



Getting a new deal for the LDCs on RoO: The long and perilous Journey from the Hong Kong Decision (2005) to the Nairobi Decision (2015) and beyond...

Stefano Inama
**United Nations Conference on Trade and
Development (UNCTAD)**

We start with ...

The Hong Kong Decision

"Ensure that preferential Rules of Origin applicable to imports from LDCs are transparent and simple, and contribute to facilitating market access. "

- This wording does not provide for the establishment of any working group or modalities to make sure this commitment is implemented

Putting flesh on the bones: The LDC proposals on rules of origin (2006-2017)

- LDCs tabled a first proposal for discussion in 2006
- The proposal was discussed in 2007 and 2008 with some preferences giving Countries and with the NAMA Chair.
- A first revised proposal was submitted in 2011 to take into account of the EU reform of RoO
- A revised proposal was submitted in 2013, the proposal was later turned into a Draft leading to the **Bali Decision**
- As the Bali outcome did not provide for a mechanism to trigger reforms in Preference giving countries work resumed in the CRO in 2014-2015 leading to **Nairobi Decision 2015**
- At present LDCs are expecting Implementation of the Nairobi Decision 2017.... on the way to MC 11



The LDC dilemma :where do we put the negotiating leverage ? Binding or not binding language ? What is the value of a decision ?

- Unilateral preferences are not binding and so their RoO, *unless you wish to change the WTO system as we know it.*
- Yet EU and Canada introduced reforms of their RoO for LDCs
- A WTO Decision is not binding, nor justiciable in WTO legal system
- Kyoto Conventions annexes on RoO also are not binding, nor justiciable, yet have provided guidelines for decades.
- **The value of a Decision resides on the technical nature of its language and the WTO process that the Decision is capable to generate**

Work After the Bali Decision 2014-2015

- The most difficult issue after the Bali Decision was how to resurrect the discussion on RoO for LDCs in the CRO
- Para 10 of the Bali decision only referred to *annually review **the developments** in preferential rules of origin applicable to imports from LDCs* .
- On April 2014 UNCTAD with support of the Dutch Government organized a workshop in Geneva prior to the formal CRO
- The WTO chairman was able to secure consensus to restart discussions on the LDC RoO
- LDCs with the help of UNCTAD presented a study on difficulties of LDCs to comply with RoO at CRO in October 2014 paving the way for further discussion in 2015 CRO sessions



Work After the Bali Decision 2015 (2)

- UNCTAD organized two tailored Executive Trainings on Negotiation and Drafting Rules of Origin for LDC Geneva based and capital based delegates organized at EUI
- April CRO 2015-series of questions elaborated to donors based on Bali Decision
- Acceptance of a July 2015 dedicated session of the CRO
- Technical assistance to LDC WTO delegates before/ after the dedicated CRO session of July ,technical meetings, 14 one- to one- training sessions and the elaboration of background documents

The negotiating process leading to the Nairobi Decision

- On the way to MC 10 The LDC WTO group opted for submitting a text containing a series of binding commitments on RoO rather than aiming at establishing a process in the CRO to progressively lead to such result
- This negotiating position set the tone for the 42 hours of negotiations in the TNC where:
- **on one hand** , the LDC WTO group tried to obtain a text that would oblige the preference giving countries to modify their actual RoO and
- **on the other hand** the preference granting countries tried to dilute and/or confuse the text to make sure their RoO would not change
- The decision contains a number of “shall” that are however diluted by the following text

The content of the Nairobi Decision(i)

- *Ad Valorem* Preference-granting Members **shall:** (a) Adopt a method of calculation based on the value of non-originating materials. **However, Preference-granting Members applying another method may continue to use it.** It is recognized that the LDCs seek consideration of use of value of non-originating materials by such Preference-granting Members **when reviewing their preference programmes;**



The content of the Nairobi Decision(ii)

- **CTC:** Preference-granting Members **shall:**
- (a) **As a general principle**, allow for a simple change of tariff heading or change of tariff sub-heading;
- (b) Eliminate all exclusions or restrictions to change of tariff classification rules, **except where the Preference-granting Member deems that such exclusions or restrictions are needed, including to ensure that a substantial transformation occurs;**



The content of the Nairobi Decision(iii)

- *Specific working or Manufacturing:*
Preference-granting Members shall, to the extent provided for in their respective non-reciprocal preferential trade arrangements, allow as follows:

The content of the Nairobi Decision(iv)

- **Cumulation** : Preference-granting Members **are encouraged to expand cumulation to facilitate compliance with origin requirements by LDC producers using the following possibilities:**
 - (a) cumulation with the respective Preference-granting Member;
 - (b) cumulation with other LDCs;
 - (c) cumulation with GSP beneficiaries of the respective Preference-granting Member; and
 - (d) cumulation with developing countries forming part of a regional group to which the LDC is a party, as defined by the Preference-granting Member.



The content of the Nairobi Decision(v)

- *Implementation: 3 points*
- *1) No later than 31 December 2016Preference granting countries undertaking the commitments in accordance with paragraph 4.1 up to that date or thereafter, **shall inform** the Committee on Rules of Origin (CRO) of the measures being taken to implement the above provisions.*
- *2) Notifications of utilization rates of preferences granted to LDCs*
- *3) Developing a template for notification of RoO*

Progress in implementation...

- Japan, Canada, US, Switzerland, EU, notified the WTO of their compliance with Nairobi decision *and other preference giving countries may follow*
- *There are still significant gaps on notifications of utilization rates*
- *The template is adopted and the LDCs are waiting to examine the new notifications made according to the template*
- *The LDCs asked for a new dedicated session first in July 2017 and later postponed to September to examine the progress made in implementation*
- *It is not clear what is the goal for MC11*



Some piece of advise...

- The outcome of the Bali and Nairobi decisions demonstrated that making progress on RoO is not a one shot exercise
- Rather than focusing on binding language that could be easily turned into an empty shell it is advisable to focus on a broader mandate for the CRO to deepen and intensify the work on LDC rules of origin
- This does not provide assurance for success but it is the only possible way to exert peer pressure for reform of RoO
- Capacity building for LDC Geneva and capital based is a key aspect of this process

Some forthcoming UNCTAD activities on RoO with European University Institute

- An executive workshop on RoO organized with Global Governance program at the the EUI 30 May-1 June April:
- Rules of origin in international trade new frontiers and evolution
- <http://globalgovernanceprogramme.eui.eu/academy/rules-origin-international-trade-evolution-new-frontiers/>
- Tailored training course for LDC Delegates(restricted) on 20-21 June ;Florence European University Institute