

Workshop on Rules of Origin for WTO LDC Members

Geneva, 13-14 September 2010

I. Introduction

The LDC Group organised, with technical and financial support from Trade Mark Southern Africa, a workshop on preferential rules of Origin (RoO) from 13th – 14th September 2010. This Workshop brought together capital based experts on Rules of Origin and Geneva based delegates from Angola, Bangladesh, Benin, Bhutan, Burundi, Cambodia, Democratic Republic of Congo, Central African Republic, Chad, Djibouti, Ethiopia, Lao People's Democratic Republic, Lesotho, Madagascar, Malawi, Mali, Mozambique, Myanmar, Nepal, Rwanda, Samoa, Senegal, Sudan, Tanzania, Uganda, Yemen, and Zambia

II. Chairman's opening Remarks

In his opening address, His Excellency, Dr. Mothae Maruping, Ambassador/Permanent Representative of Lesotho, speaking on behalf of the LDC Coordinator, welcomed the capital based officials from the Ministries of Trade, Customs Authorities and other government departments. The Ambassador thanked Trade Mark Southern Africa (TMSA) for the support provided in hosting the workshop. The Ambassador also expressed the Group's appreciation of TMSA's continued support of the Group's effective participation in the Doha Development Agenda negotiations. He also thanked the representatives of China, the European Union, India, Japan and the United States for accepting the invitation to share information on their respective preferential market access schemes.

In his remarks he stated that despite improvements made by cooperating partners to their preferential schemes, effective market access had continued to be an issue of concern to LDCs owing to, among other factors, the nature of Rules of Origin and other technical requirements attached to such schemes. This has contributed to the low utilization of preferential schemes by LDCs, with Rules of Origin being the highest impediment to preference utilization. To resolve this, the LDC Group shall continue to engage with partners to enhance LDC utilization of preferential Market Access schemes, and seek Duty Free Quota Free Market Access for all LDC products. It was noted that despite efforts to secure implementation of the mandate provided in Hong Kong to "ensure that preferential Rules of Origin applicable to imports from LDCs are transparent and simple, and contribute to facilitating market access", progress on this has been slow. It is for this reason that this workshop was convened - to reinvigorate discussions with a view to facilitate implementation of the Hong Kong Decision. He reiterated the importance of having useful engagement with a selected number of preference-giving countries in order to get a better understanding and appreciation of their perspective.

Mr. Mark Pearson, the Programme Director of TMSA thanked the Ambassador for his opening remarks and informed the participants that the LDC Group had developed a work programme with support coming from TradeMark Southern Africa and UNCTAD. The work programme included a component on how to advance the work on preferential RoO and ensure that this takes centre stage in the Doha negotiations so that the DFQF can become more meaningful to the LDCs. Therefore, the workshop will focus on the content of the revised proposal, which is a revision of the proposal tabled by Zambia on behalf of the LDC group in June 2006. The Workshop had brought together Rules of Origin experts to facilitate interactive discussion based on national experience, with a view to enriching the revised proposal and ensure that all LDCs came to a common understanding and appreciation of the proposal. To this end, a series of questions to guide the workshop had been developed based on questions raised by WTO Members in particular in meetings of the Negotiating Group on Market Access and the Special Session of the Committee on Trade and Development (CTDSS).

III. Overview of RoO in the Multilateral Trading System in the context of GATT

The presentation on the overview of RoO in the Multilateral Trading System was done by Mr. Stefano Inama from UNCTAD. In his presentation, he highlighted the following:

