Submitted to:

Office of the United States Trade Representative
TRADE POLICY STAFF COMMITTEE

Regarding:

2005 WTO DECISION ON DUTY-FREE QUOTA-FREE MARKET ACCESS FOR THE LEAST DEVELOPED COUNTRIES

Statement of the

American Dehydrated Onion and Garlic Association

March 15, 2007

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I. The U.S. Dehydrated Onion and Garlic Industry

A. Dehydrated Onion and Garlic are Import Sensitive

The American Dehydrated Onion and Garlic Association (ADOGA) welcomes this opportunity to comment on Duty-Free, Quota Free (DFQF) market access for Least Developed Countries (LDCs) under the auspices of the World Trade Organization (WTO). ADOGA is very concerned about *any* duty reduction for dehydrated onion and garlic,[1] even from the LDCs, because, as an import sensitive industry with import sensitive products, the potential for harm outweighs the potential for benefit.

Frankly, the U.S. import tariff is one of the few market equalizers this industry enjoys. It receives no subsidies or marketing assistance from the U.S. government as many other agricultural crops do. Without the tariffs as a defense against aggressive imports, the industry has difficulty competing against foreign sources that enjoy much lower costs of production. Over the years the industry has worked to reduce costs and increase efficiency, but it still faces input costs higher than many foreign competitors. In this context, the U.S. import tariff becomes extremely important to the industry.

With more tariff reductions on the horizon, the industry is understandably concerned. Past trade negotiations have been successful in reducing domestic protections such as tariffs, but not quite as successful in defending U.S. industries against foreign products imported from economies completely different from our own or from *unfairly* traded imports. The term "level playing field" is not always achieved by zeroing out tariffs and quotas.

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[1] HTS 0712.20.20.00 – dried onions, powder or flour (2007 MFN rate: 29.8%)
HTS 0712.20.40.00 – dried onions, other (2007 MFN rate: 21.3%)
HTS 0712.90.40.20 – dried garlic, powder or flour (2007 MFN rate: 29.8%)
HTS 0712.90.40.40 – dried garlic, other (2007 MFN rate: 29.8%)

ADOGA requests that *no* reduction be taken on the U.S. tariffs for dehydrated onion and garlic due to their import sensitivity. The Association suggests that U.S. negotiators consider exempting dehydrated onion and garlic from tariff reductions because of their highly import sensitive status. However, should reduction be *mandatory* for all tariff lines, the Association requests the smallest reduction and the longest phase-out period possible for dehydrated onion and garlic.

B. This Industry Merits Protection

ADOGA is comprised of two companies – Gilroy Foods, Gilroy, California, and Sensient Dehydrated Flavors, Turlock, California – that produce the majority of all U.S. dehydrated onion and garlic. Overall, the U.S. dehydrated onion and garlic industry production is valued at over $350 million annually.

Economic exigencies have led to consolidation within the dehydrated onion and garlic industry. Over the years, six producing companies have been reduced to three producers due to economic stress within the industry attributable to aggressively directed import competition. That same economic stress continues today with imports, particularly dehydrated garlic, underselling domestic product.

The U.S. dehydrated onion and garlic industry employs an estimated 3,700 workers on a full time or seasonal basis at plants and headquarters, including hourly plant workers or farm workers hired primarily for harvesting operations. The total U.S. dehydrated onion and garlic industry payroll is approximately $118 million. These jobs are primarily in small, rural California towns where family wage jobs are difficult to find.

Plant workers' wages in unionized operations are generally at the $15-18 per hour level, plus ≈60 percent in additional benefits. Plant pay in non-union locations varies depending on local conditions and reportedly averages $2-3 per hour less than union rates, with benefits in the 40-

50 percent range. These plant wages are good by the standards of the communities in which the companies operate.

Most of the harvest workers have been working in the industry for many years and are experienced workers. As a result, they generally earn more than the average California field worker wage, which was about $8.81 per hour in 2005 according to the U.S. Department of Agriculture, National Agricultural Statistics Service. The field workers employed in the industry are currently paid an average of $10-13 per hour, plus up to 50 percent in benefits, a perquisite that many agricultural employers do not provide. Some workers receive up to an average of $15 per hour due to higher skill levels.

ADOGA would expect the projected loss of sales resulting from tariff elimination to result both in direct job loss and lowering of wage rates in non-union jobs. (Both job loss and reduced wage rates have resulted in other U.S. vegetable processing industries suffering from import competition.) Job loss can be expected to be somewhat less than proportional to sales loss if sales loss is small. If sales losses and decreased profitability result in plant closures, however, job loss percentages could well exceed sales declines.

An example of the devastating impact of imports is the closure of the DeFrancesco & Sons dehydration facility in Firebaugh, California, in March 2006. DeFrancesco was a third generation dehydrator of onion and garlic; a company that reportedly held a 20 percent market share at one point in its history. But, facing increasingly burdensome regulations, increasing costs of production, and aggressive competition from low-priced Chinese dehydrated garlic, the company simply could not survive any longer. As many as 187 direct, year-round jobs were lost with the DeFrancesco closure – jobs that provided a measure of stability for many workers who had been working for decades with the company, according to Frank DeFrancesco, president of DeFrancesco

& Sons.[2] Not only will jobs at that wage level be difficult to replicate in the Firebaugh area, but the company also covered the entire cost of insurance for the employees and their families and had established a profit-sharing program for the employees. In addition to the direct, year-round jobs, as many as 450 part-time jobs (May through December) were lost, not to mention a substantial number of indirect jobs at local businesses and suppliers. This fate may await all industry employees if the U.S. government continues to allow unfettered market access to traders that do not face the same cost and regulatory burdens or play by the same trade rules as U.S. producers do.

The ADOGA companies are dependent on maintaining their domestic market share, first and foremost. Despite increased efficiency and productivity over the years, the ADOGA companies have lost market share to lower priced, aggressively traded imports. The decline in U.S. prices and lost market share directly relates to the growth in imports.

U.S. tariff elimination will launch a cascade of negative consequences – starting with additional lost sales – as it reduces the industry's capacity utilization, productivity and profitability. Import pressure has already taken a toll on research and development investments, but that will be exacerbated by tariff reduction. With the industry so sensitive to imports and large quantities of low-priced imports flowing in, it must fight to maintain every sale. Additional imports, induced by reducing the import duty, will only serve to drive the price down and further marginalize the industry.

The effect of reduced market share and reduced prices will be plant closures; an effect that would be felt both directly and indirectly. The processing companies would be negatively affected, but growers, too, would be impacted from Oregon to Mexico. While they can often switch to other crops, onion and garlic are useful in rotation and offer good value. Local communities enjoy additional sales, spin-off business, salaries and community involvement from the presence of

[2] Adrian Rodriguez, "Firebaugh Plant Closes, Citing Costs and Competition," *The Business Journal,* March 24, 2006.

these facilities in their towns. Applying an output multiplier for the state of California to industry revenues shows that the indirect and induced benefits coming from this industry total about $420 million.[3] Most of these benefits accrue to the local communities where the plants are located.

C. Working to Remain Competitive

The U.S. industry continues to work to find production efficiencies to reduce overall costs. Examples of previous efficiencies include the development of new raw material varieties that reduce the cost of dehydration (primarily in onions),[4] increased automation on the production line, more efficient use of electricity, and the development of highly sophisticated machinery specially designed for harvesting onions and garlic bound for dehydration.

