

Brief on Duty Free Quota Free Market Access¹ (DFQFMA)

The LDC Group has been negotiating in the 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. In the preparations for the Hong Kong 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 was better than had been obtained in past negotiations but still fell short of the expectations of the LDCs.

The decision taken at Hong Kong was 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.*

Article 36 of Annex F also states that:

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.

In the Closing Session of the Ministerial Meeting in Hong Kong, the Chair (Hong Kong China) proposed *"that Ministers take note of their understanding that the text concerning the duty-free quota-free decision in sub-paragraph (a)(ii) of Annex F was a framework, and that developed Members and developing Members declaring themselves in a position to do so were urged to set out, by the end of 2006, the means by which they would implement this decision."* (WT/MIN(05)/SR/12)

Progress on preparing modalities for the implementation of the DFQFMA decision made at Hong Kong has been slow. The current position is given in the Revised Draft Modalities of the Agriculture and NAMA Chairs obtained in TN/AG/W/4/Rev1 and TN/MA/W/103 respectively.

The specific texts of the NAMA and Agricultural Revised Draft Modalities that address market access for LDCs limit themselves to a repetition of the original Hong Kong decision and make not attempt to establish any credible mechanisms to monitor the implementation of the commitments or the timeframes for these commitments.

¹ This brief is based on an UNCTAD Study entitled " *Erosion of Preference in the Post Hong Kong Framework : from Trade is Better than Aid to Aid for Trade*" ,UNCTAD 2008

From the point of view of the LDCs the Hong Kong Ministerial decision on DFQFMA has a number of weaknesses, in particular:

- Although the decision covers 100% of products originating from all LDCs (and both the level of product coverage and the inclusion of all LDCs should be regarded as major achievements for the LDC negotiators), there is a loop-hole as it allows developed countries to self-assess whether they are in a position to provide 100% product coverage and, if, by their own assessment, they are not, then they can provide DFQFMA to 97% of products originating from LDCs. Given that the export bases of most LDCs are extremely limited and that developed countries have about 6,000 to 10,000 tariff lines, an exclusion of 3% of tariff lines amounts to about 180 to 300 tariff lines. This may not sound much but if the 3% exclusions are of lines that constitute LDC exports, then the provision of 97% DFQFMA to LDCs is commercially meaningless.
- The implementation date is set at 2008 or by the start of the implementation period (of the DDA). However, there is no time limit set for the 3%. In his Challenges paper of 25th May 2007 the Chair of the Committee on Agriculture suggested that "*Even if that last 3% cannot be achieved by the commencement of the implementation period, it is something to aim for by the end*". However, this suggestion was dropped from the Chair's Draft Modalities papers, presumably because of strong opposition from some developed country Members and the LDCs will struggle to get an implementation date introduced for the 3%.
- Although the Hong Kong Ministerial Declaration envisages developing country Members providing LDCs with DFQFMA, the language used in the Declaration 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. 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. This implies that if the inclusion of some tariff lines into the LDC DFQFMA provisions would have an adverse effect on the exports of developing countries then the developed country making the concessions to the LDCs had a right not to include these lines in the concessions. At the time of the decision the main reason for the inclusion of this phrase was to protect garment exports into the US from some developing countries from competition from a few LDCs.
- The monitoring mechanism is extremely weak and 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.²

Despite these weaknesses, there is a body of opinion that regards the LDC package of DFQFMA on a lasting basis for all products originating from all LDCs by 2008 or no later than the start of the implementation period, combined with the Enhanced Integrated Framework and the Aid for Trade initiative as being the major outcome of the Hong Kong Ministerial meeting.

The value of the DFQFMA initiative is expected to derive from further concessions to be made by the United States and Japan under their respective GSP schemes for LDCs. The EBA Initiative of the EU more than fully satisfies the 97% requirement and, with the improvements

² See Mavroidis, Horn and Inama, What developing countries should be asking in the context of DSU negotiations, mimeo, 2003.

made by the Japanese in April 2007, it also satisfies the 97% requirement. By contrast, in the case of the United States, there remains considerable scope for improvement to achieve the 97% requirement. This could be done by expanding product coverage for textiles and clothing.

The implementation of this commitment, as well as its timing, needs to be monitored, as the definitions of duty- and quota-free for 97% at the tariff-line level are not always clear and are open to abuse through interpretation.

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 make a significant impact on increasing economic growth and reducing poverty in the poorest countries of the world. As mentioned above, on a gross estimate average of 10,000 tariff lines for the United States and Japan, the 97% 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 as shown in Tables 1 and 2.