- Little attention had been given to Rules of Origin under GATT 1947 and even when discussions were initiated in 1951, the focus was on marks of origin.
- The Kyoto Convention of 1974 and 2000 contains disciplines on RoO. However, these are non-binding guidelines on how to draft Rules of Origin. The Convention identifies two kinds of products: (i) wholly obtained products; and (ii) those where more than one country is involved in their manufacture (or substantial transformation). The challenge has been with determining 'substantial transformation.' The Kyoto Convention of 1974 provides guidance on the technical methodologies to define 'substantial transformation' by providing the following criteria: (i) change in tariff heading; (ii) working or processing; and (iii) ad valorem percentage change. It was up to each country to determine what was in its best interest. The Convention of 2000 modified the methodologies to define substantial transformation by placing the criteria of change of tariff classification as the preferred criteria. This was a drastic change, probably influenced by the WTO Rules of Origin Agreement which entered into force in 1995. Prior to 1995, there were no multilateral Rules of Origin.
- The first attempt to discuss preferential RoO at multilateral level was done through the UNCTAD working groups on Rules of Origin at the inception of the Generalised System of Preference Schemes. However donor countries argued that since preferences were given unilaterally, the preference giving countries had the right to decide what kind of RoO they would apply.
- The discussions at the WTO are on non-preferential Rules of Origin with a focus on harmonisation of the RoO through a work programme. Negotiations of the harmonisation work programme under the Agreement on Rules of Origin was initiated in Brussels at the World Customs Organization and handed over to the WTO Committee Rules of Origin in Geneva. Although the work should have been concluded in 1999 work is still on-going and a final agreement on harmonisation is still pending. The preferential Rules of Origin are not the object of harmonisation and in the WTO agreement are covered by a common declaration of a non-binding nature.
- Negotiations have been a series of complex considerations. This is because RoO are product-specific covering thousands of tariff lines. This requires a number of different skills and expertise (trade experts, customs and private sector) and there is always a problem of retaining or losing origin as production is increasingly fragmented and therefore brings to the fore the difficulty of assessing the possible trade effects of different RoO when associated to contingency protection instruments and other WTO agreements.
- The major lessons to be learnt include the fact that there are no multilateral rules or magical solutions to address issues of RoO; there are many lessons that the LDCs may draw on; and globalization of productions and lowering of MFN rates of duties warrants an overall review of unilateral preferential Rules of Origin.

Deliberations

Participants raised among other issues the following:

- How possible was it for LDCs to pursue their proposal if preferential Rules of Origin were unilateral and non-contractual;
- What the future was on the work pursued under the Committee on Rules of Origin;
- How discussions would be pursued under NAMA in view of the comments made that the NAMA negotiators did not have expertise on Rules of Origin;
- There was need to consider how cost of compliance could be addressed in view of the criteria used which go beyond trade considerations, as well as the procedure for advancing the proposal; and
- Clarity was sought as to whether it was possible to revise the Kyoto convention

In response to the comments and questions, Mr. Inama informed the group that it would be difficult to revise the Kyoto Convention. However, the WTO, under the DDA, offered an opportunity to have a framework on RoO governing the preferential schemes leveraging on the Hong Kong Ministerial decision on DFQF. He reiterated the fact that the initial LDC proposal sought to start the implementation of the language contained in such declaration denouncing the negative effects of RoOs on the preferential market access provided. The group was informed that for most members the translation into proactive action of the phrase relating to simple and transparent RoO is what has continued to be a stumbling block.

The presenter also pointed out the fact that industrial capacities are very low in LDCs hence the need to choose a Rules of Origin criteria which best reflects the capacities of LDCs.

II. Presentation by Preference Granting Countries

China, the European Union, India, Japan and the United States were invited to share information on preferential Rules of Origin offered under their respective preferential market access schemes. The following was highlighted:

a. China

Mr. Changsheng Li from the Permanent Mission of the People's Republic of China made the presentation on China's preferential market access scheme. The participants were informed that China's scheme covers 98.2% of products originating from LDCs. As from July 2010 the Chinese scheme covered 4762 tariff lines out of a total of 7923 tariff lines, representing 60% of China's tariff lines. 23% of LDC exports go China, making China the biggest single market for LDCs. There were currently 42 LDCs that had been provided with duty free and quota free market access on selected merchandise. To qualify, a country must have diplomatic ties with China and be included on the list of beneficiaries. There should also have been an exchange of letters. There are currently 33 beneficiary countries. 8 LDCs are yet to bilaterally ratify. The criteria for conferring origin include (i) wholly originating (ii) substantial transformation, which includes change in tariff heading and ad valorem percentage change. For a good to qualify for change in tariff heading it must undergo a four-digit change. For value addition, the threshold has been set at 40%.