Despite industry advances, the regulatory burden facing U.S. producers increases production costs much more than it does in other countries (particularly China). Numerous federal laws and regulations apply to this industry, including those concerning the environment (clear air, clean water, chemical use, endangered species, etc.), labor health and safety, food health and safety, fair packaging and labeling, and more. In many cases, the State of California often imposes more restrictive and costly laws and regulations than the federal government does (e.g., Proposition 65). The disparity between stronger U.S. laws compared with weaker foreign laws regarding the environment, food safety and labor, leads to a disparity in pricing and disadvantages U.S. producers when competing on price.

A far more volatile input – the cost of energy – further illustrates the disparity between U.S. and foreign costs. The dehydration process requires large amounts of energy, and all ADOGA dehydration plants are located in California where energy rates are high and may go higher with additional state and federally imposed clean air restrictions. During times of dire need, as in the

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[3] *Economic Impact of a Possible Loss of Tariff Protection on the U.S. Dehydrated Onion and Garlic Industry*, SRI Consulting, June 1997.

[4] Onion varieties specifically developed for dehydration by ADOGA member companies have significantly more solids per onion than an onion grown for fresh consumption.

2000-2001 California energy crisis, many utilities looked to large industrial loads for "demand management" and, indeed, the ADOGA plants were curtailed. Shedding large blocks of load eases the strain on the energy grid, but increases the difficulty of maintaining economical, cost-efficient production.

Even now, when California's energy supply is adequate, Chinese and other foreign producers still have a competitive advantage over U.S. producers because of energy subsidies and lower environmental standards for clean air, clean water and disposal of nuclear waste. China, for example, not only affects global competition by subsidizing the price of energy and maintaining lax environmental standards and enforcement, but its energy consumption per unit of gross domestic product is double the rate of the developed world, thus making a tight world energy market even tighter by inefficient use. This fact does not translate to the bottom line for Chinese producers because they are insulated from market forces by the government. All these factors put U.S. producers as a competitive disadvantage and argue for the maintenance of the import tariff as an equalizer.

ADOGA understands that equalizing these production factors will be a long-term process over many years; however, negotiators should keep the inherent inequality in mind when considering what constitutes a "level playing field" in trade matters. ADOGA believes, at least with dehydrated onion and garlic, that the U.S. import tariffs help equalize the disparate positions of the various countries and should be maintained at the present levels.

II. Threat of Transshipment and Other Unfair Trade Practices

Duty-free, quota free market access for least developed countries will only serve to exponentially expand the routes through which unfair traders, like many from China, obtain illegal but free access to the U.S. market. China's trade practices have been a source of major injury to the U.S. dehydrated onion and garlic industry due to the predatory practices of Chinese dehydrated

garlic producers and exporters. Such practices have caused the ADOGA members to lose substantial market share to Chinese imports, even after China's accession to the WTO and its supposed agreement to the fair trade tenets that accompany WTO membership.

To put Chinese market penetration into context, simply consider a timeline of Chinese dehydrated garlic flowing into the United States. In 1993, Chinese imports of dehydrated garlic totaled about 10 million pounds. Imports increased to 16-18 million pounds in 1994 through 1997. Then, in 1998 a poor U.S. crop bumped Chinese imports to 67 million pounds. Despite normal U.S. production since the 1998 crop year, Chinese imports have not declined to their previous level. In fact, 2006 saw over 100 million pounds of dehydrated garlic flow into the United States from China. The U.S. dehydrated garlic market is growing, but not to a level that warrants this massive influx of Chinese imports. Up until about 15 years ago, the U.S. industry served almost all U.S. demand for dehydrated garlic (as it essentially does for dehydrated onion) and would have continued to increase production to serve the demand, but its market share declined in direct correlation to increased imports of Chinese dehydrated garlic.

China's expanded market share has been attained solely at the expense of domestic producers. Chinese imports are underselling U.S. producers, which forces down domestic prices or results in lost sales for domestic producers who cannot economically reduce their price.

How does Chinese dehydrated garlic undersell domestically produced dehydrated garlic when the imported product price includes the cost of shipping and the additional 29.8 percent U.S. import duty? For one, the domestic industry understands that China provides export subsidies on dehydrated garlic, despite China's commitment to eliminate all export subsidies when it joined the WTO. China also reportedly provides a three year tax waiver and a three percent export rebate for exporters.

Chinese traders also illegally transship dehydrated garlic into the United States though countries with duty-free access to the U.S. market. U.S. Census Bureau statistics have shown dehydrated garlic imports from Puerto Rico, Canada and Israel, although none of these countries produce dehydrated garlic in the quantities necessary to account for these import levels. Indeed, last year U.S. Customs and Border Protection (Customs) tested the product imported from Canada and found it to be Chinese in origin. While that illicit source was closed down, traders find other ways to circumvent international trade laws to obtain unfair advantages. The industry can only expect to see more Chinese transshipment through the LDCs if they are granted duty-free, quota-free access to the U.S. market.

Another rampant unfair trade practice involves undervaluing dehydrated garlic imports on entry documentation in order to reduce the amount of duty owed. When an import duty is at 29.8 percent as it is for dehydrated garlic, it literally pays to find ways to reduce the declared value. Understating the value of goods entering the United States is both unfair and illegal, but it is also very hard to recognize and prove, especially when the sale is to a complicit party in the United States.

At the urging of the domestic industry, Customs investigated and found Chinese traders undervaluing dehydrated garlic as it enters the United States. However, even if the deception is recognized on one or two shipments, pursuing every individual undervalued shipment or shipper would be difficult.[5] Regardless, ADOGA continues to work with Customs to catch all instances of undervaluation, but Customs has many responsibilities and Chinese traders are very crafty at circumventing the duty. As a result, undervaluation continues to roil the domestic market.

[5] It is interesting to note the fresh garlic industry found that Chinese traders commonly changed identities to circumvent the 376 percent dumping duty in "new shipper reviews" under the antidumping laws. That could also occur when a shipper is identified as a transshipper or has been found to fraudulently undervalue their goods on the Customs forms. The offender simply disappears from existence and continues its illegal trading under a new name. In that case, with a new name, Customs would have no past record of fraud, so no red flags would be raised to monitor their trading activity.

Finally, the fact that China pegs its currency to the U.S. dollar and does not let it float simply exacerbates the pricing situation, as it makes Chinese products cheaper in the United States than they would be if the currency floated. This is just another example of how Chinese policies and practices negatively affect U.S. producers.

These unfair trade practices continue to put the domestic dehydrated onion and garlic industry at a disadvantage. This is just one more reason why U.S. negotiators should maintain the import tariffs on dehydrated onion and garlic, even vis-à-vis the least developed countries. It is one of the few protections left to this import sensitive industry against unfair traders.

III. Conclusion

ADOGA urges U.S. trade negotiators to maintain the tariffs on dehydrated onion and garlic at their present level and not permit duty-free access by the LDCs to the domestic market. Losing this last safeguard, even to the LDCs, could be fatal to the domestic industry.

This is not just an intellectual exercise in macroeconomics. Actions taken by U.S. negotiators affect real companies, real employees and real communities. ADOGA believes dehydrated onion and garlic merit sensitive product treatment, resulting in either an exemption from tariff reduction or only minimal tariff reduction, if it is absolutely necessary to reduce the tariffs on these goods.

Thank you for this opportunity to comment. Should you have any questions or require further information on this industry, please do not hesitate to contact us.

