japan)
Former EU-Cotonou Partnership Agreement	Product-specific rules for all products.	Same as above	Same as above	Same as above	Same as above	Form EUR 1 needed. Self-certificating procedures available.
Canada	One single rule across the board 40% for DC, 60% for LDCs, for all products **except textile** and apparel articles where product specific rules apply	Maximum amount of imported inputs	Local content	Ex-factory price	Minimum 40% for LDCs	GSP-Form A not required. Self-certification possible. Special certificate of origin for textile and clothing
United States	One single percentage (35%) rule across the board for all products	Minimum local content requirement	Cost of materials produced in preference-receiving country plus the direct cost of processing carried out there	Ex-factory price or appraised value by United States customs	Minimum 35%, exact % must be written in certificate of origin	No certificate of origin required.
AGOA	Same as above with the exclusion of textiles and clothing [23]	Same as above Product specific origin for textiles and clothing	Same as above	Same as above	Same as above	Special visa requirements apply for textiles and clothing

[23] For product-specific rules of origin see below in the corresponding section.

III. European Community

A. General overview

The preferential market access conditions of the European Community (EC) for LDCs' exports are regulated by two main trade arrangements:

(a) The EC GSP scheme which as of 5 March 2001 (the date of the 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 with special provisions applicable to three sensitive products, namely rice, sugar and fresh bananas (where customs duties have been phased out over specific transitional periods);

(b) The recently signed EPAS agreements that are replacing the ACP–EC Cotonou Partnership Agreement[24] (the CPA, successor to the Lomé IV Convention) that was in force until 1 January 2008.[25]

The introduction of the EBA amendment to the EC GSP scheme brought a substantial improvement in the GSP treatment granted to LDC beneficiaries, which has made it a more favourable programme in terms of product coverage, depth of tariff cuts and stability of market access than the previous Lomé/Cotonou trade regime. The EBA was incorporated into the Council Regulation of the EC GSP scheme.

It is worth noting that, before the implementation of the EBA initiative, ACP LDCs 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 were those LDCs that were not members of the ACP group, namely Afghanistan, Bangladesh, Bhutan, the Lao People's Democratic Republic, 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 laid 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 were 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 by which the EC committed itself on a contractual basis to ensure until end of 2007 non-reciprocal preferential market access conditions for ACP products. With a view to giving greater stability to the EBA-GSP preferences for LDCs, the EC has undertaken to

[24] 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).

[25] 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).

maintain the special preferential treatment in favour 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 were characterized by more favourable conditions than the ones available under the pre-EBA GSP for LDCs. Even if the 1998 extension in GSP coverage improved the benefits for non-ACP LDCs,[26] market access conditions for ACP LDCs were, most of the time, still more favourable than the ones for non-ACP LDCs under the GSP, especially in the agriculture sector. In fact, all the sensitive agricultural concessions that are granted under Lomé/Cotonou special protocols and quotas and only apply to few ACPs had not been extended to the non-ACP LDCs.

With the expiry of the ACP–EU Cotonou Partnership Agreement on 31st December 2007, all LDC continued to benefit from the EBA. In addition to the EBA those LDCs that initialled an Interim EAC-EC Economic Partnership Agreement (IEPA) also benefit from the EU market access offer under this latter agreement. The Interim EPAs are a framework text that set the foundations for pursuing negotiations towards the achievement of the full EPA. The latter would be a binding legal text where the signing Parties will engage in reciprocal trade concessions covering goods as well as services and the development aspects of multilateral trade liberalization.

Table 2 below provides an indication of which countries have signed or initialled EPAs, which countries are on the Generalized System of Preferences (GSP) and which countries are on the EU Everything-but-Arms (EBA, this also being a GSP yet different from the one granted to the Developing Countries) as of 1st January 2008. South Africa is not included in the table as it did not sign or initial an EPA[27] and has continued to trade with the EU under the existing bilateral Trade and Development Cooperation Agreement (TDCA).

[26] 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 to implementing the conclusions of the First WTO Ministerial Meeting, held in Singapore in 1996.

[27] South Africa has not signed an interim EPA although went to Brussels in November 2007 with the intention of signing. The main hurdle for South Africa in signing an EPA was the requirement to agree to a Most Favoured Nation (MFN) clause which committed each country signing the SADC EPA to provide to the EU any trade concession that it would, in the future, grant to a third partner in trade having more that one percent share of world merchandised exports. This would mean that South Africa would have to provide trade concessions negotiated with countries such as China to the EU in addition to those already granted under the EPA.

Table 2. Market Access status of ACP countries as regards interim EPAs (non-LDCs are denoted in bold)

Region	EPA (9 LDCs, 26 non-LDCs)	EBA (32 LDCs)	GSP (10 non-LDCs)
Eastern and Southern Africa	**East African Community (EAC)** (Burundi, **Kenya**, Rwanda, United Republic of Tanzania, Uganda), Comoros, Madagascar, **Mauritius, Seychelles**, **Zimbabwe**	Djibouti, Eritrea, Ethiopia, Malawi, Somalia, Sudan, Zambia	
SADC	**Botswana,** Lesotho, **Namibia,** Mozambique, **Swaziland**, Angola		
Caribbean	**Antigua and Barbuda, Bahamas**, **Barbados, Belize, Dominica, Dominican Republic, Grenada**, **Guyana**, Haiti, **Jamaica, Saint Kitts and Nevis, Saint Lucia**, **Saint Vincent and the Grenadines, Surinam**, **Trinidad and Tobago.**		
Central Africa	**Cameroon**	Central African Republic, Democratic Republic of the Congo, Chad, Equatorial Guinea, São Tome	**Gabon**, **Congo**
Pacific	**Papua New Guinea**, **Fiji**	East Timor, Kiribati, Samoa, Solomon Islands, Tuvalu, Vanuatu	**Cook Islands**, **Tonga, Marshall Islands**, **Niue, Micronesia**, **Palau**, **Nauru**
West Africa	**Côte d'Ivoire**, **Ghana**	Benin, Burkina Faso, Cape Verde, Gambia, Guinea, Guinea-Bissau, Liberia, Mali, Mauritania, Niger, Senegal, Sierra Leone, Togo	**Nigeria**

As can be seen from the table, all member States of the three major Economic Communities in the Eastern and Southern African region – recognized by the African Union as building blocks of the African Economic Community (AEC), these being COMESA, EAC and SADC except South Africa – are either trading with the EU under the EBA initiative or under the EPA framework.

B. The "Everything But Arms" Initiative

Before the introduction of the EBA amendment, which substantially improved the market access conditions of LDCs, the extremely high trade-weighted coverage (99.9 per cent)[28] appeared to provide little scope for improving market access for LDC products. However, a closer analysis of the preferential treatment provided under the Lomé/Cotonou Agreement and former GSP trade revealed that the product coverage and preferential rates granted to LDCs were not necessarily equivalent to duty-free access.[29]

The structure of the duties applicable to imports into the European Union is rather complex. Many agricultural products face a combination of *ad valorem* and specific duties, depending on the specific agricultural product and on its components – for example, the duty varies according to the presence or otherwise, in different percentages, of certain ingredients/inputs. For example, many tariffs applicable to products of the food industry (sugar confectionery, cereal preparations, chocolates, etc.) vary according to the content of sugar and milk fat contained in them. In addition, entry prices (and relative tariffs) are applicable to imports of vegetable and fruit products. Thus, exports may face different duty rates in relation to the time period in which they are exported to the European Union. Similarly, for products such as meat and dairy products, cheese, tomatoes, mandarins and some cereals, preferences under the Lomé/Cotonou Agreement were limited by ceilings or tariff quotas. Finally, four agricultural products, namely bananas, beef, sugar and rum, were covered separately by specific regulations in protocols.[30]

A closer analysis provided evidence that the wide product coverage provided by the European Union under the former Cotonou Agreement and the pre-EBA GSP for LDCs was not equivalent to full product coverage/duty-free access. More specifically, there was considerable scope for eliminating all specific duties in the agricultural sector by abolishing or reducing the entry-price system and removing the remaining tariff quotas applicable under the Cotonou Agreement.

The EBA improved considerably the preferential market access granted to LDCs beyond the preferences provided by the former Cotonou Partnership Agreement (CPA) and the former European Union GSP for LDCs. Under the EBA amendment, all products are admitted duty and quota-free for an unlimited period of time, except bananas, sugar and rice, in respect of which customs duties have been phased out over a transitional period. All dutiable products that were previously granted only a margin of preference or were subject to quantitative limitations are now given duty-quota-free treatment. Most importantly, the amendment abolished the specific duties and entry prices that were previously applicable to certain categories of agricultural and processed foodstuffs under both the CPA and the GSP. The minimum price limitation applied to sugar as further explained below is the only exception.

Another important feature of the EBA is the stability given to these preferences. In fact, even though the EBA is an integral part of the European Union GSP scheme, its duration is not subject to the periodic GSP reviews or to time limits. By the same token, the initiative is subject to all the disciplines and various limitations of the GSP scheme, such as the unilateral and

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[28] Trade-weighted coverage is given by matching a covered product with LDC trade (this is the main indicator utilized in the study to assess the relevance of the preferential schemes for LDCs).

[29] See for further details: *Market Access for Least Developed Countries*. UNCTAD/DITC/TCND/4. May 2001

[30] However, their relevance for ACP LDCs is limited to Somalia (bananas), Madagascar (beef and sugar) and Malawi, Uganda and the United Republic of Tanzania (all for sugar).

unbound character of the GSP, the provisions on temporary withdrawal of the preferences (Article 22 of Regulation 2320/98, specially reinforced by the EBA amendment itself), strengthened safeguard provisions and rules of origin.

Most recently, EBA legislation was extended [31] as part of the GSP legislation till 2011. However article 32, paragraph 2 of Regulation specifically provides that such expiry date does not apply to the special arrangement for the least developed countries, nor, to the extent that they are applied in conjunction with that arrangement, to any other provisions of this Regulation.

It is worth to mention that under EBA the LDC countries are those recognized and classified by the United Nations. For a country no longer classified by the United Nations as a least developed country, a transitional period is established to alleviate any adverse effects caused by removal of the tariff preferences granted under the EBA as further detailed below.

In spite of these improvements, a significant limitation of the EBA may be found in the absence of improvement in the field of rules of origin since previous GSP rules are still applicable. Thus, given the current cumulation regime applicable under the GSP, some ACP/LDCs may be placed in an unfavourable situation with respect to the cumulation regime granted to LDCs under the interim EPAs (see below for the different cumulation systems).

C. EC GSP scheme for LDCs: Product coverage and tariff treatment

The current EBA extends duty-quota-free access to all products originating in LDCs, except arms and ammunition falling within HS Chapter 93.[32] The EBA coverage 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. For most of such products, the pre-EBA GSP used to provide a percentage reduction of MFN rates, which would apply only to the *ad valorem* duties, thus leaving the *specific* duties still entirely applicable.

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

- **Fresh bananas (CN code 0803 0019).** The EBA provided for full liberalization between 1 January 2002 and 1 January 2006 by reducing the full Community tariff by 20 per cent every year. Such liberalization is now completed.
- **Rice (HS 1006)**. Customs duties on rice will be phased in 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 this quota were based on best LDC export levels to the EC in the past years, plus 15 per cent. The quota grew by 15 per cent every year, from 2,517 tons (husked-rice equivalent) in 2001/2002 to 6,696 tons in 2008/2009 (the marketing year starts in September and finishes in August of the following year).

[31] Council regulation applying a scheme of generalized tariff preferences for the period from 1 January 2009 to 31 December 2011 and amending Regulations (EC) No 552/97, No 1933/2006 and Commission Regulations (EC) No 1100/2006 and No 964/2007 published in the Official journal L 211 of 6 august 2008.

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

- **Sugar (HS 1701).** Full liberalization 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 enter 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 will be excluded from the above calculations so as to uphold the viability of the Protocol.

Table 3. 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.								

As far as the rice and sugar are concerned the latest Council regulation[33] provides as follows:

The EC common Customs Tariff duties on the products under tariff heading 1006 shall be reduced by 80 per cent until 31 August 2009, and suspended entirely with effect from 1 September 2009. The EC common Customs Tariff duties on the products under tariff heading 1701 shall be reduced by 80 per cent until 30 September 2009, and suspended entirely with effect from 1 October 2009.

A provision contained in paragraph 4 of article 11 reintroduce a system of minimum prices for import of sugar after the liberalization date of 30 September 2009 .For the period from 1 October 2009 to 30 September 2012 the importer of products under tariff heading 1701 shall undertake to purchase such products at a minimum price not lower than 90 per cent of the reference price (on a c.i.f. basis) set in Article 3 of Council Regulation (EC) No 318/2006 of 20 February 2006 on the common organization of the markets in the sugar sector for the relevant marketing year.

In the interim period till the end of 2009 tariff quotas are opened for rice and sugar as follows:

Until Common Customs Tariff duties on the products under tariff headings 1006 and 1701 are entirely suspended in a global tariff quota at zero duty shall be opened for every marketing year for products under tariff heading 1006 and subheading 1701 11 10 respectively, originating LDCs.

[33] **Council Regulation:** applying a scheme of generalized tariff preferences for the period from 1 January 2009 to 31 December 2011 and amending Regulations (EC) No 552/97, No 1933/2006 and Commission Regulations (EC) No 1100/2006 and No 964/2007 published in official Journal L 211 of 6 August 2008

The tariff quotas for the marketing year 2008/2009 shall be equal to 6 694 tonnes, husked rice equivalent, for products under tariff heading 1006 and 204 735 tonnes, white sugar equivalent, for products under subheading 1701 11 10.

Graduation from LDC Status

When a country is excluded by the United Nations from the list of the least developed countries, it shall be withdrawn from the list of the beneficiaries of this arrangement. The removal of a country from the arrangement and the establishment of a transitional period of at least three years shall be decided by the Commission, in accordance with the procedure referred to in Article 27.4.