According to the calculation shown in Table 1, in the case of the United States market, the trade flows of products from LDCs in the 3% of tariff lines not covered by the GSP scheme was, in 2004, slightly higher than US\$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, it is evident that almost all products are textiles and garments.

Table 1: Trade flows currently excluded from DFQF to the United States and trade flows that might continue to be excluded under the 97 per cent commitment (2004)

Description	Total (\$000)	Share of U.S. imports in world imports from LDCs	Receiving preferential treatment (\$000)	World imports from LDCs (\$000)
1	2	3	4	5
Trade flows of all imported products in the United States from LDCs	12 863 496	23.7	4 640 925	54 176 725
Trade flows of products currently NOT covered by the GSP	5 070 879			
Trade flows of 3 per cent of tariff lines not covered by the GSP scheme	5 068 870			
Percentage of trade flows from LDCs excluded from preferential treatment	39.4			

As shown in Table 2, the case of Japan was similar. The amount of LDC trade not covered by the GSP scheme was equivalent to \$1.4 billion, mainly represented by petroleum oils and fish. This figure was exactly the same as the first 300 tariff lines not covered in the GSP scheme. Again, in this case, the requirement to achieve 97 per cent at the tariff level was already fulfilled under the existing GSP arrangement. In April 2007 Japan notified³ further improvements to implement the DFQFMA commitment. As a result of this expansion, Japan reported that 1,101 products have been added to the list of items for the DFQFMA to LDCs (from 7,758 to 8,859 tariff lines). According to the notification, the coverage has increased significantly from 86% to 98%, defined at the tariff line level. In terms of import value, Japan reported that the coverage of the DFQF to LDCs is well over 99%. It 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.

³ See WT/COMTD/N/2/Add.14 of 12 April 2007.

Table 2: Trade flows currently excluded from DFQF to Japan and trade flows that might continue to be excluded under the 97 per cent commitment⁴ (2004)

Description	Japan imports from LDCs			World imports from LDCs (\$000)
	Total (\$000)	Share of Japan's imports in world imports from LDCs	Receiving preferential treatment (\$000)	
2	7	8	9	11
Trade flows of all imported products in Japan from LDCs	2 421 540	4.5	149 049	54 169 426
Trade flows of products NOT covered by the GSP scheme	77 897			
Trade flows of 3 per cent of tariff lines NOT covered by the GSP scheme	77 897			
Percentage of trade flows from LDCs excluded from preferential imports	62.2			

The calculation has not been made for the EU, as EBA product coverage complies more than fully with the commitment of the Hong Kong Ministerial Decision on Measures in Favour of LDCs in terms of market access.

It is clear from this analysis that the main market where progress is needed, in terms of the DFQFMA decision, is the US, 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 is not clear at this point what kind of follow up has taken place since. The discussions over the extension of the current US GSP during 2008 may represent a significant opportunity for LDCs to resume such discussions.

Canada and, more recently, the EC have taken action to review their GSP Rules of Origin⁵ and this could provide an opportunity to the LDCs to ensure that Rules of Origin especially are made more transparent and simple.

The Hong Kong 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 report⁶ 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. 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 Declaration. In this context, it may be noted that in June 1999 WTO

⁴ This calculation does not take into account the recent improvements made to the GSP of Japan in favor to LDCs made in April 2007, nor the fact that for the most exported product from LDCs in 2005, petroleum oils (heading no. 270900090), as contained in the list of products contained in the Annex is no longer dutiable and MFN free since April 2006.

⁵ See the Green Paper on the Future of Rules of Origin in Preferential Trade Arrangements, COM(2003)787 final Brussels, 18 December 2003.

⁶ WTO document WT/CMTD/LDC/W/35.

members agreed to a waiver⁷ to provide an instrument for developing country members to offer preferential tariff treatment to LDCs' products in a non-discriminatory and non-reciprocal nature, as in the GSP. Paragraph 2 of the waiver states that:

"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 and the preference margins to be accorded. Subsequent modifications to the preferences shall similarly be notified."

However, as of January 2007, this waiver had been utilised 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 from the point of view of developing countries. However, further efforts may be devised to further improve trade preferences in accordance with the spirit and letter of the 1999 waiver so that trade preferences granted by developing countries to LDCs should be non-reciprocal and non discriminatory. It is, therefore, not necessary for LDCs to accept preferences provided under GSTP or reciprocal Regional Trade Arrangements as alternatives to the implementation of the DFQFMA commitment.

⁷ WTO document WT/L/304 of 17 June 1999.