Respectfully submitted:

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SUBMISSION OF THE AMERICAN SUGAR ALLIANCE

Office of the United States Trade Representative

Request for Public Comment on Duty-Free, Quota-Free Market Access for Least Developed Countries (LDC's)

Washington, D.C.
March 13, 2007

The American Sugar Alliance (ASA) is pleased to have this opportunity to provide comments on duty-free, quota-free (DFQF) market access to LDC's. The ASA is the national coalition of growers, processors, and refiners of sugarbeets and sugarcane.

As our industry has consistently advised the Administration throughout the Doha Round negotiations, the granting of DFQF access for sugar would have disastrous consequences for the U.S. sugar producers and for the operation of the U.S. sugar program. Unlike the situation with respect to many other products, LDC's have very substantial sugar production and export capacity. As Table 1 indicates, LDC's produce over 3 million tons of sugar and export over a million tons. The granting of DFQF access for sugar would tend to redirect a large portion of this export capacity toward the U.S. market – and we could expect that, in some of these countries, production and export capacity would be expanded to take advantage of this opportunity. Moreover, there would inevitably be strenuous efforts, very difficult to monitor, to transship sugar from subsidized non-LDC exporters such as Brazil and/or to substitute such imported foreign sugar for domestic consumption and thereby free up domestic production for export.

Thus, the granting of DFQF would likely result in the flooding of the U.S. market with hundreds of thousands, perhaps even a million or more tons of LDC sugar.

The U.S. sugar market is in no position to absorb such quantities. Largely because of commitments already made in the WTO, in NAFTA and in other FTA's, the U.S. sugar market is chronically over-supplied. The anomalous shortages of the 2005/06 year, due to a disastrous hurricane season and other exceptional weather conditions, is now well past and prices have dropped to such low levels that forfeitures threaten. And as USDA itself has indicated, the oversupply situation is likely to grow considerably worse in future years with the complete opening of the U.S. market to Mexican sugar as of January 1, 2008.

The 2002 Farm Bill establishes non-recourse loan rates for raw and refined sugar (rates which have not changed for 22 years). Loans made under this program can either be repaid with interest or the sugar for which the loan is provided can be forfeited to the CCC (Commodity Credit Corporation). However, the Farm Bill directs USDA to manage the sugar policy on a no-cost basis by maintaining market prices above the range at which producers would find it desirable to forfeit collateral rather than redeem CCC loans. This is accomplished, in periods of potential oversupply, through the establishment of marketing allotments for U.S. cane and beet producers; production in excess of these allotments must be stored at the producer's expense as "blocked stocks." Such stocks now total over 300,000 short tons and several years ago totaled as much as 1 million tons.

Despite the burdens sometimes imposed, the U.S. sugar industry strongly supports the continuation of the existing program as the most effective and equitable way of balancing the interest of U.S. producers, consumers and taxpayers – as well as those of our foreign suppliers. In its "2007 Farm Bill Proposals" just submitted to Congress, USDA has also endorsed continuation of the current structure of the program.

However, the granting of DFQF access to LDC's, on top of sugar market access commitments already made in the WTO and in the FTA's already completed or currently in the approval process – and the prospect of unchecked exports from Mexico – would almost certainly render this program non-viable, resulting in plunging prices and costly forfeitures.

Such a result would not only prove disastrous to U.S. sugar producers but would seriously damage the interests of the many developing countries whose sugar exports benefit from the TRQ's established under the WTO and it would significantly diminish the value of concessions on sugar granted to our FTA partners. Of the 41 countries which have guaranteed access to the U.S. market under these TRQ's, 38 are developing countries. As prices on the U.S. market are significantly higher than those on the grossly distorted world "dump" market, these commitments are of great value to these countries. The deterioration of U.S. prices due to excessive imports or the collapse of the U.S. program would destroy the value of this access and prove ruinous to the sugar industries of many of these countries.

We believe that the disastrous consequences of granting DFQF for sugar were clearly recognized by the U.S. negotiating team at the December 2005 Sixth Ministerial Conference of the WTO in Hong Kong and that recognition of this problem figured prominently in U.S. insistence that only 97 percent of tariff lines be covered by the DFQF commitment. Statements made by then-USTR Portman and USDA Secretary Johanns to Congressional staff, private sector advisors and to

the press at Hong Kong and immediately after clearly indicated that they understood the sensitivity of sugar, that they were committed to protect the functioning of the U.S. program, and that the commitments made with respect to DFQF would not disrupt the functioning of that program.

In appreciation of these assurances, the attached letter of December 19, 2005 was sent by the ASA to then-USTR Portman and Secretary Johanns. The sentiments in that letter were echoed in a more recent letter (February 2, 2007) from Senate Finance Committee Chair Baucus to Ambassador Schwab.

In light of the above we strongly recommend that, using the flexibility provided in the Decision on duty-free, quota-free access for LDC's adopted at the December 2005 Ministerial:

--Sugar and all sugar-containing products covered by the sugar import program be excluded from any actions taken to grant DFQF to LDC's.

The full list of the tariff lines that should be covered by this exclusion is as follows:

AG17011150, AG17011250, AG17019130, AG17019148, AG17019158, AG17019950, AG17022028, AG17023028, AG17024028, AG17026028, AG17029020, AG17029058, AG17029068, AG17049068, AG17049078, AG18061015, AG18061028, AG18061038, AG18061055, AG18061075, AG18062073, AG18062077, AG18062094, AG18062098, AG18069039, AG18069049, AG18069059, AG19012025, AG19012035, AG19012060, AG19012070, AG19019054, AG19019058, AG21011238, AG21011248, AG21011258, AG21012038, AG21012048, AG21012058, AG21039078, AG21069046, AG21069072, AG21069076, AG21069080, AG21069091, AG21069094, and AG21069097.

Most of these categories have served mainly as a channel for circumvention of the basic TRQ's set for raw and refined sugar. Thus, in order to avoid the development of a bogus trade in such products aimed solely at undermining the U.S. sugar program, it is essential that all of these tariff lines be covered.

Table 1

Least Developed Country* Sugar Producers

(Thousand metric tons, three-year average, 2004/05-06/07)

	Production	Imports	Consumption	Exports	Net Exports	EU Quota	US Quota
Angola	31	257	283	0			
Bangladesh	136	877	1023	0			
Benin	7	34	41	0			
Burkina Faso	39	28	61	5			
Burundi	20	0	20	0			
Chad	34	20	50	0			
Congo	75	60	136	12		10	
Ethiopia	350	78	363	63			
Guinea	24	75	93	20			
Haiti	10	183	183	0			7
Madagascar	44	90	130	18		11	7
Malawi	**263**	**10**	**110**	**118**	**108**	**21**	**18**
Mali	40	50	75	0			
Mozambique	**260**	**73**	**157**	**178**	**105**		**23**
Myanmar	**305**	**10**	**108**	**209**	**199**		
Nepal	130	20	133	10			
Niger	15	50	65	0			
Sierra Leone	4	30	34	0			
Somalia	22	67	92	0			
Sudan	**818**	**83**	**622**	**262**	**178**		
Tanzania	257	150	397	7		10	
Togo	0	2	2	0			
Uganda	190	55	233	0			
Zambia	**257**	**0**	**116**	**145**	**145**		
24 Countries - Total (Net exporters in bold)	**3,329**	**2,303**	**4,528**	**1,047**	**736**	**52**	**55**

Source: USDA, Foreign Agricultural Service, June 5, 2006; U.S. quota for 2005/06. Totals may not add due to rounding.