Other requirements include the following:

- Goods should be exported directly from the beneficiary countries. A derogation from this may be allowed only when the goods are not in trade or commercial circulation; unloading or reloading; for temporary storage to keep goods in good condition; and under customs surveillance.
- The certificate of origin is to be issued by the recipient country and has to have a validity period, a unique number and a specified layout in one original and three copies.

The presenter also pointed out that in the two months of implementation following the revision in July 2010, it has been observed that for some shipments from LDCs beneficiaries to China:

- The recorded information is insufficient
- There is incomplete filling in of the forms,
- HS codes are missing,
- the seals are missing or hardly recognizable,
- feedback on requests for verification have been slow.

b. The European Union

Mr John Clarke, charge d'affaires at the European Union Delegation in Geneva, made a presentation on EU preferential Rules of Origin. In his presentation he highlighted the fact that the European Union will next week (starting 20 September 2010) adopt comprehensive Rules of Origin following the revision of the rules applicable to Least Developed Countries (LDCs). The RoO have been revised to ensure that LDCs are able to take advantage of the market access provided. These rules will apply as of 2011 except as specified. The revisions include among other issues:

- the adoption of single transformation rules, replacing the present double transformation requirement, as sufficient for conferring origin for textiles and clothing;
- an increase in the proportion of foreign content for processed agriculture products and machinery to 70% of the value of the processed product;
- possibility for regional cumulation to allow sourcing from any country (LDC or not) and to allow LDCs to enter into sectors where they have not been;
- abolition of the requirement for direct shipment from an LDC to the EU because some LDCs do not have easy access to the EU . However, the non-manipulation clause is still in place;
- the exporter will make his own declaration. This gives flexibility to exporters who will need to register with a competent authority in their country. A system of regular monitoring to ensure truthful conduct among exporters will be devised. In order to facilitate transition to

this exporter declaration and ensure that exporters assimilate the new system and to allow individual LDCs to put in place proper surveillance, 2017 has been designated as deadline for compliance.

- The rules also contain a clause on derogation to source overseas in times of emergency where manufacturing is affected.

c. India

Mr. Bipin Menor from the Permanent Mission of India made the presentation on India's preferential market access scheme. He informed the meeting that India's preferential market access scheme was in its second year of implementation. It covered 92.3% of LDCs' export trade. The scheme has an exclusion list accounting for 6% of the tariff lines. He also pointed out that the adoption of this scheme was a major challenge for India owing to the concerns expressed by the poor constituency of India.

The criteria used by India are (i) wholly originating and (ii) substantial transformation. As regards substantial transformation, it includes the following:

- Value addition of 30%
- Change in tariff heading
- Insufficient working or processes

The participants were informed that only 25 LDCs had signed their letters of intent. The presenter invited those who had not done so to do so in order to benefit from the scheme.

d. Japan

Mr Masafumi Kobayashi from the permanent mission of Japan made the presentation of Japan's rules under its Generalised System of Preferences. In his presentation, he pointed out that Japan did not maintain separate Rules of Origin for LDCs. The conditions for conferring origin are based on (i) wholly obtained and (ii) substantial transformation criteria. Substantial transformation criteria consist of one or a combination of the following:

- manufacturing or processing operations criteria;
- mandatory use of specified originating materials; and
- value added (ad valorem percentages) criteria.

Exceptions to substantial transformation criteria include minimal processes and the donor-country content rule.

Goods must be designated and eligible to qualify for preferences. Specific procedures must be followed and documentary evidence must be presented such as a certificate of origin; proof for donor-country content rule; and proof for consignment criteria.

e. The United States

Ms Laurie Molnar from the Permanent Mission of the United States (US) made the presentation on the preferential market access schemes maintained by the US. In her presentation, she pointed out that the US' Generalised System of Preference (GSP), the African Growth and Opportunity Act and the Caribbean Basin Initiative sought to maintain simple and transparent rules. The GSP covers 4800 products and origin is conferred through wholly obtained and substantial transformation criteria. Substantial transformation demands a 35% appraised value for the value content rule. For purposes of cumulation, regional groupings are treated as single countries.

Regarding AGOA, there are no competitive needs limits; there is added flexibility on cumulation with AGOA for value addition; and there are product specific rules especially for apparel and textiles.

The CBI aims to facilitate economic development for the 18 countries covered under this scheme; the procedures do not require extensive documentation.