D. Temporary withdrawal of the EC GSP treatment

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

(a) The serious and systematic violation of principles laid down in the conventions listed in Part A of Annex III[34], on the basis of the conclusions of the relevant monitoring bodies;

(b) The export of goods made by prison labour;

(c) Serious shortcomings in customs controls on the export or transit of drugs (illicit substances or precursors), or failure to comply with international conventions on money-laundering;

(d) Serious and systematic unfair trading practices which have an adverse effect on the Community industry and which have not been addressed by the beneficiary country. For those unfair trading practices which are prohibited or actionable under the WTO Agreements, the application of this Article shall be based on a previous determination to that effect by the competent WTO body;

(e) The serious and systematic infringement of the objectives of regional fishery organisations or arrangements of which the Community is a member concerning the conservation and management of fishery resources.

Temporary withdrawal is not automatic, but follows the procedural requirements laid down in articles 17 to 19 of the Regulation as summarized below:

1. Consultation

When the Commission or a Member State considers that there are sufficient grounds for an investigation, it shall inform the GSP Committee and request for consultations, which should take place within 1 month.

[34] See annex 3 of this handbook

2. Investigation

Following the Consultation, the Committee may decide within 1 month whether to initiate an investigation. The Commission shall:

- Announce the initiation of the investigation in the *Official Journal of the European Union* and notify the country concerned; and
- Commence the investigation that should be completed within one year. The duration of the investigation may be extended if necessary.

During the investigation, the Commission may (Article 18, paragraphs 3 to 5):

- Seek all information it considers necessary, including the assessment, comments, decisions made by the relevant supervisory bodies of the United Nations, the ILO and other competent international organizations;
- Verify the information with economic operators and the competent authorities of the beneficiary country concerned;

3. Findings

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 Union*, announcing the termination of the investigation and its conclusions.

If, on the contrary, the Commission considers temporary withdrawal to be necessary, it shall notify the decision to the beneficiary country concerned, publish a notice in the *Official Journal of the European Union* announcing its intention to submit a proposal to the Council for temporary withdrawal and monitoring the situation for six months. This interim period may provide beneficiary country concerned the opportunity to take the measures necessary to conform, in a reasonable period of time, with conventions referred in Part A of Annex III to the Regulation.

When the Commission finds temporary withdrawal necessary at the end of the sixth months period it will submit an appropriate proposal to the council which will decide within 2 months by qualified majority. When such a decision is taken, it will enter into force 6 months later.[35]

In addition article 16 provides that the preferential arrangements may be withdrawn temporarily, in respect of all or of certain products originating in a beneficiary country, in cases of fraud, irregularities or systematic failure to comply with or to ensure compliance with the rules concerning the origin of the products and with the procedures related thereto, or failure to provide the administrative cooperation as required for the implementation and policing of the arrangements provided under the EC GSP Paragraph 2 of article 16 provides the definition of what is meant for administrative cooperation. The administrative cooperation referred to in paragraph 1 requires, *inter alia*, that a beneficiary country:

35 Due to political situation in Myanmar, temporary withdrawal of all tariff preferences in respect of imports of products originating in Myanmar should remain in force. (OJ L 169, 30.6.2005, p.2).

(a) communicate to the Commission and update the information necessary for the implementation of the rules of origin and the policing thereof; assist the Community by carrying out, at the request of the customs authorities of the Member States, subsequent verification of the origin of the goods, and communicate its results in time;

(b) assist the Community by allowing the Commission, in coordination and close cooperation with the competent authorities of the Member States, to conduct Community administrative and investigative cooperation missions in that country, in order to verify the authenticity of documents or the accuracy of information relevant for granting the benefit of the arrangements referred to in Article 1(2);

(c) carry out or arrange for appropriate inquiries to identify and prevent contravention of the rules of origin;

(d) comply with or ensure compliance with the rules of origin in respect of regional cumulation, within the meaning of Regulation (EEC) No 2454/93, if the country benefits there from;

(e) assist the Community in the verification of conduct where there is the presumption of origin-related fraud. The existence of fraud may be presumed where imports of products under the preferential arrangements provided for in this Regulation massively exceed the usual levels of the beneficiary country's exports.

Before the Commission adopts the decision to suspend preferential treatment provided by the Regulation, it is requested to fulfil the following administrative procedure:

1. Inform the Committee;

2. Call on the Member States to take such precautionary measures as are necessary in order to safeguard the Community's financial interests and /or secure compliance by the beneficiary country with its obligations;

3. Publish a notice in the *Official Journal of the European Union* stating the grounds for reasonable doubts about the right of the country in question to continue enjoying the preferential treatment granted by the Regulation.

Before any decision becomes effective, the Commission shall inform the beneficiary country concerned. *Any* Member State may refer to a decision to the Council taken in accordance with the suspension of preferential arrangements provided for a country within 1 month, and the Council may take a different decision within 1 month.

The period of suspension shall not exceed 6 months. By the end of the suspension period, the Commission shall decide either to:

- Terminate the provisional suspension measure following consultations with the Generalized Preferences Committee; or
- To extend the suspension measure in accordance with the procedure set out in this procedure.

Member States shall communicate to the Commission the relevant information to justify the suspension. If the Commission considers that the information provides for sufficient evidence, it shall take, after informing the Committee, all the appropriate measures as quickly as possible.

E. Safeguards under the EC GSP scheme

LDCs are exempted from the adoption of safeguard provisions (Article 20, paragraph 8 of the regulation).In the EC GSP scheme there is a general safeguard clauses and a surveillance mechanism for agricultural products. The general safeguard mechanism 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 20, paragraph 1, of the Regulation).

The Commission may thus initiate an investigation. In examining whether there are serious difficulties, the Commission takes into account, *inter alia*, the following factors concerning Community producers, where the information is available:

- Market share;
- Production;
- Stocks;
- Production capacity;
- Bankruptcies;
- Profitability;
- Capacity utilization;
- Employment;
- Trade; and
- Prices.

The decision is taken within one month of consulting the Generalized Preferences Committee. The beneficiary countries concerned are notified of the decision before the measures become effective. In exceptional circumstances (article 31, paragraph 5, of the Regulation), the Commission may implement any preventive measure which is strictly necessary.

On first January of each year in the case of imports of products of section XI(b) (textile articles), the EC GSP scheme provides that preferences may be removed at Commission own initiative or at the request of a Member State, when these imports:

- Increase by at least 20 per cent in quantity (by volume) as compared to the previous calendar year; or
- Exceed 12.5 per cent threshold during any 12 months period.

In either situation, the preferential tariff rates applied to a products from Section XI(b) originating in a beneficiary country covered under the general arrangements and the GSP-Plus arrangements will be removed.

The beneficiary countries under the EBA arrangement and the countries whose share of imports into the Community of the imports from all GSP-covered countries do not exceed 8 per cent would not be affected by this provision. The removal of the preferences shall take effect 2 months after the publication of the Commission's decision published in the *Official Journal of the European Union.*

In addition article 23 of the regulation provides that the commission my adopt surveillance for agricultural products and that in case where:

(a) When the beneficiary country concerned does not ensure compliance with the rules of origin or does not provide the administrative cooperation referred to in Article 16; or

(b) When imports of products from Chapters 1 to 24 under the preferential arrangements granted under this Regulation massively exceed the usual levels of exports from the beneficiary country concerned.

The time limit for conducting a safeguard investigation will be reduced to two months.

F. Rules of origin under the EU GSP scheme

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 (ECCC), as last modified by Commission Regulation No. 1602/2000 and 881/2003;.[36]

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

(a) Origin criteria;

(b) Direct consignment conditions; and

(c) Documentary evidence.

LDCs that have initialed interim Economic Partnership Agreements (EPAs) could also use the rules of origin under these latter agreements[37]. However this handbook does not cover such arrangements.

Origin criteria

The origin criteria are at the core of the rules of origin. They determine how and when a product can be considered 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).

[36] For further information on rules of origin in the EC GSP scheme, see Part 2 of the *Handbook on the Scheme of the European Community* (UNCTAD/ITCD/TSB/Misc. 25/Rev.1).See also the European community rules of origin for the Generalized system of trade preferences at http://ec.europa.eu/taxation_customs/resources/documents/guide-contents_annex_1-en.pdf

[37] One of main advantages os rules of origin under interim EPAs is the single transformation in certain textile and clothing products and fishery products.

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:

(a) Mineral products extracted from its soil or from its seabed;
(b) Vegetable products harvested there;
(c) Live animals born and raised there;
(d) Products obtained there from live animals;
(e) Products obtained by hunting or fishing conducted there;
(f) Products of sea fishing and other products taken from the sea by their vessels;[38]
(g) Products made on board their factory ships exclusively from products referred to in (f);
(h) Used articles collected there fit only for the recovery of raw materials;
(i) Waste and scrap resulting from manufacturing operations conducted there;
(j) Products extracted from the seabed or below the seabed which is situated outside its territorial waters, provided that it has exclusive exploitation rights;
(k) Products produced there exclusively from products specified in (a) to (j).

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

The definition of its "vessels" (laid down in Article 68(2)) consists of a number of cumulative criteria - so *all* criteria listed must be fulfilled as specified below. Fish caught on the high seas can be considered to originate in the beneficiary country in question (or in the EC) if:

- The vessel used is registered/ recorded in the beneficiary country and is sailing under its flag (or an EC Member State) and
- The captain and officers are all nationals of that country (or an EC Member State), and
- At least 75 per cent of the crew are nationals of that country (or an EC Member State), and 12
- A number of specific requirements concerning ownership of the vessels have been *fulfilled.*

[38] 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).

It has to be noted that, pending the reform of the EC rules of origin as launched by the Green paper[39], The EC rules of origin under EBA remain applicable. This means that the improvements to the definitions of their vessels made in the context of the EPAs or interim EPAs negotiations are not applicable to those LDCs who have not entered into such agreements.[40]

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 and 881/2003, 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."[41]

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 whether 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 10 per cent of the ex-works price of the product, subject to certain conditions (article 71, paragraph 1, of the ECCC).[42]

This provision does not apply to products falling within Chapters 50 to 63 of the Harmonized System. For this latter category of products different flexibilities exists as detailed in the explanatory notes to the single list[43].

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 whether the sawnwood (the imported material) can be considered to have undergone "sufficient working or

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39 "The rules of origin in preferential trade arrangements: Orientations for the future", COM(2005) 100 final, Brussels, 16 March 2005.

40 See for further details "Lesson learned from Drafting rules of origin under DFQF and EPAs" UNCTAD forthcoming publication.(2008).

41 As a result of the latest amendments introduced by Regulation 46/99, and reported in Regulation 1602/2000, with a view to harmonizing the EC preferential rules of origin, a new Single List replaced annex 15 of the ECCC, and thus constitutes the basic reference for the application of the EC GSP rules of origin.

42 Paragraph 1, second subparagraph, of article 71 of the ECCC, as contained in Regulation 1602/2000 and 881/2003, 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.

43 See annex 14 to regulation 2454/93

processing" according to the conditions laid down in the Single List.

Table 4. Example of sawnwood processing

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 from material of any heading except 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 table 4, in the case of goods falling under HS Chapter 94, the Single List provides for two alternative origin criteria:

1. "Change of tariff heading" (CTH) rule; and
2. Percentage criterion.

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

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

(b) The value of imported inputs must not exceed 40 per cent of the value of the finished product. In order to fulfil this condition, it is necessary to calculate the amount of non-originating sawnwood incorporated in the final product, the chair. In order to do this, the exporter must take into account the following:

- The term "value" in the Single List means the customs value[44] 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 list rules means the price paid for the product obtained from the manufacturer within whose enterprise the final working or processing is carried out: this price includes the value of all materials used in manufacture, minus any internal taxes which are, or may be, payable when the product obtained is exported.

[44] 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).

Example 2

For most articles of apparel and clothing accessories that are not knitted or crocheted, classified in HS Chapter 62, the list rules 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 list rules requires that the value of all non-originating inputs used in their manufacture 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):

(a) Operations to ensure the preservation of products in good condition during transport and storage (ventilation, spreading out, drying, chilling, placing in salt, sulphur dioxide or other aqueous solutions, removal of damaged parts, and similar operations);

(b) Simple operations consisting of the removal of dust, sifting or screening, sorting, classifying or matching (including the making-up of sets of articles, washing, painting, cutting-up);

(c) Changing the packaging and the breaking-up and assembly of consignments, placing in bottles, flasks, bags, cases or boxes, fixing on cards, boards or other things, and all other simple packaging operations;

(d) Affixing marks, labels and other similar distinguishing signs on products or their packaging;

(e) 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;

(f) Simple assembly of parts of products to constitute a complete product;

(g) A combination of two or more operations specified in subparagraphs (a)-(f);

(h) Slaughter of animals.

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[45] cumulation is permitted (subject to certain conditions) on a regional basis. Since regulation 881/2003 combined the Andean group with the Central American Common market there are three 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, Lao People's Democratic Republic, Malaysia, Philippines, Singapore, Viet Nam and Thailand), the Central American Common Market (Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua) and 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).[46]

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):

(a) 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

(b) 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 is to 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[47] there is greater than the highest customs value of the products used originating in any of the other countries of the regional group, and;

[45] "Partial" cumulation is a definition used in previous UNCTAD working group on rules of origin to differentiate this kind of cumulation from full cumulation.The EC refers to such kind of cumulation as diagonal cumulation even if this terminology is mostly used in the context of reciprocal free trade areas .In this handbook the definition of partial cumulation has been retained.

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

[47] 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.

(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)."

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 List rule requires cotton jackets (HS heading 6203) to be produced from originating yarn. With regional cumulation, however, preference-receiving country A may utilize imported fabrics from country B (note that these fabrics must already have acquired originating status in country B), which is a member of the same regional grouping, and the finished jacket will be considered 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 the Lao People's Democratic Republic, for example, may incorporate the following inputs (all prices are in United States dollars):

Table 5. Inputs in different countries

Inputs originating in Singapore[48]	1 400
Inputs originating in Thailand	4 500
Inputs originating in Japan	1 500
Value added in the Lao People's Democratic Republic (local content, labour costs, profits)	2 600
Total (ex-works price)	**10 000**

Under 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 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 imported inputs. As the amount of the inputs from Japan is $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.