* Others: Afganistan, Bhutan, Cambodia, Cape Verde, Central African Republic. Comoros. Djibouti, Equatorial Guinea, Eritrea, Gambia, Guinea-Bissau, Kiribati, Laos, Lesotho, Liberia, Maldives, Mauritania, Rwanda, Samoa, Sao Tome and Principe, Senegal, Solomon Islands, Timor-Leste, Tuvalu, Vanuatu, Yemen; 50 least developed countries in all; United Nations, December 2005.

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BACKING AMERICA'S BEET AND CANE FARMERS

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December 19, 2005

The Honorable Rob Portman
United States Trade Representative

The Honorable Mike Johanns
Secretary, United States Department of Agriculture

Dear Mr. Ambassador and Mr. Secretary,

Thank you. America's sugar producers greatly appreciate your hard work and efforts at the World Trade Organization Ministerial in Hong Kong—especially in resisting demands by the European Union and others for unilateral sugar concessions.

We also appreciate Administration assurances that the Ministerial text gives you the necessary flexibility to continue operating the no-cost sugar policy despite the "duty free, quota free" provision pertaining to Least Developed Countries (LDCs).

We intend to work closely with your offices and with Congress to ensure that this is the case.

As you are aware, these countries produce 3 million tons of sugar a year and export nearly 1 million tons. Providing duty free, quota free treatment for sugar from LDCs would result in excessive amounts of sugar entering the U.S. market, regardless of domestic market needs.

Open-ended access for these countries would be incompatible with the Administration's obligation to operate the U.S. sugar program on a no-cost basis as directed by Congress. It could put thousands of sugar farmers and workers out of business. And it would do nothing to advance the sugar industry's objective of fundamentally reforming the world sugar market by eliminating the widespread trade-distorting policies by both developing and developed countries that have characterized that market.

Again, we thank you for the attention you, your staff, and all Administration officials gave to the WTO talks. We look forward to working with you to resolve the LDC issue, and we stand ready to help you achieve real reform in the distorted world sugar market.

Sincerely,

Margaret Blamberg
American Cane Sugar Refiners' Association

James W. Johnson, Jr.
United States Beet Sugar Association

Don Wallace
American Sugar Cane League

Carolyn Cheney
Sugar Cane Growers Cooperative of Florida

Luther Markwart
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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

February 2, 2007

The Honorable Susan Schwab
United States Trade Representative
600 17th Street, N.W.
Washington, DC 20508

Dear Ambassador Schwab:

Thank you again for taking time out of your busy schedule in December to come to Montana. I was honored to welcome you to Big Sky Country and look forward to your next visit.

With reports of possible progress in the Doha Round of World Trade Organization ("WTO") negotiations, I would like to bring to your attention my understanding regarding proposed U.S. commitments on duty-free, quota-free treatment for least developed countries ("LDCs") made at the Hong Kong Ministerial meeting in December 2005. While the United States must work diligently to ensure that LDCs are able to reap the benefits of an open trade regime, we must be mindful of the effect of our trade commitments on certain sensitive products, like sugar. Specifically granting duty-free, quota-free treatment to LDCs on sugar could lead to a destabilizing flood of imports into the U.S. market, making it impossible to administer domestic sugar program created by Congress.

As you know, Congress has long written the U.S. sugar program to operate at no net cost to the U.S. Treasury. This requires a balance between our domestic needs and supply. A unilateral expansion of import access would upset this balance and undermine the sugar program created by Congress. Congress will soon enact a new farm bill, which will include the sugar program. I will not support a trade negotiation that usurps Congress's power to craft policy affecting this sensitive sector.

Any commitments that the United States will make with respect to LDCs as part of a final Doha Round package must allow sufficient flexibility to deal with the special difficulties facing our sensitive products. As you recall, the Hong Kong Ministerial Declaration limits any future commitments regarding duty-free, quota-free access to 97 percent of tariff lines. Should the Doha Round conclude, I fully expect that implementation of this commitment would account for the sensitivity of sugar so that we allow the U.S. sugar program to continue to function as Congress intended.

As always, I look forward to working closely and constructively with you and wish you the best of luck in your negotiating efforts.

Sincerely,

Max Baucus

WORLD TRADE ORGANIZATION

TN/CTD/W/30
TN/MA/W/74
TN/AG/GEN/20
12 June 2006
(06-2808)

Committee on Trade and Development
Special Session
Negotiating Group on Market Access
Committee on Agriculture
Special Session

Original: English

LEAST-DEVELOPED COUNTRIES' PROPOSAL ON RULES OF ORIGIN

Communication from Zambia on behalf of the LDC Group

The following communication, dated 31 May 2006, has been received from the Delegation of Zambia on behalf of the LDC Group.

There is no evidence that strict rules of origin over the past 30 years have done anything to stimulate the development of integrated production structures in developing countries. In fact such arguments have become redundant in the light of technological changes and global trade liberalisation which have led to the fragmentation of production processes and the development of global networks of sourcing. Globalisation and the splitting up of the production chain does not allow the luxury of being able to establish integrated production structures within countries. Strict rules of origin act to constrain the ability of firms to integrate into these global and regional production networks and in effect act to dampen the location of any value-added activities. In the modern world economy flexibility in the sourcing of inputs is a key element in international competitiveness. Thus, it is quite feasible that restrictive rules of origin rather than stimulating economic development will raise costs of production by constraining access to cheap inputs and undermine the ability of local firms to compete in overseas markets.

From "Rules of Origin, Trade and Customs" by Brenton and Imagawa (page 36)

INTRODUCTION

1. Rules of Origin have been under consideration by the WTO since almost its inception in 1995 and consensus on Rules of Origin has yet to be arrived at. The main reason for this lack of consensus could well be that different Members of the WTO expect Rules of Origin to serve different functions. The function of Rules of Origin which refer to the Duty-Free Quota-Free Market Access for Least-Developed Countries (LDCs) provisions are to reduce trade diversion and trade deflection to a minimum, which can be achieved by having Rules of Origin which are simple and transparent.

2. LDCs have, for a long time, argued that, despite being accorded preferential market access through the various agreements, they have not been able to take advantage of these opportunities

because of the associated, often stringent, rules of origin. It is against this background that LDCs have been advancing the position that rules of origin need to be simplified.

3. Paragraph 47 of the Hong Kong Ministerial Declaration (WT/MIN(05)/DEC) contains the following:

> *Building upon the commitment in the Doha Ministerial Declaration, developed-country Members, and developing-country Members declaring themselves in a position to do so, agree to implement duty-free and quota-free market access for products originating from LDCs as provided for in Annex F to this document. Furthermore, in accordance with our commitment in the Doha Ministerial Declaration, Members shall take additional measures to provide effective market access, both at the border and otherwise, including simplified and transparent rules of origin so as to facilitate exports from LDCs.*

4. The Hong Kong Ministerial Declaration, therefore, commits developed-country Members of the WTO, and developing countries declaring themselves in a position to do so to provide preferential market access to Least-Developed Countries.

5. Rules of Origin are required in any preferential trading arrangement, with the minimum requirement being to minimise trade deflection[1] by ensuring that the product to be exported into the customs territory granting the preference is produced (however that is defined) in the customs territory the preference is granted to. Although Rules of Origin can have development objectives and can also be used as a means of protection, the Hong Kong Ministerial Declaration specifically states that the Rules of Origin, in this situation, should be simple and transparent and should facilitate exports from LDCs.

