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**A perspective about the implementation
of the Nairobi Decision; What more is
expected from LDCs and what are the
nexts steps?**

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A first decade of LDC proposals to Bali and Nairobi (2005-2015)

- To start implementation of the DFQF commitment of Hong Kong Ministerial of 2005 LDCs tabled a first proposal for WTO Members for discussion in 2006
- It took a decade to get to the Bali (2013) and Nairobi Decision(2015)
- In 2003 Canada reformed the RoO under the GPT rules
- In 2011 the EU implemented its reform heralding a new era on Rules of Origin for LDCs
- Recently Japan, China and Eurasian Customs Union introduced improvements
- Australia ,New Zealand and Thailand announced reviews



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What is the value of WTO Ministerial Decision?

- A Decision is not binding, nor justiciable
- However, in the vacuum left by the ARO on preferential Rules of Origin it still has a meaning
- **Kyoto Conventions also are not binding, nor justiciable yet have provided guidelines for decades**
- Much depend on the language of the Decision and the WTO process that the Decision is capable to generate

- After Bali it was difficult to reopen discussion as the text refers to “*annually review **the developments** in preferential rules of origin applicable to imports from LDCs*”.
- *So what if there are no “developments” ?*
- It took years and a research and capacity building program to start a process leading to the Nairobi decision of 2015
- On April 2014 UNCTAD with support of the Dutch Government launched a research and capacity building program with European University that has supported the LDCs WTO group to date

The content of the Nairobi Decision 2015

- In its proposal for MC 10 of September 2015, the LDC WTO group opted for a text containing a series of binding commitments on RoO rather than aiming at establishing a process in the CRO to progressively lead to RoO reforms.
- 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 text that follows.

Implementation agenda after Nairobi : a second decade of efforts?

- *No later than 31 December 2016Preference granting..., **shall inform** the Committee on Rules of Origin (CRO) of the measures being taken to implement the above provisions.*
- *The CRO shall annually review the implementation of this Decision....*
- In this regard, Members reaffirm their commitment to annually provide import data to the Secretariat ...on the basis of which the Secretariat can calculate **utilization rates**
- Furthermore, the CRO shall develop a **template for the notification of preferential rules of origin**, to enhance transparency and promote a better understanding of the rules of origin applicable to imports from LDCs.



Implementation of the Nairobi Decision 2015-2017

- The Development of a template took most of attention of the LDC group in **2016**
- LDCs expected preference giving countries notify according to the template the improvements to RoO to comply with the deadline of **31 December 2016**
- However, it took until the WTO Committee on Rules of origin (CRO) meeting of **March 2017** to achieve consensus on the template
- Methodology on calculation of UR agreed on **March 2017**
- The LDCs insisted on new notifications to follow the template allowing for comprehensive review to be held at the **CRO October session in 2017**

Implementation of the Nairobi Decision 2017-2020 (1)

- The meeting of the **CRO in October 2017** was a litmus test of the implementation of the Nairobi decision as the majority of PGCs notified their rules according to the template allowing a first assessment.
- Comprehensive presentations were made by LDCs to show the shortcomings of the current RoO
- Yet, PGCs mostly reiterated the view that their RoO were in compliance with Nairobi decision and no changes were necessary



Implementation of the Nairobi Decision 2017-2020 (2)

- Faced by the implicit or explicit statements of the PGCs that their rules of origin were in conformity with the Nairobi decision, the LDC WTO group renewed efforts in **2018 and 2019** to bring new evidence at the CRO to start a constructive dialogue.
- These renewed efforts focus on:
 - A progressive examination of each of the substantive components of the Nairobi Decision to show to the PGCs the deviation of their rules of origin and best practices that could be adopted
 - Evidence from analysis of the URs that the existing rules of origin adopted by PGCs were linked to low utilization of these trade preferences



5th Anniversary of the Nairobi Decision (April and November 2020 CROs) and way forward

- LDCs underscored that around 18 submissions from 2015 to 2020 were made, either in form of substantive presentations or analytical documents.
- To date, **there is no written substantial response or submission from any PGCs in response to LDCs submissions**
- There have been a series of bilateral meetings
- There have been improvements made by Canada, China, Japan, and Eurasian Customs Union
- Undergoing reviews of Australia, New Zealand, and Thailand
- At the November CRO meeting some PGC delegation contested the notion raised by LDC that their RoO are not in conformity with Nairobi Decision.



5th Anniversary of the Nairobi Decision

- The LDCs should not be left alone in the quest for better rules of origin as this is an objective of the multilateral community embedded since 2005 in the Hong Kong WTO Ministerial Decision and in target **17.12 of the SDGs 17**
- The LDCs believe that it is necessary to revitalize the debate in the CRO and recognize that a new mandate involving all WTO members with a fresh work program **setting a time horizon** should be an outcome of MC 12.
- The work undertaken at WCO on the revision of Annex K should provide additional impetus to the CRO process
- Such work program on RoO could have significant spillovers for the entire international trading system





Thank you for your attention

"Mazzarello - geometrie del dare, nuovo futuro" is the work of Maurizio Cancelli.

Its architectural perspective emphasizes the interactions of governments, societies and economies from around the globe under the United Nations Framework. This collaboration highlights the earth, its resources and potentials, and fosters a recognition of local communities and their right to exist in their places of origin, with their own distinction and diversity. Maurizio Cancelli started his artistic research on the right to live in one's place of birth more than thirty years ago. His work is inspired by the mountainous terrain surrounding the village of Cancelli in the heart of Umbria, Italy.



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