[48] 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.

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, is to 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 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,[49] which 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 one another 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 favour 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 request. The following in particular shall be taken into account when the request is considered:

(a) 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 those activities;

(b) 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 favouring the realization of the investment programme would enable these rules to be satisfied in stages;

(c) 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;

[49] 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).

- 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 three LDCs: the Lao People's Democratic Republic, Cambodia, and Nepal.

These derogations have existed since the 1990s but they have been prolonged several times. The relevant provisions are contained in Regulations No 1613/2000[50] as amended by Regulations Nos 291/2002, 2186/2004[51] and 1806/2006[52] for the Lao People's Democratic Republic, Regulation No 1614/2000[53] as amended by Regulations Nos 292/2002, 2187/2004[54] and 1807/2006[55] for Cambodia and, finally, Regulation No 1615/2000[56] as amended by Regulations Nos 293/2002, 2188/2004[57] and 1808/2006[58] for Nepal. The latest amendments prolong the derogations until the 31 December 2008. However, the derogation should be reviewed in the light of the new rules of origin.

The products, listed in the Annex to Regulation 1613/2000, 1614/2000 and 1615/2000, 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 these three countries by way of derogation from Articles 67 to 97 of Regulation (EEC) No 2454/93. The derogation shall apply only to products imported into the Community from the Lao People's Democratic Republic, Cambodia and Nepal till the expiry date of the derogation (currently 31 December 2008), up to the annual quantities listed in the attached annexes against each product. When drawings of one of these countries account for 80 per cent of such quantities, the Commission, in consultation with the government in question, shall consider if it is still necessary for this country to apply for derogation beyond those quantities. (Article 4 of Regulation Nos 1613/2000, 1614/2000 and 1615/2000).

The practical effects of the derogation in favour of LDCs are three fold: (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 to maintain the manufacturing operation taking place in the beneficiary country; (3) to extend the geographical coverage of the regional cumulation facility so as to facilitate their sourcing of input, otherwise

50 OJ L 185, 25.7.2000, p38.

51 OJ L 373, 21.12.2004, p.14.

52 OJ L 343, 8.12.2006, p. 69.

53 OJ L 185, 25.7.2000, p46.

54 OJ L 373, 21.12.2004, p.16.

55 OJ L 343, 8.12.2006, p. 71.

56 OJ L 185, 25.7.2000, p54.

57 OJ L 373, 21.12.2004, p.18.

58 OJ L 343, 8.12.2006, p. 73.

limited to the regional grouping to which the exporting LDC beneficiary belongs, ability and predictability for their market access.

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. Under 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:

(a) 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;

(b) Products constituting one single consignment transported through the territories of countries other than the beneficiary country or the Community, with, should the occasion arise, trans-shipment 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;

(c) 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;

(d) 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:

(a) A through bill of lading covering the passage through the country or countries of transit; or

(b) 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

(c) 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 travelled).

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 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):

(a) 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, which 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.

(b) 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.

(c) 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.

(d) 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.

(e) The use of English or French for the notes on the reverse of the certificate (Form B) is not obligatory.

(f) 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).

(g) 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).

(h) 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).

(i) 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

Under 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 the 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):

(a) The certificate was not issued at the time of exportation because of error, accidental omission or special circumstances; or

(b) 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 a posteriori", printed in box 4.

Time limit for presentation of certificates of origin Form A

Under paragraph 1 of article 82, a certificate of origin Form A must be submitted, within 10 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 10-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

Under 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 those 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 that 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).

IV. Japan

A. Provisions of the Japanese GSP scheme for LDCs

The Japanese scheme of generalized preferences was recently reviewed and extended for a new decade, until 31 March 2011[59]. Under the scheme currently in force for fiscal year 2001/2002,[60] 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 these preferences. In particular, Zambia, the Democratic Republic of the 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. Senegal has been added to the list of LDC beneficiaries, the United Nations General Assembly having designated it an LDC in April 2001.

Selected agricultural, fishery and industrial products are not covered by the scheme.[61] 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) An additional list of products for which preferences are granted only to LDC beneficiaries.

With regard to refined copper imported from the Democratic Republic of the Congo and Zambia, the normal GSP tariff rate, a 40 per cent tariff cut, is applied and the ceiling (38,788,751 kg for fiscal year 2002/2003) have been removed at the end of the fiscal year 2005.

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

On April[62] 2007 Japan notified further improvements to implement the Duty- Free Quota-Free commitment. As a result of this expansion, Japan reported that 1,101 products have been added to the list of items for the DFQF to LDCs (from 7,758 to 8,859 tariff lines). According to the notification made by Japan to WTO the coverage has increased significantly from 86 per cent to 98 per cent, defined at the tariff line level. In terms of the import value, Japan reported that the coverage of the DFQF to LDCs is well over 99 per cent. From a quick comparative glance it

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59 For a detailed review of the Japan GSP scheme see N. Komuro, Japan Generalized system of preferences: an oriental Pandora box, Mimeo

60 For detailed information on the current scheme, see the *Handbook on the Scheme of Japan 2002/2003* (UNCTAD/ITCD/TSB/Misc.42/Rev.2), also available on the Internet.

61 For further information, see the annex to the UNCTAD study on "Improving Market Access for LDCs" (UNCTAD/DITC/TNCD/4) of 2 May 2001.

62 See WT/COMTD/N/2/Add.14 of 12 April 2007.

appears that rice will continue to be excluded while relevant exports of fish products from LDCs will be granted duty-free treatment following the improvement.

Some exclusions are still concerning 118 ultra-sensitive items at the HS 9-digit level.[63]

B. Rules of origin under the Japanese GSP scheme

Rules for transportation (direct consignment)

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

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

(b) However, with regard to goods transported to Japan through territories other than the exporting preference-receiving country, they are entitled to preferential treatment if:
   (i) They have not undergone any operations in the transit countries other than trans-shipment or temporary storage exclusively on account of transport requirements; and
   (ii) 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.

(c) 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:
   (i) The transportation to Japan from the country where the exhibition (or similar event) has been held falls under (i) or (ii) above; and
   (ii) The exhibition (or similar event) has been held in a bonded area or any other similar place, under the supervision of that country.

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.

[63] These products are: some fishes, fish filets, rice, sugar items, rice or wheat preparations, food preparations using rice, wheat or barley, preparations of sugar centrifugal etc. See N. Komuro, Japan Generalized system of preferences: an oriental Pandora box, Mimeo.

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:

(a) Operations to ensure the preservation of products in good condition during transport and storage (drying, freezing, placing in salt water and similar operations);

(b) Simple cutting or screening;

(c) Simple placing in bottles, boxes and similar packing cases;

(d) Repacking, sorting or classifying;

(e) Marking or affixing of marks, labels or other distinguishing signs on products or their packaging;

(f) Simple mixing of non-originating products;

(g) Simple assembly of parts of non-originating products;

(h) Simple making up of sets of articles of non-originating products;

(i) A combination of two or more operations specified in (a) – (i).

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):

(a) In the case of goods produced in a preference-receiving country only from materials imported from Japan, or those produced in a preference-receiving country only from materials wholly obtained in that country and materials imported from Japan, such goods will be regarded as being wholly obtained in that country.

(b) 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 (a) above shall be regarded as wholly obtained in that country.

However, with regard to the products listed in annex 8, special treatment will not be granted.

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:

(a) Goods wholly obtained in the group or goods imported from Japan into the group are treated as originating in the group;

(b) Goods produced totally or partly from materials imported into 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) should be presented to the customs at the time of import declaration in addition to the Certificate of Origin Form A.

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 10) must be submitted to the Japanese customs authorities upon 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) 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 there under 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.

V. United States of America

A. Provisions of the United States GSP scheme for LDCs

The United States GSP scheme provides for duty-free entry to all products covered by the scheme from designated beneficiaries.[64] The scheme has been in operation since 1976, initially for two 10-year periods, and then has always been renewed every one or two years. It was approved in December 1999 and was reauthorized through September 2001, with retroactive effect from June 1999.[65] The latest renewal occurred when the Trade Act of 2002, signed in August 2002, officially reauthorized the scheme through December 2006, after it expired in September 2001. Under the current authorization, the program is scheduled to expire on 31 December 2009.

A significant improvement in the United States 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 United States Government, through the GSP Subcommittee, conducts an annual review of the list of eligible articles and beneficiaries. Certain articles, such as textiles, watches, footwear, handbags, luggage, flat goods and 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 programme. Firms and Governments should take the following steps for all products of interest to them:

Step 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.

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

[65] The principal reason for these brief GSP reauthorizations is that the programme 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 forgone tariffs, and these same rules also apply to the GSP. These provisions created a new political complication for the 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.

In order to determine whether a product is GSP-eligible, one should know how to read the HTSUS.[66] Part of a page from the United States schedule, together with an explanation of its structure and codes, is reproduced in table 6 below. 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 four countries remain subject to these rates. These are Afghanistan, Cuba, the Lao People's Democratic Republic, and the Democratic People's Republic of Korea. NTR agreement with the Lao People's Democratic Republic is currently pending. Countries that receive MFN treatment pay the tariffs that are shown in column 1. Some of the countries that receive NTR treatment also benefit from preferential trade agreements or programme tariffs, as shown in the "Special" 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 (A*), and products that are eligible for GSP treatment only when imported from least developed countries (A+).

Table 6. Harmonized Tariff Schedule of the United States (2008)

Heading/ Subheading	Stat. Suffix	Article Description	Unit of Quantity	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*,AU, BH,CA,E,IL, J,JO,MA,MX,PS G)	5.5¢/kg
0703.10.30	00	Other: Pearl onions not over 16 mm in diameter	kg	0.96¢/kg	Free (A*,AU, BH,CA,E,IL, J,JO,MA,MX,PS G)	5.5¢/kg
0703.10.40	00	Other 1/	kg	3.1¢/kg	(A*,AU, BH,CA,E,IL, J,JO,MA,MX,PS G)	5.5¢/kg
0703.20. 00	 10 20 90	Garlic Fresh whole bulbs Fresh whole peeled cloves Other	 kg kg kg	0.43¢/kg	(A*,AU, BH,CA,E,IL, J,JO,MA,MX,PS G)	3.3¢/kg
0703.90.00	00	Leeks and other alliaceous vegetables	kg	20%	Free (A+,CA,D,E, IL,J,JO;MX,P) 7,5 (SG) 11,6(CL) 12(AU) 14(BH,MA)	50%

[66] The updated United States tariff schedule is available on the Internet at http://dataweb.usitc.gov/.

How to read the United States tariff schedule ?

- The numbers and nomenclature (product descriptions) used in the schedule are identical to those used by all countries that adhere to the Harmonized Tariff System (HTS).
- 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) treatment, otherwise known as most-favoured-nation (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 programmes:

  A = Generalized System of Preferences (GSP)
  A* = GSP (certain countries are not eligible)
  A+ = GSP (only least developed countries)
  AU= United States–Australia free trade area
  BH= United States Bahrain free trade area
  CA = Canada (NAFTA)
  CL= United States–Chile free trade area
  E = Caribbean Basin Initiative
  IL = United States-Israel Free Trade Area
  J = Andean Trade Preferences Act
  MX = Mexico (NAFTA)
  P= Dominican Republic-Central America-United States Free Trade Agreement Implementation Act
  D = AGOA
  JO = United States–Jordan Free Trade Area Implementation Act

Here is the current list of codes:

(c) Products Eligible for Special Tariff Treatment.

(i) Programs under which special tariff treatment may be provided, and the corresponding symbols for such programs as they are indicated in the "Special" subcolumn, are as follows:

Generalized System of Preferences	A, A* or A+
United States-Australia Free Trade Agreement	AU
Automotive Products Trade Act	B
United States-Bahrain Free Trade Agreement Implementation Act	BH
Agreement on Trade in Civil Aircraft	C
North American Free Trade Agreement:	
Goods of Canada, under the terms of general note 12 to this schedule	CA
Goods of Mexico, under the terms of general note 12 to this schedule	MX
United States-Chile Free Trade Agreement	CL
African Growth and Opportunity Act	D
Caribbean Basin Economic Recovery Act	E or E*
United States-Israel Free Trade Area	IL
Andean Trade Preference Act or Andean Trade Promotion and Drug Eradication Act	J, J* or J+
United States-Jordan Free Trade Area Implementation Act	JO
Agreement on Trade in Pharmaceutical Products	K
Dominican Republic-Central America-United States Free Trade Agreement Implementation Act	P or P+
Uruguay Round Concessions on Intermediate Chemicals for Dyes	L
United States-Caribbean Basin Trade Partnership Act	R
United States-Morocco Free Trade Agreement Implementation Act	MA
United States-Singapore Free Trade Agreement	SG
United States-Oman Free Trade Agreement Implementation Act	OM

- Column 2 applies to four 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.

Step 2

Check whether the United States imports of that product are actually entering under the GSP. This can be done by examining the most recent trade data reported in the database of the United States International Trade Commission (USITC), accessible on the Internet at http://dataweb.usitc.gov/.

Step 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 of origin are already being met, the GSP privileges should be claimed.

The granting of duty-free access to eligible products under the United States GSP programme is subject to the "competitive need limits". The United States 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.[67] 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 United States scheme also provides for a graduation mechanism. The GSP law sets out per capita GNP limits, and advances in beneficiaries' level of economic development and trade competitiveness are regularly reviewed. In considering graduation actions, the GSP Subcommittee reviews: (a) the country's general level of development; (b) its competitiveness in the particular product; (c) the country's practices relating to trade, investment and workers' rights; and (d) the overall economic interests of the United States.

B. Rules of origin under the United States GSP scheme

The United States GSP rules of origin provide that an article must be shipped directly from the beneficiary country to the United States without passing through the territory of any other country or, if shipped through the territory of another country, the merchandise must not have entered the commerce of that country en route to the United States.[68] In all cases, the invoices must show the United States as the final destination.