6. Rules of Origin are important in that they can affect the sourcing and investment decisions of companies and can, at the same time, distort the relative prospects of similar firms within a country. The adoption of restrictive Rules of Origin are more likely to constrain than to stimulate regional economic development and can act to undermine preferential trade agreements.

ORIGIN-CONFERRING CATEGORIES

7. 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 which can be achieved by one or all of the following (as defined in Annex D1 of the Kyoto Convention):

[1] Trade deflection is taken to mean the export of products originating in a third country which does not have preferential access into a first country being re-routed through a second country which does have preferential access. This re-routing could take the form of simple transhipment or could involve a simple operation, such as repackaging the goods.

(a) change of tariff classification;

(b) percentage value added (build-down method);

(c) local content (build-up method);

(d) specific manufacturing process.

Change of Tariff Classification

8. A change of tariff classification refers to a change in the Harmonised System (HS) tariff classification once a good undergoes a substantial transformation. Origin is granted if the exported product has a different tariff classification to any of the inputs used in its production. The benefit of using the change of tariff classification is that it is unambiguous and easy to understand. In terms of documentary requirements, it requires that producers keep records of the tariff classifications of all inputs and the final product. Change of tariff classification is usually defined at the 6-digit level (change of tariff sub-head – CTSH).

Value Addition

9. Value-added is defined as the difference between the cost of the finished product and the cost of all the materials used in the production of the finished product. In calculating value addition the denominator is the ex-works price, which, in the case of the Cotonou Rules of Origin, for example, is the price paid for the manufactured product, ex-works, minus any internal taxes which are, or may be, repaid when the product is exported. The numerator would be the value of the materials used to produce the manufactured product and this could be calculated using either the free-on-board (f.o.b.) or cost-insurance-freight (c.i.f.) values. Each method of calculating value addition will give a different value of non-originating materials. Preferential Trade Agreements using the value addition criterion in determining source of origin have a value-added threshold of a defined percentage that has to be met if origin is to be conferred.

10. The value-added criterion has a number of limitations. Value-addition may deter a manufacturer from investing in more efficient plant and machinery as this will most probably 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.

11. A further limitation is the fact that value-added percentages are easily affected by movements in exchange rates for finished products that have imported raw materials. When a local currency appreciates, the percentage value added tends to decline, and vice versa. The first column in the table below gives a example of a manufacturer importing half the value of his inputs, and a value addition of 35 per cent, so, in this case, the manufacturer meets the threshold for the value-addition criterion of the country in which his country has a preferential trading arrangement with. The second column assumes that there has been a currency devaluation of 100 per cent in the country of the exporter. Despite the fact that there has been no change in technology or change in volume of inputs, the value addition reduces to below 35 per cent so, in this case, the export would not qualify for preferential treatment and would be charged the full MFN duty by the importing county, despite the fact that the importing country is providing preferential treatment to the exporting country.

		Local currency	100% depreciation	Local currency
Cost of materials		1000		1500
Local	500		500	
Imported	**500**		**1000**	
Direct labour		250		250
Depreciation of machinery		40		40
Factory overheads		250		250
Ex-factory cost		**1540**		**2040**
Value Added =	(1540-1000)/ 1540	**35.06**	(2040-1500)/2040	**26.47**

12. It is often difficult to calculate the value added if there are a number of products produced from the imported material. For example, some LDCs import crude palm oil and from this refined cooking oil, soap, margarine and other finished products are manufactured. Under these circumstances there are various ways to calculate the input cost of the crude palm oil. Even in instances where cost accounting methods are used, the calculations, which are done by the exporter, are open to dispute and query by the importer.

Specific Manufacturing Process

13. In some Rules of Origin, substantial transformation is defined on the basis of a list of processing or manufacturing operations which have to be carried out on specific non-originating materials in order to confer origin to the resulting product. In some instances specific manufacturing processes are used in conjunction with other origin-conferring criteria, such as value addition criteria. Specific manufacturing processing rules usually apply to specific sectors, such as the textile industry, and restrict firms' choices of production methods and of product. Requirements are usually very detailed and specific and are often extremely complex, with the end result being that it becomes difficult for products to qualify.

CUMULATION

14. Cumulation allows producers to import materials from a specific country or regional group of countries without undermining the origin of the product.

DE MINIMIS (TOLERANCE)

15. Most Rules of Origin allow for a certain percentage of non-originating materials to be used without affecting the origin of the final product. The tolerance rule can act to make it easier for products with non-originating inputs to qualify for preferences.

PROBLEMS ASSOCIATED WITH RULES OF ORIGIN

16. There is a sizeable literature on Rules of Origin and the uptake of preferences and, from this literature, the following points arise:

- There is a direct cost associated with the completion of Rules of Origin of about 3 per cent to 5 per cent which reduce exports under preferential schemes;

- Rules of Origin can make it more difficult to achieve economies of scale since input requirements may vary according to destination markets of the final products;

- Rules of Origin are an incentive to purchase intermediates in the country conceding the preference, and this can be a source of a trade diversion if there is a more efficient producer of intermediates elsewhere;

- Rules of Origin can be used as a means of protection for the importing country, with some studies showing that the larger the difference in tariffs, the more restrictive the associated Rules of Origin; and

- Rules of Origin usually do not recognise constantly changing industrial configurations brought about through globalisation and can retard the effective utilisation of trade preferences and may impede rather than facilitate preferential market access.

17. However, despite these drawbacks and difficulties, it is necessary to agree on a set of Rules of Origin if a preferential trading arrangement such as the one agreed to by the WTO Members for LDCs as defined in Annex F of the Hong Kong Ministerial Declaration is to be implemented. The challenge facing WTO Members is to define a set of Rules of Origin which will assist LDCs to take advantage of the improved market access conditions they have been provided with so that LDCs are able to translate this improved market access into improved living standards of their populations through economic growth brought about by increased trade, while minimising trade deflection.

Annex 1

Summary of the Different Approaches to Determining Origin

Rule	Advantages	Disadvantages	Key Issues
Change of Tariff Classification (in the Harmonised System)	• Consistency with non-preferential rules of origin. • Once defined, the rule is clear, unambiguous and easy to understand by both operators and enforcers. • Relatively straightforward to implement.	• Harmonised System not designed for conferring origin, as a result there are often many individual product specific rules, which can be influenced by domestic industries • Documentary requirements maybe difficult to comply with. • Can be conflicts over the classification of goods which can introduce uncertainty over market access	• Level of classification at which change required – the higher the level the more restrictive. • Can be positive (which imported inputs can be used) or negative (defining cases where change of classification will not confer origin) test[a] – negative test more restrictive.
Value Added	• Clear, simple to specify and unambiguous. • Allows for general rather than product specific rules	• Complex to apply – requires firms to have sophisticated accounting systems. • Uncertainty due to sensitivity to changes in exchange rates, wages, commodity prices etc.	• The level of value added required to confer origin • The valuation method for imported materials – methods which assign a higher value (eg CIF) will be more restrictive on the use of imported inputs
Specific Manufacturing Process	• Once defined, clear and unambiguous • Provides for certainty if rules can be complied with	• Documentary requirements can be burdensome and difficult to comply with. Leads to product specific rules. • Domestic industries can influence the specification of the rules.	• The formulation of the specific processes required – the more procedures required the more restrictive. • Should test be negative (processes or inputs which cannot be used) or a positive test (what can be used) – negative test more restrictive.