According to the Presenter, generally US Rules of Origin are as simple as possible for exporters. Verifications are simple as well and this has been made possible through written requests to importers. There is also a requirement to maintain records for at least 5 years. Although there is a requirement for direct shipment, this is flexible as one can ship through another port but goods must remain within the control of customs.

Deliberations

Participants raised among other issues the following:

- The presentations revealed variation in the rules on substantial transformation, a situation which may not allow export market diversification for LDCs;
- Whether USA and Japan planned to elaborate RoO specific for LDCs;
- Whether there was consideration of global cumulation to allow sourcing from anywhere in the world;
- Whether China and India had submitted their schemes to the WTO so that the group could have a complete list of products covered;
- Whether the EU undertook consultations with the LDC when revising its rules in order to understand their needs;
- Regarding the EU's 2017 deadline for export declarations, why make this obligatory; and
- What were the views of the EU on cumulation in view of the fact that there were conditions of administrative agreements to be fulfilled.

In response to the issues raised by the members, the EU recognized that there will be a certain level of administrative burden to ensure that the system is working correctly. The EU further informed the group that it is very difficult for harmonization of Rules of Origin because of the differences in product coverage among other reasons.

India informed the group that though harmonization of RoO was a contentious issue harmonization of RoO of non-preferential rates can form the basis for coming up with harmonized RoO under the preferential schemes.

Japan could not tell whether there would be any consideration for LDC specific RoO.

The US reiterated the difficulty of harmonizing the RoO. The group was informed that the US was currently undergoing review of treatment of preferential RoO. The group was informed that under the Millennium Challenge Account, countries were being assisted to take advantage of the preferential market access schemes offered to them.

Due to time constraints, it was agreed that members would provide written questions which would be transmitted to the preference giving countries.

III. Regional Perspective:

a. SADC

Mr Paul Kalenga made the presentation on SADC RoO in which he highlighted lessons learnt by SADC in its attempt to open markets. He also highlighted the fact that duty free and quota free market access was meaningless if not supported by simple Rules of Origin as these can undermine the potential gains from preferences. SADC had initially adopted a simple set of RoO similar to those maintained by COMESA, which over time were revised to make them more stringent. The focus was on elaborating asymmetrical RoO to facilitate industrial transformation of the SADC region and the opening up of markets in terms of tariff reduction. The presenter pointed out that little account was taken of the impact of RoO on market access. The rules are variant, tariff line by tariff line, depending on the particular product, a situation that allowed product lobbyists to operate. To date SADC had no RoO on wheat flour. South Africa and Southern African Customs Union (SACU) opened up first and faster than the others. Ten years later, no downstream processing industries have been developed. By 2004, many SADC members began to realise that the RoO regime did not support use of preferences. The Heads of State and Government Summit held in July/August 2010 called for a comprehensive review of RoO. There was a view expressed that SADC provides good lessons on what not to do in crafting the RoO.

b. COMESA

Mr. Pearson made the presentation on COMESA Rules of Origin on behalf of COMESA. In his presentation, he stated that COMESA Rules of Origin have 5 independent criteria which include the following:

- goods wholly produced or obtained in the member States;
- local content, where goods are produced in member States using imported and local materials provided the Cost Insurance Freight value of imported materials does not exceed 60% of total cost of all materials used in production;
- the value added in the process of production accounts for at least 35% of ex-factory cost of the goods (Egypt 45%);
- Change in Tariff Heading: the process of production leads to a change in tariff classification at 4-digit level; and
- Goods of economic importance: the good is listed as a good of particular economic importance to the member States with a value added of attained through the process of manufacture of at least 25%.

COMESA allows full cumulation among its members. Although the RoO are more liberal than those used by SADC, COMESA still faces a number of challenges in the application of the RoO. The challenges include the lack of equivalence among the 5 criteria, which has led to a number of disputes and the instability of value added criterion, which is easily influenced by factors such as the exchange rates and international price fluctuations.

Deliberations

In the ensuing discussions some members highlighted the need to have presentation on experiences from other areas other than COMESA and SADC. Some members sought clarity from SADC on what the main reason was for ending up with more stringent RoO.