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[67] The "upper" competitive limits are exceeded if, during any calendar year, United States imports of that product from that country: (a) account for 50 per cent or more of the value of total United States imports of that product; or (b) exceed a certain dollar value, which is annually adjusted in proportion to the change in the nominal GNP of the United States. 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 per cent or a dollar value set at approximately 40 per cent of the "upper" competitive need level.

[68] Articles trans-shipped 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: (a) the merchandise does not enter into the commerce of the country maintaining the free trade zone; and (b) 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: (a) the merchandise remained under the customs authority of the intermediate country; (b) the merchandise does not enter into the commerce of the country maintaining the free zone, except for purchases or sale other than at retail; (c) 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

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[69] 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 towards the value-added requirement only if they are "substantially transformed" into new and different constituent materials of which the eligible article is composed. Where articles are imported from GSP-eligible regional associations, member countries of the association will be accorded duty-free entry if they together account for at least 35 per cent of the appraised value of the article, the same for a single country. The customs service is charged with determining whether an article meets the GSP rules of origin.

The 35 per cent value-added can be spread across more than one country when imported from GSP-eligible members of certain regional associations. Articles produced in two or more eligible member countries of an association will be accorded duty-free entry if the countries together account for at least 35 per cent of the appraised value of the article, the same requirement as for a single country. The competitive need limits will be assessed only against the country of origin and not against the entire association. There are currently five associations that may benefit from this provision: the Andean Group, the Association of South-East 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: (a) the packing costs incurred by the buyer; (b) any selling commission incurred by the buyer; (c) the value of any assistance; (d) any royalty or licence fee that the buyer is required to pay as a condition of the sale; and, (e) the proceeds, accruing to the seller, of any subsequent resale, disposal or use of the imported merchandise. As a general rule, shipping and other costs related to the transport of the GSP articles from the port of export to the United States are included neither in the value of the article nor in the value-added calculation.

It should be noted that the United States programme does not require that GSP imports be accompanied by extensive documentation. It used to be the case that importers had to file a special Form A in order to obtain GSP treatment, but that requirement was eliminated several

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condition as introduced into the free trade zone; and, (d) for articles trans-shipped through former beneficiaries who are members of regional associations (see below), the processing described in (b) above is permitted. This exception currently applies to goods of ASEAN beneficiaries trans-shipped 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 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.

[69] 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, blueprint 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 overheads (such as administrative salaries, casualty and liability insurance, advertising, and salespersons' salaries, commissions or expenses).

years ago.[70] 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)[71] is the most recent United States initiative authorizing a new trade and investment policy towards Africa. It represents a meaningful opportunity for eligible sub-Saharan African countries, which could result in a substantial improvement of conditions for preferential access to United States markets.

Under Title I-B of the Act, beneficiary countries in sub-Saharan Africa that will be designated by the president as eligible for the AGOA benefits will be granted what could be called a "super GSP."

While the current "normal" GSP program of the United States is subject to periodic short-term renewals and contains several limitations in terms of product coverage, AGOA amends the GSP program by providing duty-free treatment for a wider range of products. This would include, upon fulfilment of specific origin and visa requirements, certain textile and apparel articles that were heretofore considered import-sensitive and thus statutorily excluded from the program.

AGOA legislation was subsequently amended and renewed.

The Trade Act of 2002 contained amendments to apparel and textile provisions under AGOA. It modified certain provisions under AGOA by including knit-to-shape, increasing the cap on apparel imports, granting LDC status to Botswana and Namibia[72], and revising the technical definition of merino wool. Furthermore, it clarified the origin of yarns under the Special Rule for designated LDCs and made eligible for preferences "hybrid" apparel articles (i.e., cutting that occurs both in United States and in AGOA countries does not render fabric ineligible).

The most recent report of 2007 stated that the African Growth and Opportunity Act (AGOA) provides duty-free access to the U.S. market for substantially all products exported from 38 eligible sub-Saharan African countries73.1 AGOA amends the U.S. Generalized System of

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70 One consequence of the defunct Form A is that the letter "A" is still used in the United States tariff schedules to identify products that are eligible for the GSP.

71 AGOA, which is part of the Trade and Development Act of 2000, was signed into law by the President of the United States on 18 May 2000. The AGOA implementation regulation was published on 2 October 2000.

72 The definition of LDC in the US trade policy does not follow the UN list of LDCs. It follows that some UN designated LDCs are not covered by AGOA .For a more detailed explanation. See section 7 in Erosion of trade preferences in the Post Hong Kong (China) framework: From trade is better then aid to aid for trade: UNCTAD, 2008.

73 The 38 AGOA beneficiary countries are Angola; Benin; Botswana; Burkina Faso; Burundi, Cameroon; Cape Verde; Chad; Congo; Democratic Republic of the Congo; Djibouti; Ethiopia; Gabon; The Gambia; Ghana; Guinea; Guinea-Bissau; Kenya; Lesotho; Liberia; Madagascar; Malawi; Mali; Mauritius; Mozambique; Namibia;

Preferences (GSP) statute with respect to AGOA-eligible beneficiaries by extending duty-free treatment until 2015 and expanding GSP product coverage (about 4,600 products) by more than 1,800 additional tariff lines. AGOA also exempts beneficiary countries from GSP competitive need limitations. In 2006, over 98 percent of U.S. imports from AGOA-eligible countries entered the United States duty-free.

On December 20, 2006, President Bush signed the Africa Investment Incentive Act (AGOA IV). AGOA IV enhances AGOA trade benefits for eligible sub-Saharan African countries and strengthens economic engagement between the United States and sub-Saharan Africa. AGOA IV extends the third-country fabric provision, adds an abundant supply provision, designates certain denim articles as being in abundant supply, and provides duty-free treatment for certain textile and textile articles (non-apparel) imported from lesser-developed AGOA beneficiary countries.

As of April 2007, 26 countries are eligible to receive AGOA apparel benefits. Seventeen of these countries[74] also qualify for AGOA's provisions for hand loomed and handmade articles (known as Category 9). The AGOA Acceleration Act of 2004 added ethnic printed fabrics to the types of goods that could be exported under Category 9. Ethnic prints must meet a specific set of criteria to qualify for AGOA benefits. Mali, Niger, Nigeria and the United Republic of Tanzania have been approved for ethnic printed fabrics.

Below is a table listing AGOA eligible countries, the effective date of their eligibility, and the effective date of their eligibility for AGOA apparel benefits if applicable.

Niger; Nigeria; Rwanda; São Tomé and Príncipe; Senegal; Seychelles; Sierra Leone; South Africa; Swaziland; Uganda; the United Republic of Tanzania; and Zambia.

[74] The 17 countries are: Kenya, Lesotho, Botswana, Madagascar, Malawi, Mali, Namibia, Ghana, Mozambique, Senegal, Ethiopia, Niger, Nigeria, Sierra Leone, Swaziland, the United Republic of Tanzania and Zambia.

COUNTRY	DATE DECLARED AGOA ELIGIBLE	DATE DECLARED ELIGIBLE FOR APPAREL PROVISION	SPECIAL RULE FOR APPAREL
(Republic of) Angola	December 30, 2003		
(Republic of) Benin	October 2, 2000	January 28, 2004	Yes
(Republic of) Botswana	October 2, 2000	August 27, 2001	Yes
Burkina Faso	December 10, 2004	August 4, 2006	Yes
(Republic of) Burundi	January 1, 2006		
(Republic of) Cameroon	October 2, 2000	March 1, 2002	Yes
(Republic of) Cape Verde	October 2, 2000	August 28, 2002	Yes
(Republic of) Chad	October 2, 2000	April 26, 2006	Yes
(Union of) Comoros	June 30 , 2008		
(Republic of) Congo	October 2, 2000		
(Democratic Republic of) Congo*	December 31, 2002		
(Republic of) Djibouti	October 2, 2000		
Ethiopia	October 2, 2000	August 2, 2001	Yes
Gabonese (Republic)	October 2, 2000		No
The Gambia	December 31, 2002	April 28, 2008	Yes
(Republic of) Ghana	October 2, 2000	March 20, 2002	Yes
(Republic of) Guinea	October 2, 2000		
(Republic of) Guinea-Bissau	October 2, 2000		
(Republic of) Kenya	October 2, 2000	January 18, 2001	Yes
(Kingdom of) Lesotho	October 2, 2000	April 23, 2001	Yes
(Republic of) Liberia	December 29 , 2006		
(Republic of) Madagascar	October 2, 2000	March 6, 2001	Yes
(Republic of) Malawi	October 2, 2000	August 15, 2001	Yes
(Republic of) Mali	October 2, 2000	December 11, 2003	Yes
(Republic of) Mauritius	October 2, 2000	January 18, 2001	No
(Republic of) Mozambique	October 2, 2000	February 8, 2002	Yes
(Republic of) Namibia	October 2, 2000	December 3, 2001	Yes
(Republic of) Niger	October 2, 2000	December 17, 2003	Yes
(Federal republic of) Nigeria	October 2, 2000	July 14, 2004	Yes
(Republic of) Rwanda	October 2, 2000	March 4, 2003	Yes
(Democratic Republic of) Sao Tome and Principe	October 2, 2000		
(Republic of) Senegal	October 2, 2000	April 23, 2002	Yes
(Republic of) Seychelles	October 2, 2000		No
(Republic of) Sierra Leone	October 23, 2002	April 5, 2004	Yes
(Republic of) South Africa	October 2, 2000	March 7, 2001	No
(Kingdom of) Swaziland	January 17, 2001	July 26, 2001	Yes
(United Republic of) Tanzania	October 2, 2000	February 4, 2002	Yes
(Republic of) Togo	April 17, 2008		
(Republic of) Uganda	October 2, 2000	October 23, 2001	Yes
(Republic of) Zambia	October 2, 2000	December 17, 2001	Yes

Source: http://www.agoa.gov/eligibility/country_eligibility.html

* AGOA trade preferences granted on October 31, 2003.

The “AGOA-enhanced” GSP benefits will be in place until 30 September 2015 providing additional security for investors and traders in qualifying African countries. This element of security 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.

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

An AGOA article must meet the basic United States GSP origin and related rules[75] to receive duty-free treatment (as discussed in section III.C). In the context of AGOA, application of the basic GSP origin rules is subject to the following two additional rules:

(a) The cost or value of materials produced in the customs territory of the United States may be counted towards the 35 percent requirement up to a maximum amount not to exceed 15 percent of the article's appraised value.

(b) The cost or value of the materials used that are produced in one or more beneficiary sub-Saharan African countries shall be counted towards the 35 percent requirement (cumulation among AGOA-designated countries).

Specific provisions on textile/apparel articles

Country eligibility

AGOA provides preferential tariff treatment for imports of certain textile and apparel products from designated sub-Saharan African countries, provided that these countries (a) have adopted an effective visa system and related procedures to prevent illegal transshipment and the use of counterfeit documents; and (b) have implemented and follow, or are making substantial progress towards implementing and following, certain customs procedures that assist the Customs Service in verifying the origin of the products.

Rules of origin and preferential groupings of textile/apparel articles

AGOA provides duty-free and quota-free access for selected textile and apparel articles if they are imported from designated sub-Saharan African countries under the textile/apparel provision. The 35 percent value-added requirement for AGOA GSP treatment is not required for the textile/apparel provision. Apparel products eligible for benefits under the AGOA must fall within one of 10 specific preferential groupings and meet the related requirements. The Trade Act of 2002 modified certain rules by making knit-to-shape articles eligible for duty-free and quota-free treatment in the preferential groupings.

In addition AGOA IV of 2006 modified certain textile and apparel provisions under AGOA. The legislation:

- Extended the third country fabric provision for lesser-developed countries until 2012 and increased the cap for AGOA apparel made of third-country fabric to 3.5 percent of total U.S. apparel imports for the year beginning October 1, 2006.
- Provided special rules governing fabrics or yarns that are produced in commercial quantities (or "abundant supply") in designated sub-Saharan African countries for use in qualifying apparel articles.

[75] Section 503(a)(2) of the Trade Act of 1974.

- Expanded duty-free treatment for textile or textile articles (e.g., towels, sheets, made-ups) originating entirely in one or more lesser-developed AGOA beneficiary countries.

Before each preferential group is examined in detail, it is important to note that groupings 4 and 5 are subject to the quantitative limitations called "cap"[76] given the fact that beneficiary countries are allowed to use regional or foreign fabrics or yarns. More details about "cap" are given in the following section.

The granting of preferential treatment depends on the origin of the fabric and yarn used. This is the rule of origin under AGOA for textile/apparel articles.

Grouping 1

Apparel articles sewn or assembled in one or more beneficiary sub-Saharan African countries (SSAs) from fabrics wholly formed and cut, or from components knit-to-shape, in the United States from yarns wholly formed in the United States[77]: DUTY-FREE and QUOTA-FREE TREATMENT.

Grouping 2

Apparel articles sewn or assembled and further processed[78] in one or more beneficiary SSAs from fabrics wholly formed and cut, or from components knit-to-shape, in the United States from yarns wholly formed in the United States[79]: DUTY-FREE and QUOTA-FREE TREATMENT.

Grouping 3

Apparel articles sewn or assembled in one or more beneficiary SSAs with United States thread from fabrics wholly formed in the United States and cut in one or more SSAs from yarns wholly formed in the United States, or from components knit-to-shape in the United States from yarns wholly formed in the United States, or both:[80] DUTY-FREE and QUOTA-FREE TREATMENT.

Grouping 4

Apparel articles wholly assembled in one or more beneficiary SSAs from fabric wholly formed in one or more beneficiary SSAs from yarns originating either in the United States or one

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[76] The word "cap" is utilized by the USTR as a tariff quota.

[77] Includes fabrics not formed from yarns, if such fabrics are classifiable under HTSUS heading 5602 or 5603 and are wholly formed and cut in the United States. The article is entered under subheading HTSUS 9802.00.80.

[78] Further processing includes embroidery, stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, beaching, garment-dyeing, screen printing, or similar processes.