[a] A positive determination of origin typically takes the form of 'change from any other heading', as opposed to a negative determination of origin, such as 'change from any other heading except for the headings of chapter XX'; It is worth noting that change of tariff classification, particularly with a negative determination of origin, can be specified to have an effect identical to that of a specific manufacturing process.

Source of Table: "Rules of Origin, Trade and Customs" by Paul Brenton and Hiroshi Imagawa

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

Annex F of the WTO Hong Kong Ministerial Decisions

Rules of Origin

GENERAL PROVISIONS

Article 1

For the purposes of this Agreement:

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

(b) "manufacture" means any kind of working or processing including assembly or specific operations;

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

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

(e) "goods" means both materials and products;

(f) "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);

(g) "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;

(h) "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;

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

(j) "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;

(k) "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;

(l) "classified" refers to the classification of a product or material under a particular heading; and

(m) "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

1. The following products shall be considered as originating in the LDCs:

(a) products wholly obtained in the LDCs within the meaning of Article 3 of this Agreement; and

(b) 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.

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

3. 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

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

(a) mineral and other naturally occurring products extracted from their soil or from their seabed;

(b) vegetable products harvested there;

(c) live animals born and raised there;

(d) products from live animals raised there;

(e) products obtained by hunting or fishing conducted there;

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

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

(h) 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;

(i) waste and scrap resulting from manufacturing operations conducted there;

(j) products extracted from marine soil or subsoil outside their territorial waters provided that they have sole rights to work that soil or subsoil;

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

2. 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.

3. 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

1. 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.

(a) 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.

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

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

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.

2. A finished good is sufficiently worked or processed when:

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

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

(iii) 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 .

3. Value of materials.

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

(i) in the case of a material that is imported by the producer of the good, the value of the material;

(ii) 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.

(b) 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:

(i) 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;

(ii) 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;

(iii) 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.

(c) 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:

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

(ii) 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;

(iii) 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;

(iv) the cost of originating materials used in the production of the non- originating material;

(v) 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

1. 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:

(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 like operations);

(b) 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;

(c) 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;

(d) affixing marks, labels and other like 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 mixtures do not meet the conditions laid down in this Agreement to enable them to be considered as originating in a LDC;

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

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

(h) slaughter of animals.

2. 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

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

2. 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:

(a) 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

(b) it can be demonstrated to the satisfaction of the customs authorities of the preference giving countries that:

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

   (ii) 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

1. 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

2. 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.

3. 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.

4. 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.

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

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

(b) 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

6. 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

1. 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 Harmonised System. Accordingly, it follows that:

- when a product composed of a group or assembly of articles is classified under the terms of the Harmonised 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 Harmonised System, each product must be taken individually when applying the provisions of this Agreement.

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

3. 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.

4. Sets, as defined in General Rule 3 of the Harmonised 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.

5. 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:

(a) energy and fuel;

(b) plant and equipment;

(c) machines and tools;

(d) goods which do not enter and which are not intended to enter into the final composition of the product.

WORLD TRADE ORGANIZATION

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Committee on Trade and Development
Special Session
Negotiating Group on Market Access
Committee on Agriculture
Special Session

DUTY-FREE AND QUOTA-FREE MARKET ACCESS IMPLEMENTATION OF THE DECISION ON MEASURES IN FAVOUR OF LEAST-DEVELOPED COUNTRIES OF ANNEX F OF THE HONG KONG MINISTERIAL DECLARATION OF DECEMBER 2005

Communication from Zambia on behalf of the LDC Group

The following communication, dated 29 June 2006, has been received from the Delegation of Zambia on behalf of the LDC Group.

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1. Introduction

In adopting the Decision on Measures in Favour of Least-Developed Countries (36) of Annex F, WTO Members agreed that developed country Members shall, and developing country Members declaring themselves in a position to do so should provide duty-free and quota-free (DFQF) 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 of the Doha Round in a manner that ensures stability, security and predictability.

There are qualifications to this commitment which are as follows:

(i) that if specified Members face difficulties at this time to provide 100 per cent duty-free and quota-free market access to LDCs, they would commit to 97 per cent defined at the tariff line level;

(ii) developing country Members shall be permitted to phase in their commitments and shall enjoy appropriate flexibility in coverage.

The Ministerial Decision also specifies that Members shall notify the implementation of the schemes adopted under this decision annually to the Committee on Trade and Development. The Committee shall also annually review the steps taken to provide LDCs with DFQF market access and report to the General Council for appropriate action.

In the Closing Session of the Ministerial Meeting in Hong Kong, Ministers took note of their understanding that the text concerning the DFQF 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)

Follow-on work on the DFQF market access agreement will be done in the Committee on Trade and Development in Special Session (CTDSS) where it was dealt with in the run-up to the Hong Kong Ministerial Meeting and results thereof will form an integral part of the negotiations on Agriculture and NAMA.

LDCs reiterate their firm intention to implement policies and programmes which will allow them to graduate out of the LDC category and, by graduating, give up the market access provisions and other SDT provisions granted to LDCs in Annex F of the Hong Kong Ministerial Decision. However, for LDCs to graduate out of the LDC category, it is recognized that they require assistance from other WTO Members who should implement the decisions in the spirit that they were made and in recognition of the fact that LDCs require SDT in order for them to play a more meaningful role in the multilateral trading system.

This submission by the LDC Group makes proposals on how the decision taken on DFQF market access for LDCs shall be made operational.

2. Implementation of the WTO Ministerial Decision on DFQF Market Access

Given the very limited number of tariff lines which are exported by LDCs, Members are called upon to implement the decision on DFQF market access in a way which will be commercially meaningful to LDCs and in a way that will contribute to the expansion of LDC exports, so as to allow LDCs to use trade as a development tool to graduate out of the LDC category. Specifically, Members should implement the decision as follows:

(i) In order to meet the minimum 97 per cent benchmark (with a view to achieving 100 per cent coverage), developed country Members should provide DFQF market access in tariff lines in which positive duties are still applied to LDC existing exports. The list of tariff lines, extracted from the World Trade Organization's (WTO) Integrated Data Base (IDB), which are not zero-rated for LDCs, is available on request.

(ii) Those developing countries considering themselves in a position to provide LDCs with DFQF market access should make their positions known by the end of 2006, or in the shortest possible time. They should provide, as a first step, DFQF market access to products of export interest, and which are commercially meaningful, to LDCs, with a commitment to gradually achieving 100 per cent.

(iii) DFQF market access that is provided to LDCs will be defined as the percentage of the total number of tariff lines which are zero rated for all LDCs.

(iv) In providing DFQF market access to LDC exports as set out above, the origin of goods will be conferred to LDCs if they conform to the LDC Rules of Origin as set out in TN/CTD/W30.

(v) In order to ensure that the improved market access provided under the DFQF market access provisions are not nullified by non-tariff barriers to trade, SPS provisions and other technical barriers to trade, WTO Members will work with LDCs to ensure that they receive the necessary trade-related technical assistance and capacity building and aid for trade to allow them to conform to non-tariff regulations which govern imports into WTO Member markets.

3. Notification and Negotiations

In Paragraph 36 of the Hong Kong Ministerial Declaration, Ministers took note of the work done on the Agreement-specific proposals, especially the five LDC proposals. Ministers also recognized that substantial work still remains to be done and committed themselves to address the development interests and concerns of developing countries, especially the LDCs, in the multilateral trading system, and recommitted themselves to complete the task they set themselves at Doha. Ministers accordingly instructed the Committee on Trade and Development in Special Session to expeditiously complete the review of all the outstanding Agreement-specific proposals and report to the General Council, with clear recommendations for a decision, by December 2006.