In response, the group was informed that the problem within SADC was the emphasis on the use of RoO as an instrument primarily for industrial policy instead of as a means to limit trade deflection.

IV Drafting preferential RoO

Mr. Stefano Inama made the presentation on drafting of preferential Rules of Origin which included the main elements of the LDC proposal. In his presentation, he highlighted the following:

- The determinants in defining the substantive requirements of preferential RoO include on one hand, to ensure that benefits are confined to products genuinely manufactured in the beneficiary countries and, on the other hand, RoO should match the existing manufacturing capacity of the LDCs.
- Excessively stringent RoO results in low utilization of the preferential market access schemes;
 - RoO should be transparent and simple to ensure a predictable origin outcome;
 - The LDC proposal in its current form is not a magic solution but sets a stage for dialogue;
 - The proposal needs to be completed with the addition of certification and verification procedures;
 - There is need to avoid RoO negotiations on a tariff line by tariff line basis; and
 - The LDC proposal introduces liberal RoO by adopting a modern formulation of a general percentage rule based on a value of material rule.

Main elements of the LDC proposal include:

- The use of the value of material calculation;
- Adoption of an across the board percentage criterion;
- Full cumulation among parties and diagonal cumulation on an inter-regional basis with other regions and neighbouring countries; and
- Possibility of refining the model by developing options and variants.

Deliberations

Members reiterated the need to have preferential RoO that were simple and transparent which would enable the LDCs to access preferential markets. Some members expressed concern that the value of material calculation may not be sufficient to confer origin in some cases, with garment manufacture cited as an example.

In response to the interventions, the Group was informed that the LDC proposal provided for both a "build up" and a "build down" calculation and that the country exporting the goods (i.e. the LDC) would have a choice of which of the two methods they wanted to use. Furthermore, what is being requested with the LDC proposal is what is already being implemented by some developed countries. In the case of textile and clothing products the Group was informed that product specific Rules of Origin may be envisaged for such products, albeit kept to a minimum so as not to open a proliferation of product specific Rules of Origin

V. Negotiating History

TMSA presented a brief negotiating history of the LDC proposal which included the fact that Ministers in Hong Kong declared 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 put forward a proposal contained in documents TN/CTD/W/30, TN/MA/W/74 and TN/AG/GEN/20 of June 2006, to the Special Session of the Committee on Trade and Development, the Negotiating Group on Market Access and the Committee on Agriculture in order to make the Hong Kong Ministerial Decision operational. However, there has been very little progress on these negotiations. This has been partly because of a general misconception of the LDC proposal, which led the NAMA Chair to conclude that both the opponents and proponents of the proposals seemed not to be clear on what the LDCs wanted.

VI Break - Out Sessions

In order to have focused discussions and simulate possible negotiations or questions by the Preference Giving countries on the LDC proposal, participants went into three groups to address pre-prepared questions that were based on questions that non-LDC Members had previously asked during the negotiating sessions. Each group made a presentation on the outcome of their group. The objective of the exercise was for the participants to arrive at a common understanding of the proposal and equip the WTO LDC Group with appropriate responses to any possible questions that could be asked, thereby providing coherence in responses given.

Plenary

The following was the outcome of the plenary questionnaire discussions:

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| <ol style="list-style-type: none">1) Why are the LDCs not requesting a harmonisation of preferential Rules of Origin?2) Why are LDCs requesting a uniform, multilateral set of Rules of Origin when there are already preferential unilateral Rules of Origin for LDCs from most developed countries? |
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In responding to these two questions, the participants concluded that the two questions were not different: 'uniform, multilateral set of RoO' or 'harmonisation.' Question 2 is a disguised form of question 1. Therefore care should be taken in responding to such questions in order to maintain consistency in responses given.

It was considered important that the LDC group is explicitly clear that it is not harmonization that the Group seeks to achieve. The response of the LDC Group would be that it is necessary to establish a framework that simplifies and makes easy the application of preferential Rules of Origin.

The proposal on the “build up” and “build down” calculations presents a range of percentages from 15% to 25%. This range is what exporters in LDCs can comply with as anything beyond the 25% threshold is considered difficult to achieve.