[79] Includes fabrics not formed from yarns, if such fabrics are classifiable under HTSUS heading 5602 or 5603 and are wholly formed and cut in the United States.

[80] Includes fabrics not formed from yarns, if such fabrics are classifiable under HTSUS heading 5602 or 5603 and are wholly formed in the United States.

or more beneficiary SSAs,[81] or from components knit-to-shape in one or more beneficiary SSAs from yarns originating either in the United States or one or more beneficiary SSA, or apparel articles wholly formed on seamless knitting machines in a beneficiary SSA country from yarns originating either in the United States or one or more beneficiary SSAs: DUTY-FREE and QUOTA-FREE TREATMENT WITHIN CAP.

Grouping 5

Under the Special Rule for Lesser Developed Countries,[82] duty-free access within cap is granted to apparel articles wholly assembled, or knit-to-shape and wholly assembled, or both, in one or more lesser developed beneficiary SSAs, regardless of the country of the origin of the fabric or yarn used: DUTY-FREE and QUOTA-FREE TREATMENT through 30 September 2012 WITHIN CAP.

Grouping 6

Cashmere sweaters: Sweaters in chief weight of cashmere, knit-to-shape in one or more beneficiary SSAs:[83] DUTY-FREE and QUOTA-FREE TREATMENT.

Grouping 7

Merino wool sweaters: Wool sweaters containing 50 percent or more by weight of wool measuring 21.5 microns in diameter or finer, knit-to-shape in one or more beneficiary SSAs: DUTY-FREE and QUOTA-FREE TREATMENT.

Grouping 8

Apparel articles wholly assembled from fabric or yarn not available in commercial quantities (i.e. "in short supply") in the United States: DUTY-FREE and QUOTA-FREE TREATMENT:

(a) Apparel articles that are both cut and assembled in or more beneficiary SSAs, from fabric or yarn that is not formed in the United States or a beneficiary SSA country, are subject to duty-free/quota-free treatment to the extent that apparel articles of such fabrics or yarns would be eligible for preferential treatment, without regard to the source of the fabric or yarn, under NAFTA Annex 401.[84] The AGOA provision applies

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[81] Includes fabrics not formed from yarns, if such fabrics are classifiable under HTSUS heading 5602 or 5603 and are wholly formed in one or more beneficiary sub-Saharan African countries.

[82] 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, Gabon, Mauritius, Namibia, Seychelles and South Africa fall below this per capita threshold and have thus been declared eligible to use third-country fabric (non-United States and non-African) in their duty-free apparel exports to the United States through 30 September 2004. AGOA amendments specially grant Botswana and Namibia lesser developed AGOA status for the Special Rule.

[83] The article is classified under subheading HTSUS 6110.10.

[84] NAFTA Annex 401 is available on the NAFTA secretariat's website, http://www.nafta-sec-alena.org/.

to apparel articles that would be originating goods, and thus would be entitled to preferential duty treatment, under the NAFTA tariff shift and related rules on the basis of the fact that the fabrics or yarns used to produce them were determined to be in short supply in terms of the NAFTA.

(b) At the request of any interested party,[85] the president is authorized to proclaim duty-free/quota-free treatment for apparel articles that are both cut and assembled in one or more beneficiary SSA countries, from fabric or yarn that is not formed in the United States or a beneficiary SSA country, if he has determined that such yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner and has proclaimed such treatment.[86]

Grouping 9

Hand loomed, handmade, and folklore articles: products covered under this category will be determined through United States consultations with the beneficiary countries and must also be certified by the competent authority of the beneficiary countries as hand loomed, handmade or folklore articles: DUTY-FREE and QUOTA-FREE TREATMENT.

Under executive Order 13191, the President authorized the Committee on Implementation of Textiles Agreements (CITA), after consultation with the Commissioner of Customs and Border Protection, to consult with beneficiary sub-Saharan African countries and to determine which, if any, particular textile and apparel goods shall be treated as being hand loomed, handmade, or folklore articles, or ethnic printed fabrics. As of March 2007, Botswana, Ghana, Ethiopia, Kenya, Lesotho, Madagascar, Malawi, Mali, Mozambique, Namibia, Niger, Nigeria, Senegal, Sierra Leone, Swaziland, the United Republic of Tanzania and Zambia have been approved for the hand-loomed and handmade provisions of Category 9. Mali, Niger, Nigeria and the United Republic of Tanzania have been approved for ethnic printed fabrics.

In addition to original preferential groupings with some amendments above, the textile/apparel provision is further amended by adding the following new paragraph:

Grouping 10

Apparel articles sewn or assembled in one or more beneficiary SSAs with United States thread from components cut in the United States and one or more beneficiary SSAs from fabric wholly formed in the United States from yarns wholly formed in the United States, or from

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[85] Sec.112 (b)(3)(c)(v) of the Act defines an interested party as "any producer of a like or directly competitive article, a certified union or recognized union or group or workers which is representative of an industry engaged in the manufacture, production, or sale in the United States of a like or directly competitive article, a trade or business association representing producers or sellers of like or directly competitive articles, producers engaged in the production of essential inputs for like or directly competitive articles"..."

[86] Prior to making such a proclamation, the president must obtain advice from the appropriate advisory committees and the United States International Trade Commission, and must provide a report to, and consult with, the House Ways and Means and the Senate Finance Committee. The President delegated to the Committee for the Implementation of the Textile Agreements (CITA) authority to determine whether yarns or fabric cannot be supplied by the domestic industry in commercial quantities in a timely manner. The update short-supply information is available at http://otexa.ita.doc.gov/default.htm.

components knit-to-shape in the United States and one or more beneficiary SSAs from yarns wholly formed in the United States, or both:[87] DUTY-FREE and QUOTA-FREE TREATMENT.

Administrable rules on the provision of textile/apparel articles

Groupings 4 and 5 face the cap limitation and surge mechanism as explained in the following section.

Apparel imports under Groupings 4 and 5 are subject to a cap that will be filled on a "first-come, first-served" basis.

The Committee for the Implementation of Textile Agreements (CITA) has the authority to implement certain provisions of AGOA's textile and apparel benefits. These provisions include:

- Determination of the annual cap on imports of apparel that is assembled in beneficiary countries from fabric formed in beneficiary countries from yarn originating either in the United States or in beneficiary countries. Through September 30, 2012, the statute permits lesser-developed beneficiary countries to obtain preferential treatment for apparel assembled in beneficiary countries from third-country fabric;
- Determination that yarn or fabric cannot be supplied by the U.S. industry in commercial quantities in a timely manner, and to extend preferential treatment to eligible apparel from such yarn or fabric (commercial availability);
- Determination of eligible handloomed, handmade, or folklore articles and ethnic printed fabrics; such products may be imported quota- free and duty- free;
- A "tariff snapback' in the event that a surge in imports of eligible articles causes serious damage or threat thereof to domestic industry;
- Determination of whether U.S. manufacturers produce interlinings in the United States in commercial quantities, thereby rendering articles containing foreign interlinings ineligible for benefits under AGOA; and
- Determination of whether exporters have engaged in illegal transshipment, and to deny benefits to such exporters for a period of five years.

Regional and Third Country Caps

AGOA limits imports of apparel made with regional or third-country fabric to a fixed percentage of the aggregate square meter equivalents (SME) of all apparel articles imported into the United States. For the year beginning October 1, 2006, the aggregate quantity of imports eligible for preferential treatment under these provisions is an amount not to exceed 6.43675 percent of all apparel articles imported into the United States. Of this overall amount, apparel imported under the Special Rule for lesser-developed countries is limited to an amount not to exceed 3.5 percent of apparel imported into the United States in the preceding 12-month period.

Apparel articles entered in excess of these quantities will be subject to otherwise applicable tariffs. The duty-free cap is not allocated among countries; it is filled on a "first-come, first-

[87] Includes fabrics not formed from yarns, if such fabrics are classifiable under HTSUS heading 5602 or 5603.

served" basis. For the most current data on aggregate imports under the cap, please visit http://otexa.ita.doc.gov and click on "AGOA."

Abundant Supply

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

Commercial Availability

CITA may grant duty-free benefits for apparel made of fabric or yarns that cannot be supplied by the domestic industry in commercial quantities in a timely manner. As of April 2007, 11 commercial availability petitions have been approved and eight were denied. For details on products that receive duty- free treatment under the AGOA, please visit http://otexa.ita.doc.gov and click on "Commercial Availability.

Furthermore, in any year, when the cap is filled, products may still be imported; however, normal trade tariffs will be assessed at the time of entry. It is important to note that the benefits for apparel and textile provision are significant for certain countries.[88] This fact could mean that those countries, that have traditionally exported apparels to the United States, might account for a large portion of the cap.

The rules of origin and preferential groups are summarized in table 7.

[88] The country-by-country examinations for tariff treatment of principal United States imports from sub-Saharan Africa were carried out in the study by Craig VanGrasstek, "The African Growth and Opportunity Act: A Preliminary Assessment," prepared for UNCTAD, June 2002.

Table 7. Summary of rules of origin and preferential groups

Preferential groups (description summarized)	Yarn	Thread	Fabric	Components knit-to-shape	Cutting	Sewn	Assembled	Treatment
1. Apparel assembled from United States formed and cut fabric from United States yarns or components knit-to-shape	United States		United States	United States	United States	SSA	SSA	Duty-quota-free
2. Apparel assembled and further processed from United States formed and cut fabric from United States yarn or components knit-to-shape	United States		United States	United States	United States	SSA	SSA	Duty-quota -free
3. Apparel assembled with United States thread from United States formed fabric and SSA cut fabric or components knit-to-shape from United States yarns	United States	United States	United States	United States	SSA	SSA	SSA	Duty-quota -free
4. Apparel articles from regional fabric or yarns	United States or SSA		SSA	SSA			SSA	Duty-quota -free within cap
							Assembled on seamless knitting machine in SSA	
5. Apparel assembled or knit-to-shape in a lesser developed country using foreign fabric	Foreign country		Foreign country				Lesser Developed SSA	Duty-quota -free within cap
6. Cashmere sweaters: knit-to-shape			SSA					Duty-quota -free
7. Merino wool sweaters, knit-to-shape			SSA					Duty-quota -free
8. Apparel cut and sewn or assembled from fabric or yarns identified in the NAFTA “short supply” or not available in commercial quantities in the United States	Foreign country		Foreign country		SSA	SSA	SSA	Duty-quota- free
9. Handloomed, handmade and folklore articles								Duty-quota- free
New pref. Grouping/Grouping 10 Apparel articles assembled in SSA from United States and SSA components	United States	United States	United States	United States and SSA	SSA and United States	SSA	SSA	Duty-quota -free

Other special rules on the provision of textile/apparel articles

An article is eligible for preferential treatment even if it contains findings or trimmings of foreign origin, if the value of such findings or trimmings[89] does not exceed 25 percent of the cost of the components of the assembled article. Examples of findings and trimmings include sewing thread, hooks and eyes, snaps, buttons, "bow buds," decorative lace trims, elastic strips, and zippers. Elastic strips are considered findings or trimmings only if they are each less than 1 inch in width and used in the production of brassieres.

Sewing thread will not be treated as findings or trimmings in the case of grouping 3 and the new preferential grouping because the grouping 3 and the new preferential grouping specify that the thread used in the assembly of the article must be formed in the United States and thus cannot be of "foreign" origin.

Certain interlinings[90] are eligible for duty-free treatment as findings and trimmings. The interlinings permitted include only a chest type plate, a "hymo" piece, or "sleeve header" made of woven or weft-inserted warp knit construction, and made of coarse animal hair or man-made filaments. An article is eligible for preferential treatment even if the article contains interlinings of foreign origin, if the value of those interlinings (and any findings and trimmings) does not exceed 25 percent of the cost of the components of the assembled article. The President shall terminate this arrangement if he determines that such interlinings are produced in the United States in commercial quantities.

Under the AGOA *de minimis* rule,[91] an article is eligible for preferential treatment because it contains fibers or yarns not wholly formed in the United States or one or more beneficiary sub-Saharan African countries if the total weight of all such fibers and yarns is not more than 7 percent of the total weight of the article.

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[89] AGOA Sec.112(d)(1)(A).

[90] AGOA Sec.112(d)(1)(B).

[91] AGOA Sec. 112(d)(2).

VI. Canada

A. Provisions of the Canadian GSP scheme for LDCs

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

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

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-nation (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 were originally excluded from the scheme.[92]

In 2003 The Government of Canada has extended duty-free and quota-free access to imports from 48 LDCs with the exception of some agricultural products such as dairy, poultry and eggs. This extension of the Canadian GSP scheme is effective on 1 July 2003. All eligible imports from these eligible countries would be subject to duty-free and quota-free[93]

In May 2008 the Canada Border Services Agency issues Memorandum D11-4-4 where some changes were introduced in the Guidelines and general information section to clarify policy or procedural issues

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

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

93 Internet site: www.dfait-maeci.gc.ca/tna-nac/ldc_back-en.asp, the CCRA Internet site: www.ccra-gc.ca/menu/EmenuKCA.html (Customs Memoranda), the Customs Tariff: www.ccra.gc.ca/customs/ general/publications/tariff2003/table-e.html and the following Departmental memoranda

directly competitive products by withdrawing or modifying its 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 considers that the removal of the GPT concession would remove the injury, it will conduct a public inquiry and make recommendations to the Government. In accordance with the recommendation of the CITT, the Government may withdraw the GPT concession or establish tariff rate quotas.

C. Rules of origin under the Canadian GSP scheme for LDCs

In order to be eligible for LDC GPT treatment, products must originate 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 per cent maximum import content allowance (instead of the 40 per cent permitted for other developing country GPT beneficiaries). This means that to qualify for the LDC duty-free treatment, at least 40 per cent of the ex-factory price of the goods packed for shipment to Canada must originate in one or more LDC beneficiary countries or Canada.

The ex-factory price is the total value of:

(a) Materials;
(b) Parts;
(c) Factory overheads;
(d) Labour;
(e) Any other reasonable costs incurred during the normal manufacturing process, for example, 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 and temporary storage, are not included in the ex-factory price calculation.