Annex F of the Hong Kong Ministerial Declaration is a framework agreement and work needs to be done to complete the implementation modalities of the framework agreement. This follow-on work will be done in the Committee on Trade and Development in Special Session (CTDSS) where it was dealt with in the run-up to the Hong Kong Ministerial Meeting and results thereof will form an integral part of the negotiations in Agriculture and NAMA.

Developed countries and developing countries declaring themselves in a position to provide DFQF market access to LDCs shall, by the time they submit their comprehensive draft schedules of concessions, indicate how they intend to implement the commitments they assumed under the *Decision on Measures in Favour of Least-Developed Countries* and as outlined above.

Developed countries and developing countries declaring themselves in a position to provide DFQF market access to LDCs shall provide a provisional list of the products they intend to exclude initially from DFQF market access, the steps they intend to take to progressively achieve compliance with the obligation to provide DFQF market access to all products from all LDCs, and the time frame within which they intend to complete those steps.

Once these steps are completed, developed countries and developing countries declaring themselves in a position to provide DFQF market access, will enter into negotiations with the LDC Group to allow the LDCs the opportunity to negotiate an improvement in market access.

4. Monitoring and Review

Members have decided that they shall notify the implementation of the schemes adopted under the decision taken under Annex F of the Hong Kong Ministerial Declaration every year to the Committee on Trade and Development. The Committee on Trade and Development shall annually review the steps taken to provide DFQF market access to the LDCs and report to the General Council for appropriate action.

In order to allow accurate monitoring of the implementation of the decision on DFQF market access to LDCs, Members shall provide preferential data to the IDB, which is currently done on a voluntary basis.

Technical Annex

I. LDC Export Profile[1]

1. In 2004, LDCs as a group accounted for 0.6 per cent of world exports and 0.8 per cent of world imports (Table 1). In growth terms, their performance has been mixed over the past 15 years (Chart 1).

2. Of particular note is the significant growth rate of exports posted by LDCs in 2004, which was 34 per cent, compared to 21 per cent for world exports (Table 1). This figure, however, is for all LDCs and masks considerable variance in the performance of individual countries. Five oil exporters as a group, which account for 47 per cent of total LDC exports, experienced a growth rate of 52 per cent, whereas manufacturing and commodity exporters experienced growth rates of 19 per cent and 22 per cent respectively. Eight commodity exporting LDCs (Malawi, Liberia, Central African Republic, Comoros, Samoa, São Tomé and Principe, Kiribati and Tuvalu) experienced negative growth rates.

3. The diversity of export performance across countries is also important in absolute terms. Two LDCs accounted for 36 per cent of all LDC exports in 2004 - Angola, which is a fuel exporter and Bangladesh, which is predominantly a clothing exporter. Their performance, due to their size, determines, to a significant degree, the overall performance of the LDCs as a group.

4. Chart 2 illustrates a distinct shift in the relative importance of different product groups in the total exports of LDCs. In 1995, food was the most important export, representing 21.7 per cent of total exports, followed closely by fuels representing 21.5 per cent. By 2003, food became the fourth largest export behind fuel, which accounted for 36 per cent of exports. Clothing became the second most important export, representing 19.9 per cent of total exports. Much of this significant shift is due to changes in oil prices, but at the same time, it also represents a structural shift towards clothing exports.

5. In terms of specific country markets, Table 2 shows that the European Union and the United States continue to be the most important destinations for LDC exports. Although the EU's share of total LDC exports declined in 2004 to 29.2 per cent from 39.6 per cent in 1995, it is still the most important market. The share of LDC exports to the US has fluctuated over the ten-year period reported in Table 2, but is still, approximately, one fifth of total exports. China is the third most important market and after that the top ten markets have approximately the same share. These markets are: Thailand; Japan; India; Republic of Korea; the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei); Canada; and Singapore.

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[1] Sections I to III draw heavily on the WTO Secretariat paper entitled "Market Access Issues Related to Products of Export Interest Originating from Least-Developed Countries" (WT/COMTD/LDC/W/38) of 22 February 2006.

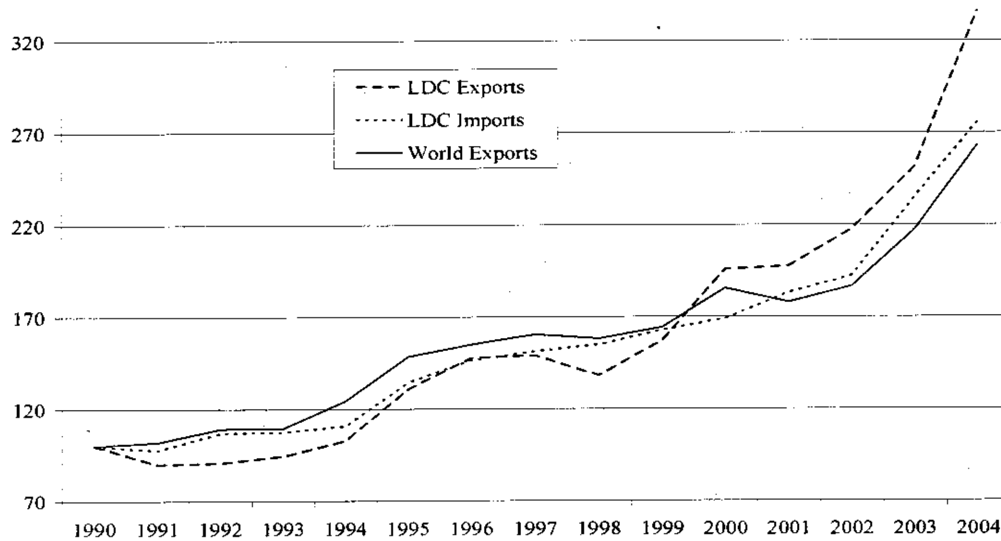
Table 1: Merchandise exports and imports of least-developed countries by selected country grouping, 2004
(Million dollars and percentage)