The group would need to use the provisions contained in the Hong Kong Ministerial Declaration and the Enabling Clause to advance their position in the negotiations

Since the perception that the LDC Group has been requesting harmonization, which has never been the case, has given the developed countries an excuse not to discuss the proposal, there was need to avoid this terminology when defending the proposal and insist on the focus as being to arrive at a “common understanding”. The objective was to derive simple and transparent Rules of Origin that minimised trade diversion. Stringent Rules of Origin are sometimes considered to be a way of encouraging industrialisation or as a means of protection and the use of Rules of Origin for either of these should be avoided. Simple and transparent Rules of Origin have been shown to trigger investment in LDCs and lead to a significant supply-side response. If the Rules of Origin are also rules-based the investments will be more secure.

In the ensuing discussion members of the group raised queries regarding what will be the impact of the LDC RoO on other rules and what will be the legal framework under which this framework would be adopted?

In response, the facilitators informed the members that it was possibly too early to address these issues. However it was thought that the LDCs’ DFQFMA and RoO proposals should be an early harvest target.

3. Why are the LDCs proposing an across-the-board value-added percentage as opposed to use of other methodologies such as change of tariff classification or specific working or processing?

In responding to this question, the Group considered it necessary to clarify the proposal as it is not about value-added but value of material content. A value added rule requires calculation of costs based on allowable and non-allowable costs, chosen at the discretion of the preference-giving Country. Moreover, the value-added rule requires apportioning costs to a single unit of production and costs such as salaries, rent, depreciation etc., are difficult to apportion. These are complex to determine and can be arbitrary. LDC producers do not usually have the capacity to continuously adjust their accounting methods according to market requirements. The value of material content was chosen because it is simple and can be applied across the board, unlike a change of tariff heading, which would require line-by-line negotiations. The value of material content is based on the value of originating and non-originating materials and involves a onetime calculation. It is the easiest criterion for LDCs, though the group was not ruling out the use of other approaches for specific tariff lines.

4. Should the LDCs take, as their starting point existing preferences provided by developed countries or should the LDCs define what they consider to be the most favourable to them, taking into account existing preferences?

5. If the LDCs start from the preferences already offered, should they start from the least preferential (on the assumption that all developed countries will then agree to a multilateral set of Rules of Origin) or should they start from the most beneficial (on the assumption that all developed countries should take a lead from the most enlightened developed country)?

6. How should the percentage value addition conferring origin be determined? At what percentage level should the LVC be set? Should the LVC be determined by each preference granting donor country? How can a list of insufficient working or processing operations, in addition to the LVC criterion, be established? How could the LDC Group demonstrate that a low percentage would not result in transshipment and in LDCs being perpetually consigned to producers of raw materials with low levels of FDI taking place?

Question 4, 5 and 6

The facilitator informed the Group that the initial LDC proposal did not include any percentages. The proposed percentages of 15% and 25% were based on the results of a questionnaire administered to the private sector in East and Southern Africa and studies undertaken by the EC. The facilitator further reiterated the fact that stringent RoO leads to the under-utilization of the preferences offered, therefore preference giving countries needed to be pushed into being realistic in terms of matching the required RoO and the industrial base of the LDCs. The facilitator advised the group not to restrict the methods that the group could use because the two options are meant to provide flexibility. In addition, there was need for the group to be clear about the difference between value-added and value of material criteria and reiterate that the group was seeking value of materials criteria.

The following was agreed by the group;

- LDCs should decide what is the most favourable in light of the HKMD;
- The starting point should be as defined by the LDCs;
- LDCs must determine the percentages and these can be qualified in that the percentages are based on studies undertaken by the European Commission and in the Eastern and Southern African region;
- LDCs must undertake consultations with the private sector;
- Stringent RoO do not necessarily lead to increased compliance;
- Determination of RoO should be based on the level of industrialization in LDCs;
- The benefit of the build-up approach is that costs of inland transport is taken into account;
- The build-down approach deducts CIF;
- The options of build-up/build-down should be left in the proposal as it was not a matter of either or and it would be left up to each exporter to choose which calculation was more appropriate for their particular needs.

Question 6

In order to effectively respond to question 6, there is a need to make reference to the narrative part of the proposal.

Responses to value of material can be found in Article 1 of the proposal.