Global cumulation and donor country content

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

To calculate the qualifying content, all LDC 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. Any Canadian content used in the production of the goods is also regarded as content from the LDCT beneficiary country where the goods originate.

Example: Wool of Yemen is combined with spandex of Hong Kong (China) and sewing thread of India to manufacture wool socks in Yemen. Under this subsection, a textile or apparel good must contain parts and materials of LDC origin that represent no less than 40 per cent of the ex-factory price of the good as packed for shipment to Canada. The wool of Yemen origin represents 35 per cent of the ex-factory price. The sewing thread of India and spandex of Hong Kong (China) represents an additional 7 per cent. This subsection permits inputs from GPT beneficiaries, in this case Hong Kong (China) and India, to be included in the 40 per cent parts and materials requirement. The 35 per cent input of wool from Yemen combined with the 7 per cent sewing thread makes 42 per cent

D. Special rules of textile and clothing

In the case of textile and clothing Canada has set out product specific rules of origin. These product specific rules apply to the textile and clothing article that have been subdivided in 7 product categories as contained in annex I.

According to this subdivision "**Yarns or sewing threads**" in part A1 and A2 of annex I must be spun or extruded in a LDC beneficiary country to be considered originating in a LDC. Once spun or extruded, the goods cannot undergo any further processing outside any LDC beneficiary.

Example: Cotton of any country of origin is imported into Bangladesh and spun into yarn in Bangladesh. The yarn is sent to Cambodia to be dyed. When the yarn is returned to Bangladesh it is sanitized and packed for shipment to Canada. Such goods would be entitled to the LDC.

However, if after the spinning process, the yarns were further processed in China (GPT), returned to Bangladesh, then exported to Canada, the goods would not be entitled to be certified as originating in a LDC because further processing occurred outside a LDCT beneficiary.

To be considered as originating in a LDC **"fabrics"** contained in subdivision B1 and B2 must be produced in a LDC beneficiary from yarns that originate in any LDC or GPT beneficiary or Canada.The yarns used in the "fabrics" must not undergo any further processing outside any LDCT or GPT beneficiary or Canada. The "fabrics" must not undergo any further processing outside any LDCT beneficiary or Canada.

Example: Cotton yarn produced in India is exported to Mali where it is woven into cotton fabric that is exported to Canada. As the cotton fabric meets the conditions of this subsection, the goods are entitled to be certified as originating in a LDC.

Example: Yarn produced in Spain is exported to Mali where it is woven into fabric for export to Canada. The fabric would not be entitled to be certified as LDC originating as the yarn does not originate in a LDCT beneficiary country, a GPT beneficiary country or Canada.

To be considered as originating in a LDC, "**apparel goods"** of subdivision C1 and C2 must be assembled in a LDC beneficiary. The fabric used in the assemble of such "apparel goods" must be cut in **that LDC** or Canada, and, in the case where such "apparel goods" are assembled from parts, those parts must be knit to shape in a LDC or Canada.

Furthermore, the fabric, or parts knit to shape, must be produced in any LDC or in Canada from yarns originating in any LDC or GPT beneficiary or in Canada. The yarns or fabric, or parts knit to shape, must not undergo any further processing outside any LDC beneficiary or Canada.

Example: Dresses or skirts manufactured in Mali will qualify as originating and be eligible for duty-free LDCT provided that the dresses or skirts are assembled in Mali from fabric that has been cut in Mali or Canada. The fabric must be produced in any LDC or in Canada from yarns that that originate in any LDC, GPT country or Canada and the yarns or fabric have not undergone any further processing outside any LDC or Canada.

In the case where the fabric is produced in a beneficiary country from yarns originating in a least developed country, a beneficiary country or Canada the **"apparel goods"** of subdivision C1 and C2 could be considered as originating, provided:

1. the yarns and fabric do not undergo further processing outside a least developed country, a beneficiary country or Canada, and

2. the value of any materials, including packing, that are used in the manufacture of the goods and that originate outside the least developed country in which the goods are assembled is no more than 75 per cent of the ex-factory price of the goods as packed for shipment to Canada.

Example: Those same dresses or skirts manufactured in Mali in the previous example will qualify as and be eligible for duty-free LDC provided that the dresses or skirts are assembled in Mali and the fabric used in the manufacture of the dresses or skirts is produced in a GPT country from yarns originating in a LDC or GPT beneficiary or Canada. The yarns and fabric cannot undergo further processing outside a LDC or GPT beneficiary or Canada. When using fabric manufactured in a GPT, the value of any materials, including packing that does not originate in the LDC in which the dresses or skirts are assembled must not exceed 75 per cent of the ex-factory price of the goods as packed for shipment to Canada.

To be considered as originating in a LDC **"made-up textile goods"** as set out in Part D of annex must be cut, or knit to shape, and sewn or otherwise assembled in a LDC beneficiary.

Furthermore, the fabric or parts knit to shape must be produced in a LDC beneficiary or Canada from yarns originating in any LDC or GPT beneficiary or Canada. The yarns or fabric or parts knit to shape must not undergo any further processing outside a LDCT beneficiary or Canada.

Example: Wool yarn produced in Afghanistan is exported to Bangladesh where the yarn is produced into wool fabric. The wool fabric is shipped directly to Lao People's Democratic Republic for further production into a good classified as "Other Made-up Textile Article." The production process of the finished good in Lao People's Democratic Republic must include cutting, or knitting to shape, of the fabric as well as sewing or otherwise assembling in that country in order for the good to qualify for the LDCT.

Documentary evidence

As of September 1997, the Canadian Customs and Revenue Agency (CCRA) have accepted 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 alternative Form A.

The proof of origin is not required to be an original. In all cases, it 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.

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.

For originating textile and apparel goods of HS Chapters 50-63 the *Certificate of Origin – Textile and Apparel Goods Originating in a Least Developed Country* (Form B255 contained in annex 2) must be submitted as proof of origin

Direct shipment requirements

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

The TBL is one single document that is issued prior to the goods beginning their journey when the carrier assumes care, custody, and control of the goods and will usually contain the following information:

(a) The identity of the exporter in the country of origin;
(b) The identity of the consignee in Canada;
(c) The identity of the carrier or agent who assumes liability for the performance of the contract;
(d) The contracted routing of the goods identifying all points of transhipment;
(e) A full description of the goods and the marks and numbers of the package; and
(f) The place and date of issue.

Note

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

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

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

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

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

- They remain under customs transit control in the intermediate country;
- They do not undergo any operation in the intermediate country, other than unloading, reloading or
- Splitting up of loads or any other operation required to keep the goods in good condition;
- They do not enter into trade or consumption in the intermediate country; or
- They do not remain in temporary storage in the intermediate country for a period exceeding six (6) months.

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

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

P means wholly (100 per cent) produced (as defined in subsection 2(1) of the *Regulations*) in the beneficiary or least developed country;
F for GPT, means, at least 60 per cent of the ex-factory price was produced in the GPT beneficiary country;
F for LDCT, means, at least 40 per cent of the ex-factory price was produced in the LDCT country. The existing 40 per cent of the ex-factory price of the goods as packed for shipment to Canada may also include a value of up to 20 per cent of the ex-factory price of the goods from countries eligible for GPT;
G for GPT, means, at least 60 per cent of the ex-factory price was cumulatively produced in more than one GPT beneficiary country or Canada;
G for LDCT, means, at least 40 per cent of the ex-factory price was cumulatively produced in more than one LDCT beneficiary country or Canada. The existing 40 per cent of the ex-factory price of the goods as packed for shipment to Canada may also include a value of up to 20 per cent of the ex-factory.

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.

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.

Trans-shipment 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.

VII. GSP rules of origin

A. The LDCs proposal on rules of origin

Introduction and status of the negotiations

Since the launching of the Duty-Free Quota-Free (DFQF) initiative in the 1996 Singapore Ministerial declaration rules of origin for LDCs started to be object of debate. The LDC Ministerial Declarations of Dhaka and Livingstone contained language referred to origin[94] without however expressly mention what kind of rules of origin were needed by LDCs.

The Decision reached in Hong Kong (China), as contained in Annex F of the Ministerial Declaration, states, i*nter alia* that WTO Members also agreed to ensure that "*preferential rules of origin applicable to imports from LDCs are transparent and simple, and contribute to facilitating market access*".

Although useful this language does not address the issue of the rules of origin and its impact on the utilization of trade preferences.

Unless further efforts are deployed by the LDCs and WTO members, no action is likely to be undertaken at the multilateral level. The above-mentioned wording on the rules of origin in the Decision is not legally enforceable. It does not provide for the establishment of any working group or the specification of modalities to avoid that the rules of origin are not an obstacle to the utilization of trade preferences.

In order to initiate implementation of the above commitment on rules of origin the LDCs group has put forward a draft that could serve as a concrete proposal to address this issue[95].

This initiative was aimed at setting the stage for a sensible debate on rules of origin between LDC and preference- giving countries on the basis of legal text rather than on declarations of principle and statements.

The responses from preference giving countries to such proposal have not been satisfactory to date. In the case of the EU, the entry into force of interim EPAs containing more lenient rules of origin for garments than under EBA meant that the LDCs are currently worse off than before. Rules of origin for garments under EBA continue to demand, in spite of long standing requests from LDCs, a double transformation while rules of origin under EPAs are currently requiring only one transformation.

A proposal to change rules of origin under EBA has been recently put forward requesting a 30 value added. While there are indications that certain garments manufactures may not be in a position to comply with such level of percentage what is certain is that at present the LDC are negatively discriminated when compared to those countries who entered EPAs. As a matter of utmost urgency consultations should be started with the EU to find a satisfactory solution.

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[94] For instance paragraph 12 of the Livingstome Declaration provides as follows: I*ncorporation of provisions in the modalities on realistic, flexible and simplified rules of origin, certification and inspection requirements and technical and safety standards;*

[95] See the WTO document, WT/CMTD/LDC/W/35.

In the discussions held in the post Hong Kong (China) framework preference giving countries entrenched themselves into the fact that since preferences are unilateral Rules of origin under the DFQF cannot be discussed or negotiated. This will repeat the failure of the early '70[96] to agree on a common set of rules of origin when GSP rules of origin were discussed in the UNCTAD working groups on rules of origin.

However, after more than 30 years and successive rounds of negotiations that have substantially lowered the preferential margin and hence the need for stringent rules of origin it may be considered simply anachronistic to continue to hold to such principles.

There have been suggestions from certain preference giving countries to move the discussions on rules of origin to the WTO committee on rules of origin or the Committee on Trade and Development (CTD). However it was noted that these proposals would have de- linked the issue of implementation of the Hong Kong (China) decision from the Doha negotiations with expectation of little or no progress.

A series of meetings have been held with Delegations of United States,EU and Japan during 2007 .However these meetings were not focused to discuss the LDC proposal on rules of origin and, generally speaking these preference giving countries reiterated that their rules of origin are simple and transparent.

In autumn 2007 in the NAMA chairman text it was stated that on the issue of rules of origin "*neither the proponents nor the members more broadly have a precise idea on how to proceed*" .This sentence ignored the LDC structured proposal on rules of origin

Moreover the Chairman text of last October contained a sentence mentioning harmonization of preferential rules of origin as an objective of the LDCs that was never advanced by LDCs

The actual chair text examined above is an improvement from the last draft only where it recognizes the existence of the LDC proposal.

In spite of this improvements the text of the Chair remain as falling short of setting a level playing field to initiate discussions on rules of origin with preference giving countries to commonly define rules of origin reflecting the actual industrial capacity of the LDCs.

Setting such level playing field was the main objective of the LDC proposal proposing as a starting point for the discussions an across the board rule of origin based on a percentage criterion. The adoption of an across the board criterion was simply to avoid the negotiations of product specific rules of origin but does not rules out the possibility to adopt product specific rules of origin for certain sectors. Moreover it has to be noted that the proposal does not set a specific level of percentage.

In fact it was felt that more field research was needed to determine the level of percentage that producers and exporters in LDCs are able to comply with.

[96] In the OECD Ad Hoc Group of the Trade Committee on Preferences, held in Paris in 1970, the preference-giving countries expressed the view that, as preferences were being granted unilaterally and non-contractually, the general principle had to be that donor countries were free to decide on the rules of origin which they thought were appropriate after hearing the views of the beneficiary countries.

Within this framework it has to be pointed out that the LDC proposal is a working document that does not exclude *a priori* to adopt, for certain sectors or HS chapters criterions such as the change of tariff classification or specific working or processing requirement .

The draft LDCs model protocol provides, according to the Kyoto convention and international practice, that there are two main origin-conferring categories, these being:

i) Wholly Produced - refers to agricultural and mining products which are collected, mined, grown, reared etc in the exporting country (e.g. mineral products; vegetable products; live animals; products obtained from live animals; etc if these products originate in the Member State concerned.) Annex D1 of the Kyoto Convention contains a definition of what constitutes wholly produced and most preferential Rules of Origin follow this definition.

ii) Substantive Transformation may be defined by one or more of the following methods:
   a. change of tariff classification;
   b. value addition;
   c. specific manufacturing process.

All of the ways of calculating substantive transformation have difficulties but the method recommended for use in the draft model protocol is the percentage criteria. The reason for recommending this method was to avoid a discussion on a line-by-line basis. If Rules of Origin were discussed on the basis of change in tariff classification or on the basis of specific manufacturing process this will necessitate a discussion on a line-by-line basis.

For change of tariff classification, because the Harmonised System is primarily a customs classification system rather than a way of defining substantive transformation, there are many instances in which a change in tariff line does not constitute substantive transformation and also instances in which substantive transformation takes place but with no change in tariff line. It will, therefore requires detailed discussions between the LDCs and the preference giving countries on what constitutes substantive transformation and, when there is no change in tariff classification at the tariff line level, what alternative method would be used to define substantive transformation. This, by definition, would need to be done line-by-line (although in some cases substantive transformation could be agreed on by chapter head and sub-head,) which will be further complicated and delayed by lobbying by interest groups in both the Preference giving countries and LDCs member States.

By definition specific manufacturing process would also need to be negotiated line-by-line.

There a number of intrinsic limitations in proposing a percentage criterion but also some gains in the context of rules of origin under the DFQF.

Percentage criterions could be defined in a variety of manner but mainly they take the forms below:

- Value addition in terms of cost of labour and direct cost of processing added to the imported materials (this is the method used under United States GSP and AGOA)
- Value addition by subtraction of the value of imported material (build down method under CAFTA)
- Allowance of maximum amount of foreign inputs out of the ex-work price
- Value addition in terms of cost of local material used in manufacturing the finished product. (build up in the CAFTA)

Limitations in using the value-addition calculation method are:

- value-addition may deter a manufacturer from investing in more efficient plant and machinery as this may reduce the cost of the manufacturing process which could result in the value added through processing to be reduced to below the value addition threshold which confers origin;
- value-added percentages are easily affected by movements in exchange rates for finished products that have imported raw materials in that when a local currency appreciates, the percentage value added tends to decline, and vice versa;
- The level of percentage threshold may be arbitrarily set and may vary accordingly.
- It is often difficult to calculate the value added if there are a number of products produced from the imported material, such as a manufacturing process uses imported crude palm oil to produce a number of products such as refined cooking oil, soap and margarine.
- Cost of labour in Developing countries is relatively cheap and in a value added calculation it may turn an asset into a penalty
- The calculations may be difficult and entails some account expertise generally not available in SME in LDCs, It may also entails discretionally in verifying origin by the customs administrations of the importing countries

However, despite these setbacks, a percentage criterion has some advantages because:

- it could be the quickest and easiest way to reach an agreement on Rules of Origin in that the Rules of Origin can be negotiated on a generic basis and not on a line-by-line basis;
- The percentage criterion method of calculation can be adjusted to minimize its shortcoming and could be drafted to compensate for additional costs incurred in transportation charges of inputs by landlocked countries.

The methodology used to calculate value addition is based in the LDC proposal on two formulas called build- down and built-up as follows that has been borrowed from the United States -CAFTA agreement:

Method Based on Value of Non-Originating Materials (“Build-down Method”)

$$RVC = \frac{AV - VNM \times 100}{AV}$$

Method Based on Value of Originating Materials (“Build-up Method”)

$$RVC = \frac{VOM \times 100}{AV}$$

Where:

- RVC is the regional value content, expressed as a percentage;

- AV is the adjusted value;

- VNM is the value of non-originating materials that are acquired and used by the producer in the production of the good; VNM does not include the value of a material that is self-produced; and
- VOM is the value of originating materials acquired or self-produced, and used by the producer in the production of the good.

The changes that have been introduced take into account of the special situations related to the transport costs of input, materials to the LDC Countries. Basically the calculations method adopted is based on adjustments made to the value of materials as contained in article 6 of the draft protocol permitting on one hand the deduction of the CIF costs when a "build-down" method is used to the nearest regional port and the additions of inter- regional inland costs of transport when the "build up" method is used. This method of calculation of the value of materials used in manufacturing will greatly facilitate LDC compliance with the rules of origin of the preference giving country.

B. Text of the LDCs proposal on rules of origin as in WTO document TN/CTD/W/30

Duty-Free Quota-Free Market Access Provisions For Least Developed Countries

Annex F of the WTO Hong Kong (China) Ministerial Decisions

Rules of Origin

GENERAL PROVISIONS

Article 1

For the purposes of this Agreement:

"LDCs" means the countries classified within this category by the United Nations General Assembly.

"Manufacture" means any kind of working or processing including assembly or specific operations;

"Material" means any ingredient, raw material, component or part, etc., used in the manufacture of the product;

"Product" means the product being manufactured, even if it is intended for later use in another manufacturing operation;

"Goods" means both materials and products;

"Customs value" means the value as determined in accordance with the 1994 Agreement on implementation of Article VII of the General Agreement on Tariffs and Trade (WTO Agreement on customs valuation);

"Ex-works price" means the price paid for the product ex works to the manufacturer in the LDC in whose undertaking the last working or processing is carried out, provided the

price includes the value of all the materials used, minus any internal taxes which are, or may be, repaid when the product obtained is exported;

"Value of materials" means the customs value at the time of importation of the non-originating materials used, or, if this is not known and cannot be ascertained, the first ascertainable price paid for the materials in the LDC except that such value may be adjusted to exclude any costs, charges or expenses incurred for transportation, insurance and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation;

"Value of originating materials" means the value of such materials as defined in sub-paragraph (h) applied mutatis mutandis;

"Value added" means the difference between the ex-works cost of the finished product and the [f.o.b.][c.i.f.] value of the materials imported from outside the LDC and used in the production;

"Chapters", "headings" and "sub-headings" mean the chapters, headings (four-digit codes) and sub-headings (six-digit codes) used in the nomenclature which makes up the Harmonised Commodity Description and Coding System, or HS;

"Classified" refers to the classification of a product or material under a particular heading; and

"Consignment" means products which are either sent simultaneously from one exporter to one consignee or covered by a single transport document covering their shipment from the exporter to the consignee or, in the absence of such a document, by a single invoice.

GENERAL REQUIREMENTS

Article 2

(a) The following products shall be considered as originating in the LDCs:

Products wholly obtained in the LDCs within the meaning of Article 3 of this Agreement; and

Products obtained in the LDCs incorporating materials which have not been wholly obtained there, provided that such materials have undergone sufficient substantial transformation in the LDCs within the meaning of Article 4 of this Agreement.

(b) For the purpose of implementing paragraph 1, all LDCs shall be considered as being one territory.

(c) Originating products made up of materials wholly obtained or sufficiently worked or processed in two or more LDCs shall be considered as products originating in the LDC where the last working or processing took place, provided the working or processing carried out there goes beyond that referred to in Article 5 below.

WHOLLY OBTAINED PRODUCTS

Article 3

The following shall be considered as wholly obtained in the LDCs:

Mineral and other naturally occurring products extracted from their soil or from their seabed;

Vegetable products harvested there;

Live animals born and raised there;

Products from live animals raised there;

Products obtained by hunting or fishing conducted there;

Products of sea fishing and other products taken from the sea outside the territorial waters by their vessels;

Products made aboard their factory ships exclusively from products referred to in sub-paragraph (f);

Used articles collected there fit only for the recovery of raw materials, including used tyres fit only for re-treading or for use as waste;

Waste and scrap resulting from manufacturing operations conducted there;

Products extracted from marine soil or subsoil outside their territorial waters provided that they have sole rights to work that soil or subsoil;

Goods produced there exclusively from the products specified in sub-paragraphs (a) to (j).

The terms “their vessels” and “their factory ships” in paragraph 1(f) and (g) shall apply only to vessels and factory ships which are registered or recorded in a LDC or in the country into which the exports of wholly produced products from LDCs are made.

Notwithstanding the provisions of paragraph 2, the preference giving country shall recognise, upon request of a LDC, that vessels chartered or leased by the LDC be treated as “their vessels” to undertake fisheries activities in its exclusive economic zone.

SUBSTANTIAL TRANSFORMATION

Article 4

For the purposes of these Rules of Origin, products which are not wholly obtained are considered to be sufficiently worked or processed in a LDC when the LDC value content is calculated on the basis of the build-down method (value added criteria) or the build-up method (local content criteria) described below**.**

For the build-down (value added) method, the LDC value content of a good may be calculated on the basis of the formula:

$$LVC = \frac{P - VNM}{P} \times 100$$

Where:
LVC is the LDC value content of the good, expressed as a percentage.
P is the ex-works price of the good.

VNM is the value of non originating materials that are acquired and used by the producer in the production of the good, but does not include the value of a material that is self-produced.

For the build-up (local content) method, the regional value content of a good may be calculated on the basis of the formula:

$$LVC = \frac{VOM \times 100}{P}$$

Where:
LVC is the regional value content of the good, expressed as a percentage.
P is the ex-works price of the good.
VOM is the value of originating materials that are acquired or self-produced, and used by the producer in the production of the good.

A finished good is sufficiently worked or processed when:

(a) In the case where the build-down method is used the LDC content expressed as a percentage is equal to (x) percent.

(b) In the case where the build-up method is used the LDC content expressed as a percentage is equal to (y) percent.

(c) In the case where adjustments are to be made to calculate the value of non-originating materials used in the production of a good when the built-down method is used paragraph 3(c) below will apply.

Value of materials

For the purpose of calculating the LDC value content of a good, the value of a material is:

In the case of a material that is imported by the producer of the good, the value of the material;

In the case of a material acquired or self-produced as defined in paragraph 4 in the territory in which the good is produced, the value, determined in accordance with the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994.

The following expenses, if not included in the value of an originating material calculated under sub-paragraph 3(a) above, may be added to the value of the originating material:

The costs of freight, insurance, packing and all other costs incurred in transporting the material within or between the territory of one or more of the LDCs or neighbouring countries as defined under Article 7 to the location of the producer;

Duties, taxes and customs brokerage fees on the material paid in the territory of one or more of the LDCs or neighbouring countries as defined in Article 7 other than duties or taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable;

The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-products.

The following expenses, if included in the value of a non-originating material calculated under sub-division 3(a) above, are deducted from the value of the non-originating material:

The costs of freight, insurance, packing and all other costs incurred in transporting the material to the location of the producer;

Duties, taxes and customs brokerage fees on the material paid in the territory of one or more LDC or neighbouring countries as defined under Article 7, other than duties or taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable;

The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by products;

The cost of originating materials used in the production of the non- originating material;

In the case where the deductions mentioned above under (i) to (iv) are not made and the value of a non-originating material is calculated on a c.i.f basis the required percentage under the build-down method will be increased by (z) percentage.

4. If a product, which has acquired originating status by fulfilling the conditions set out above, is used in the manufacture of another product, the conditions applicable to the product in which it is incorporated do not apply to it and no account shall be taken of the non-originating materials which may have been used in its manufacture.]

INSUFFICIENT WORKING OR PROCESSING OPERATIONS

Article 5

The following operations shall be considered as insufficient working or processing to confer the status of originating products, whether or not the requirements of Article 4 are satisfied:

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 like operations);

Simple operations consisting of removal of dust, sifting or screening, sorting, classifying, matching (including the making-up of sets of articles), washing, painting, cutting up;

Changes of packaging and breaking up and assembly of packages or simple placing in bottles, flasks, bags, cases, boxes, fixing on cards or boards, etc., and all other simple packaging operations;

Affixing marks, labels and other like distinguishing signs on products or their packaging;

Simple mixing of products, whether or not of different kinds, where one or more components of the mixtures do not meet the conditions laid down in this Agreement to enable them to be considered as originating in a LDC;

Simple assembly of parts to constitute a complete product;

A combination of two or more operations specified in sub-paragraphs (a) to (f); and

Slaughter of animals.

All the operations carried out in the LDCs shall be considered together when determining whether the working or processing undergone by that product is to be regarded as insufficient within the meaning of paragraph 1.

TERRITORIALITY

Article 6

The conditions for acquiring originating status must be fulfilled without interruption in the LDCs.

The acquisition of originating status shall not be affected by working or processing done outside the LDCs on materials exported from the LDCs and subsequently re-imported there, provided:

The said materials are wholly obtained in the LDCs or have undergone working or processing beyond the operations referred to in Article 5 prior to being exported; and

It can be demonstrated to the satisfaction of the customs authorities of the preference giving countries that:

The re-imported goods have been obtained by working or processing the exported materials; and

The total added value acquired outside LDCs by applying the provisions of this Article does not exceed (a) percent of the ex-works price of the end product for which originating status is claimed.

CUMULATION

Article 7

Cumulation with preference giving countries

Materials originating in the preference giving countries shall be considered as materials originating in the LDCs when incorporated into a product produced in the LDCs. It shall not be necessary that such materials have undergone sufficient working or processing, provided they have undergone working or processing going beyond that referred to in Article 5.

Diagonal regional cumulation

Products originating in any of the countries that are partners with a LDC of a regional group and used in further manufacture in a LDC shall be treated as if they originated in the LDC of further manufacture.

Notwithstanding paragraph 2, products further manufactured in a LDC shall be considered as originating in a LDC only where the LDC content there is greater than the value of the materials used that originate in any one of the other countries that are members of the regional grouping.

LDC content is calculated according to the method contained in sub-paragraph 1(a) of Article 4 (built down method) and the value of originating materials is calculated according to sub-paragraph 3(a) of Article 4.

The cumulation provided for in this paragraph may be applied only provided that:

A preferential trade agreement is in place between a LDC and other members of the same regional trading arrangement;

Originating material and products of other members of the regional group and incorporated into a product further manufactured in a LDC have acquired originating status by the application of rules contained in this Agreement.

Cumulation with neighbouring countries

At the request of a LDC, materials originating in a neighbouring developing country not a member of a regional trade agreement which is not a LDC shall be considered as materials originating in the LDC when incorporated into a product obtained there. It shall not be necessary that such materials have undergone sufficient working or processing, provided that the working or processing carried out in the LDC exceeds the operations listed in Article 5.

UNIT OF QUALIFICATION

Article 8

The unit of qualification for the application of the provisions of this Agreement shall be the particular product which is considered as the basic unit when determining classification using the nomenclature of the Harmonized System. Accordingly, it follows that:

When a product composed of a group or assembly of articles is classified under the terms of the Harmonized System in a single heading, the whole constitutes the unit of qualification; and

When a consignment consists of a number of identical products classified under the same heading of the Harmonized System, each product must be taken individually when applying the provisions of this Agreement.

[Where packaging is included with the product for classification purposes, it shall be included for the purposes of determining origin.]

Accessories, spare parts and tools dispatched with a piece of equipment, machine, apparatus or vehicle, which are part of the normal equipment and included in the price thereof or which are not separately invoiced, shall be regarded as one with the piece of equipment, machine, apparatus or vehicle in question.