The question about the list is misguided because the group's proposal is not seeking a list.

The question on transshipment and is a false one because transshipment has nothing to do with simple rules. Having low thresholds does not mean there will be an increase in transshipment.

Transshipment is a compliance issue and is more about law enforcement deficiencies.

As regards perpetuating production of low value added products or raw materials, there was no evidence that stringent rules have created industries in LDCs.

7. What is the benefit of deducting (or adding) transport and insurance costs to the cost of materials used in the manufacturing process?
8. Why do the LDCs favour regional cumulation rather than global cumulation and what method of cumulation should be aimed at? How would a LDC be able to determine that a product is originating in a LDC and not from another country? How would LDC cumulation actually work in terms of administrative co-operation and verification of proofs of origin?
9. What is the LDCs' preferred method for the administration of Rules of Origin?

Question 7: there is merit in deducting or subtracting when calculating in order to ensure comparison of like with like. For instance, if the denominator (transaction price) does not include insurance and freight (which are foreign costs), these should not form part of the numerator (the export price), as adding them would result in an unfair calculation.

Question 8: Relate this to Article 7 of the proposal. The LDC's proposal is regional cumulation to enhance regional integration. Moreover, it's better to have simple and transparent RoO than global cumulation since cumulation does not really solve the problem faced by LDCs in improving market access.

Question 9: The current LDC proposal does not include the LDCs' preferred method for the administration of Rules of Origin and LDCs were therefore ready to engage in further work to elaborate the administrative systems that would be required for the agreed preferential RoO.

In the ensuing discussion some Members emphasised the importance of not limiting cumulation to regional cumulation. In response, the facilitator indicated that the proposal was not limiting cumulation to regional cumulation as a derogation on cumulation was provided for in the proposal. The facilitator further re-emphasised the need for the Group to focus on securing simple and transparent RoO as opposed to global cumulation.

VI. Conclusion

In concluding the Group reiterated the need to decide the forum under which the RoO agenda should be pushed. It was clear that simple and transparent RoO was primarily a NAMA issue because agriculture deals with wholly obtained goods, and these are, generally speaking not problematic to meet albeit some processed agricultural products could also be affected by Rules of Origin. The group considered it necessary to have 2 parallel lines of negotiations:

- i) The multilateral negotiations under the DDA WTO negotiations; and
- ii) Bilateral engagement with the main partners (China, India, USA, Japan and EC) to remove specific bottlenecks and push the agenda forward.

TMSA proposed that experts should engage with the selected countries, after which engagement should proceed at ambassadorial level and then ministerial levels. Then push for an early harvest on RoO.

In the ensuing discussions Samoa expressed concern that there was still insufficient understanding of the proposal and it would be desirable to have an LDC Pacific questionnaire to be administered. Bangladesh called for the group to reconsider the proposal made on the build-up method and requested for the distribution of the studies that formed the basis for coming up with the proposed percentages and that there was need to modify the proposal and get approval from capital.

However some members insisted that the LDC proposal should not have to be restrictive on the criteria and therefore both options should be maintained.

In response the facilitator informed the group that the revised proposal was not substantially different from what was originally approved and tabled by Zambia in 2006. It was just an improved version of what had already been agreed by inserting the level of percentages required and takes into account the global environment. There was a need to avoid undue delays in tabling the proposal as the group had already missed an opportunity to input in the EC RoO Review deadline. However, the group still has an opportunity to input in the USA and Japan reviews. It was therefore imperative that within the course of the year, the proposal is tabled. TMSA informed the group that whilst the group should not be afraid to substantially change the proposal, it should be done only if it is necessary as this would send a wrong signal to the negotiating partners.

Uganda emphasised on the need for the group devise a way on how to proceed in Geneva as we wait for input from capital, without stalling the process.

Way forward

The group agreed on the following as the way forward;

- A paper will be prepared which will include an explanation of the build-up and build-down method and the justification for the percentages being proposed. The paper will be circulated in the week of 20 September and deadline for comments will be fixed. If no

comments are made, it will be assumed that there are no issues. In the meantime, the participants should initiate consultations in their respective capitals.

- The studies by EU and ESA would be circulated.

Annex 1: List of Participants