Sets, as defined in General Rule 3 of the Harmonized System, shall be regarded as originating when all component products are originating. Nevertheless, when a set is composed of originating and non-originating products, the set as a whole shall be regarded as originating, provided that the value of the non-originating products does not exceed (b) per cent of the ex-works price of the set.

In order to determine whether a product originates, it shall not be necessary to determine the origin of the following which might be used in its manufacture:

Energy and fuel;

Plant and equipment;

Machines and tools;

Goods which do not enter and which are not intended to enter into the final composition of the product.

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Annex I

Canada categories of textile and garments products for rules of origin purposes

PART A1 – YARNS AND SEWING THREADS

5204.11.90, 5204.19.00, 5204.20.00, 5205.11.90, 5205.12.90, 5205.13.90, 5205.14.90, 5205.15.90, 5205.21.90, 5205.22.90, 5205.23.90, 5205.24.90, 5205.26.90, 5205.27.90, 5205.28.90, 5205.31.90, 5205.32.90, 5205.33.90, 5205.34.90, 5205.35.90, 5205.41.90, 5205.42.90, 5205.43.90, 5205.44.90, 5205.46.90, 5205.47.90, 5205.48.90, 5206.11.00, 5206.12.00, 5206.13.00, 5206.14.00, 5206.14.90, 5206.15.00, 5206.15.90, 5206.21.00, 5206.22.00, 5206.23.00, 5206.24.00, 5206.24.90, 5206.25.00, 5206.25.90, 5206.31.00, 5206.32.00, 5206.33.00, 5206.34.00, 5206.35.00, 5206.41.00, 5206.42.00, 5206.43.00, 5206.44.00, 5206.45.00, 5207.10.00, 5207.90.00, 5306.20.20, 5401.10.00, 5402.62.90, 5406.10.00, 5508.10.00, 5509.21.90, 5509.22.90, 5509.31.00, 5509.32.90, 5509.41.90, 5509.42.00, 5509.52.90, 5509.53.00, 5509.53.20, 5509.53.30, 5509.53.40, 5509.53.90, 5509.61.00, 5509.62.00, 5509.69.00, 5509.91.00, 5509.92.00, 5509.99.00, 5510.20.90, 5511.10.00, 5511.20.00

PART A2 – YARNS AND SEWING THREADS

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PART B1 – FABRICS

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PART B2 – FABRICS

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PART C1 – APPAREL

6101.10.00, 6101.20.00, 6101.30.00, 6101.90.00, 6102.10.00, 6102.20.00, 6102.30.00, 6102.90.00, 6103.11.00, 6103.12.00, 6103.19.10, 6103.19.90, 6103.21.00, 6103.22.00, 6103.23.00, 6103.29.00, 6103.31.00, 6103.32.00, 6103.33.00, 6103.39.10, 6103.39.90, 6103.41.00, 6103.42.00, 6103.43.00, 6103.49.00, 6104.11.00, 6104.12.00, 6104.13.00, 6104.19.10, 6104.19.90, 6104.21.00, 6104.22.00, 6104.23.00, 6104.29.00, 6104.31.00, 6104.32.00, 6104.33.00, 6104.39.10, 6104.39.90, 6104.41.00, 6104.42.00, 6104.43.00, 6104.44.00, 6104.49.00, 6104.51.00, 6104.52.00, 6104.53.00, 6104.59.10, 6104.59.90, 6104.61.00, 6104.62.00, 6104.63.00, 6104.69.00, 6105.10.00, 6105.20.00, 6105.90.00, 6106.10.00, 6106.20.00, 6106.90.00, 6107.11.90, 6107.12.90, 6107.19.00, 6107.21.00, 6107.22.00, 6107.29.00, 6107.91.00, 6107.92.00, 6107.99.00, 6108.11.00, 6108.19.00, 6108.21.00, 6108.22.90, 6108.29.00, 6108.31.00, 6108.32.00, 6108.39.00, 6108.91.00, 6108.92.00, 6108.99.00, 6109.10.00, 6109.90.00, 6110.11.90, 6110.12.90, 6110.19.90, 6110.20.00, 6110.30.00, 6110.90.00, 6111.10.00, 6111.20.00, 6111.30.00, 6111.90.00, 6112.11.00, 6112.12.00, 6112.19.00, 6112.20.00, 6112.31.00, 6112.39.00, 6112.41.00, 6112.49.00, 6113.00.90, 6114.10.00, 6114.20.00, 6114.30.00, 6114.90.00, 6115.11.00, 6115.12.00, 6115.19.00, 6115.20.00, 6115.92.00, 6115.93.00, 6115.99.00, 6117.10.90, 6117.20.00, 6117.80.90, 6201.11.00, 6201.12.00, 6201.13.00, 6201.19.00, 6201.91.00, 6201.92.10, 6201.92.90, 6201.93.00, 6201.99.00, 6202.11.00, 6202.12.00, 6202.13.00, 6202.91.00, 6202.92.00, 6202.93.00, 6202.99.00, 6203.11.00, 6203.12.00, 6203.19.10, 6203.19.90, 6203.21.00, 6203.22.00, 6203.23.00, 6203.29.00, 6203.31.00, 6203.32.00, 6203.33.00, 6203.39.10, 6203.39.90, 6203.41.00, 6203.42.00, 6203.43.00, 6203.49.00, 6204.11.00, 6204.12.00, 6204.13.00, 6204.19.10, 6204.19.90, 6204.21.00, 6204.22.00, 6204.23.00, 6204.29.00, 6204.31.00, 6204.32.00, 6204.33.00, 6204.39.10, 6204.39.90, 6204.41.00, 6204.42.00, 6204.43.00, 6204.44.00, 6204.51.00, 6204.52.00, 6204.53.00, 6204.59.10, 6204.59.90, 6204.61.00, 6204.62.00, 6204.63.00, 6204.69.00, 6205.10.00, 6205.20.00, 6205.30.00, 6206.20.00, 6206.30.00, 6206.40.00, 6206.90.00, 6207.11.00, 6207.19.00, 6207.21.00, 6207.22.00, 6207.91.00, 6207.92.00, 6207.99.00, 6208.11.00, 6208.19.00, 6208.21.00, 6208.22.00, 6208.91.00, 6208.92.00, 6209.10.00, 6209.20.00, 6209.30.00, 6209.90.00, 6210.10.90, 6210.20.00, 6210.30.00, 6210.40.90, 6210.50.90, 6211.11.00, 6211.12.90, 6211.20.00, 6211.31.00, 6211.32.00, 6211.33.90, 6211.39.00, 6211.41.00, 6211.42.00, 6211.43.90, 6211.49.90, 6212.10.00, 6212.20.00, 6212.30.00, 6212.90.00, 6213.90.00, 6214.20.90, 6214.30.90, 6214.40.00, 6214.90.00, 6215.20.00, 6215.90.00, 6217.10.90, 6217.90.10, 6217.90.90

PART C2 – APPAREL

6107.11.10, 6107.12.10, 6108.22.10, 6110.11.10, 6110.12.10, 6110.19.10, 6113.00.10, 6113.00.20, 6115.91.00, 6116.10.00, 6116.91.00, 6116.92.00, 6116.93.00, 6116.99.00, 6117.10.10, 6117.80.10, 6117.90.10, 6117.90.20, 6117.90.90, 6202.19.00, 6204.49.00, 6205.90.00, 6206.10.00, 6207.29.00, 6208.29.00, 6208.99.00, 6210.10.10, 6210.40.10, 6210.50.10, 6211.12.10, 6211.33.10, 6211.43.10, 6211.43.20, 6211.49.10, 6211.49.20, 6213.10.00, 6213.20.00, 6214.10.10, 6214.10.90, 6214.20.10, 6214.30.10, 6215.10.00, 6216.00.00, 6217.10.10

PART D – MADE-UP TEXTILE ARTICLES

6301.10.00, 6301.30.00, 6302.10.00, 6302.21.00, 6302.22.00, 6302.29.00, 6302.31.00, 6302.32.00, 6302.39.00, 6302.40.00, 6302.51.00, 6302.53.90, 6302.59.00, 6302.60.00, 6302.91.00, 6302.93.00, 6302.99.00, 6303.11.00, 6303.12.00, 6303.19.00, 6303.91.00, 6303.92.10, 6303.92.90, 6303.99.00, 6304.11.00, 6304.19.00, 6304.91.90, 6304.92.90, 6304.93.90, 6304.99.90, 6305.20.00, 6305.32.00, 6305.33.00, 6305.39.00, 6307.10.90, 6307.90.40, 6307.90.93, 6307.90.99, 6308.00.00, 6309.00.90

Annex II

Certificate of origin textile and apparel goods originating in a least developed country

Canada Customs and Revenue Agency | Agence des douanes et du revenu du Canada

PROTECTED (when completed)

CERTIFICATE OF ORIGIN
Textile and Apparel Goods Originating in a Least Developed Country
(Instructions attached)

Please print or type

1. Exporter's business name, address and country	2. Business name and address of importer in Canada

3. Means of transport and route (if known)

4. Markings and number of packages	5. Description of good(s)	6. Preference criterion	7. Number and date of invoices

8. "As the exporter, I hereby declare that the above details and statements are correct, namely:

1. all the goods were produced in _____ ; and
(name of country)

2. the goods comply with the requirements specified for those goods in the *General Preferential Tariff and Least Developed Country Tariff Rules of Origin Regulations.*"

Name	Position in the company
Telephone number	Facsimile number

_____ Signature

_____ Date (yyyy/mm/dd)

B255 E (03) (Ce formulaire existe aussi en français) Canada

Textile and Apparel Goods Originating in a Least Developed Country (LDC)
Certificate of Origin Instructions

For purposes of obtaining the LDC preferential tariff treatment, this document must be completed legibly and in full by the exporter and be in the possession of the importer at the time the declaration is made.

Field 1: State the name, address, and country of the manufacturer or exporter of the goods. The manufacturer or exporter must be located in the Least Developed Country (LDC) in which the goods are being certified. **Do not identify a trading house, freight forwarder, export broker, etc.**

Field 2: State the name and address of the importer in Canada.

Field 3: Indicate the shipping details, as far as known when the *Certificate of Origin* is completed.

Field 4: If the goods are crated or otherwise packaged, indicate the quantity of packages or crates. Also indicate any markings on the crates that can cross-reference the *Certificate of Origin* to the Through Bill of Lading.

Field 5: Provide a full description of each good. Indicate model numbers, styles, serial numbers, or any other relevant description. It is in the exporter's interest to give as full a description as possible. If known, provide the Harmonized System heading or subheading number for each good.

Field 6: For each good described in Field 5, state which criterion (A through G) is applicable. To be entitled to the Least Developed Country Tariff (LDCT), goods listed in the Schedule to the *General Preferential Tariff and Least Developed Country Tariff Rules of Origin Regulations ('Regulations')* must meet at least one of the criteria below.

Preference Criteria

A The good is produced in a LDC and the value of the materials, parts or products originating outside that LDC, or in an undetermined location, and used in the manufacture or production of the good does not exceed 60% of the ex-factory price of the good as packed for shipment to Canada. For the purpose of this criterion, up to 20% of the ex-factory price may originate from General Preferential Tariff (GPT) eligible countries. **This criterion does not apply to goods listed in Part A1, Part B1, Part C1 or Part D of the Schedule to the *Regulations*.**

B The good is listed in Part A1 or Part A2 of the Schedule to the *Regulations* and has been spun or extruded in a LDC and has not undergone further processing outside a LDC.

C The good is listed in Part B1 or Part B2 of the Schedule to the *Regulations* and is produced in a LDC from yarns originating in a LDC, a GPT beneficiary or Canada and the yarns have not undergone further processing outside a LDC, a GPT beneficiary or Canada and the fabric has not undergone further processing outside a LDC.

D The good is listed in Part C1 or Part C2 of the Schedule to the *Regulations* and has been assembled in a LDC from fabric cut in that LDC or Canada, or from parts knit to shape, and the fabric (or parts knit to shape) has been produced in any LDC or Canada from yarns originating in a LDC, a GPT beneficiary or Canada and the yarns or fabric have not undergone further processing outside a LDC or Canada. **Note: This criterion applies if the fabric (or parts knit to shape) is produced in any LDC or Canada.**

E The good is listed in Part C1 or Part C2 of the Schedule to the *Regulations* and has been assembled in a LDC from fabric cut in that LDC or Canada, or from parts knit to shape, and the fabric (or parts knit to shape) has been produced in a GPT beneficiary from yarns originating in a LDC, a GPT beneficiary or Canada and neither the yarns or the fabric have undergone further processing outside a LDC, a GPT beneficiary or Canada and the value of any materials, including packing, that are used in the manufacture of the good and that originate outside the least developed country in which the good is assembled is no more than 75% of the ex-factory price of the good as packed for shipment to Canada. **Note: This criterion applies if the fabric (or parts knit to shape) is produced in a GPT beneficiary.**

F The good is listed in Part D of the Schedule to the *Regulations* and was cut (or knit to shape) and sewn or otherwise assembled in a LDC from fabric produced in any LDC or Canada from yarns originating in a LDC, a GPT beneficiary or Canada and the yarns and fabric have not undergone further processing outside a LDC or Canada.

G The good is 'wholly obtained or produced entirely' in the territory of one or more LDC.

Field 7: State the date(s) and invoice number(s) for the goods described in Field 5.

Field 8: This field is to be completed by the exporter of the goods in the LDC in which the goods were finished in the form they were imported into Canada. The individual completing the *Certificate of Origin* on behalf of the company must be knowledgeable regarding the origin of the goods and have access to production information, should a verification be requested. This field is the exporter's declaration that the *Certificate of Origin* is accurate and that the goods meet the LDCT rules of origin for textile and apparel goods.

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Annex 3

CONVENTIONS REFERRED TO IN ARTICLE 8

PART A

Core human and labour rights UN/ILO Conventions

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

PART B

Conventions related to the environment and to governance principles

17. Montreal Protocol on Substances that Deplete the Ozone Layer
18. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal

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