	Exports					Imports				
	Value	Annual percentage change				Value	Annual percentage change			
	2004	2000-04	2002	2003	2004	2004	2000-04	2002	2003	2004
Least-developed countries	61825	14	10	16	34	71233	13	5	22	17
Oil Exporters	29168	18	17	20	52	16945	22	25	27	19
Angola	13850	15	27	14	46	6500	21	18	46	19
Equatorial Guinea	5190	47	21	33	76	1410	33	-29	142	15
Yemen	4150	0	-1	12	11	4190	16	18	26	14
Sudan	3778	20	15	30	49	4075	27	25	18	41
Chad	2200	86	-2	141	393	770	25	142	-38	-24
Exporters of manufactures	17022	9	5	9	19	23728	7	-6	18	14
Bangladesh	8150	6	1	14	17	12026	8	-5	21	15
Myanmar	2850	15	28	-18	15	2220	-2	-18	-11	6
Cambodia	2798	19	28	10	32	3170	13	11	12	22
Madagascar	990	5	-48	76	16	1230	5	-37	84	11
Nepal	756	-2	-23	17	14	1870	4	-4	24	7
Lesotho	726	35	33	29	51	1400	15	9	38	26
Haiti	391	5	2	24	13	1306	6	12	5	10
Lao People's Dem. Rep.	361	2	-10	20	1	506	-1	-18	12	5
Exporters of commodities	15635	15	7	17	22	30561	14	6	24	19
Zambia	1576	24	-6	2	67	2143	21	-4	24	38
Senegal	1529	14	6	25	15	2710	16	17	18	13
Mozambique	1504	43	-6	58	44	1970	14	19	39	12
Congo. Dem. Rep. of	1413	17	14	19	10	1873	16	35	28	33
Tanzania	1338	19	13	39	10	2490	13	-1	30	14
Mali	1123	19	21	5	22	1320	13	-12	31	16
Togo	771	21	20	44	25	1050	17	7	46	21
Guinea	700	1	-3	-14	15	690	3	11	-4	8
Benin	672	14	20	24	21	865	9	23	10	16
Ethiopia	639	7	5	5	27	3080	25	-8	29	44
Uganda	635	8	4	12	19	1491	-1	-29	14	15
Burkina Faso	445	21	10	33	37	1155	17	13	25	25
Malawi	441	4	-9	13	-4	792	10	23	1	13
Afghanistan	420	23	150	40	20	2300	43	50	53	0
Mauritania	410	3	-8	4	22	400	6	-5	1	11
Niger	370	7	3	22	9	560	9	8	23	14
Somalia	310	13	4	-25	39	610	15	1	14	18
Liberia	235	-8	-4	15	-13	900	8	-2	11	32
Maldives	172	12	20	15	13	645	13	0	20	37
Bhutan	165	13	7	18	24	400	23	3	26	61
Sierra Leone	139	81	69	88	51	286	18	45	15	-5
Central African Republic	120	-7	4	-17	-2	150	6	12	9	15
Rwanda	99	17	-24	-3	57	285	8	-12	4	10
Solomon Islands	97	9	23	28	31	100	2	-26	22	22
Guinea-Bissau	81	7	-14	28	17	86	10	-6	19	25
Burundi	47	-2	-22	25	24	176	4	-7	21	13
Djibouti	41	7	13	3	11	275	7	1	21	16
Vanuatu	37	9	0	35	37	128	10	-13	18	22
Eritrea	35	-1	174	-33	0	650	8	27	10	10
Gambia	22	10	30	-8	83	200	2	10	25	8
Cape Verde	15	8	10	18	15	386	14	18	27	10
Comoros	15	21	33	25	-25	115	13	20	33	-4
Samoa	11	-6	-7	7	-27	168	12	4	1	23
São Tomé and Principe	6	19	90	33	-10	45	11	9	36	7
Kiribati	2	-16	-29	-22	-20	48	5	5	-7	20
Tuvalu	0	78	736	9	-33	18	38	217	40	16
Timor Leste	...	...	...	...	...	...	...	...	...	...
Memorandum item:										
World a	9153000	9	5	16	21	9495000	9	4	16	21

a Includes significant re-exports or imports for re-export.
Note: Data for 2004 are largely estimated.

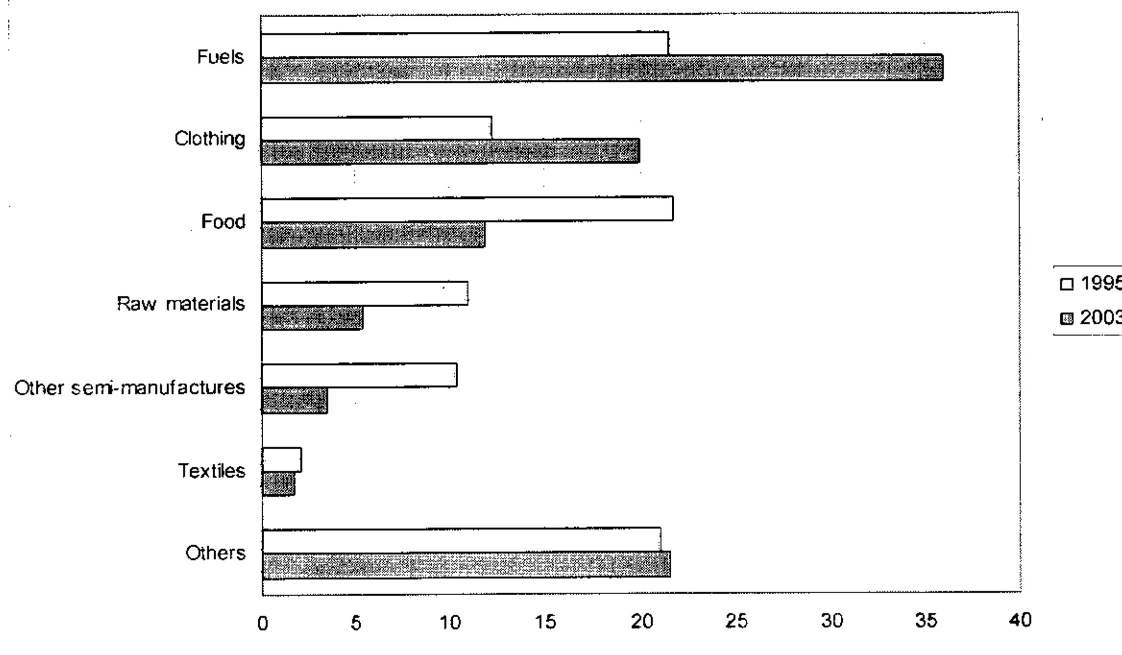
Source: WTO.

Chart 1: Growth in the value of LDC merchandise trade, 1990-2004
(Indices 1990 = 100)



Source: WTO.

Chart 2: Exports of least-developed countries by major product, 1995 and 2003
(Percentage)



Source: WTO.

Table 2: Top 10 markets for LDC exports, 1995-2004
(percentage)

Rank		1995	1996	1997	1998	1999	2000	2001	2002	2003	2004*
1	EU 15	39.6	36.9	34.9	37.3	34.6	31.1	33.4	32.8	30.6	29.2
2	USA	20.5	21.5	22.8	23.5	24.7	26.4	25.6	23.8	24.8	22.7
3	China	3.5	4.2	6.1	3.5	4.9	10.7	7.7	8.7	13.5	17.8
4	Thailand	3.9	3.5	3.8	3.1	3.8	3.7	4.9	4.9	5.1	5.0
5	Japan	6.5	6.4	4.7	4.0	3.6	3.3	2.9	4.0	3.4	4.2
6	India	2.7	2.6	2.7	3.0	4.1	2.5	3.4	3.3	3.1	2.9
7	Chinese Taipei	1.7	2.4	1.5	2.2	2.0	1.8	1.9	2.2	2.2	2.9
8	Korea, Rep. of	2.8	2.5	3.8	2.0	4.8	4.9	2.6	2.5	1.9	1.8
9	Canada	0.9	1.2	1.0	1.0	0.8	0.8	0.9	1.0	1.7	1.5
10	Singapore	2.8	2.2	1.5	2.7	2.0	1.6	1.9	1.4	1.1	1.2

* Preliminary estimates.
Source: WTO.

II. Market Access in Developed Countries

6. Developed countries provide preferential market access to products originating from LDCs on a non-reciprocal basis through their GSP schemes[2]

7. The difference between the current status of the tariff treatment of LDC exports in developed country markets and complete DFQF treatment is dependent on what measurement indicators are used. There would appear to be two ways to measure the value of DFQF market access:

(i) The percentage of imports from LDCs into developed markets that are duty free. Using data from Table 3, this figure was 82.2 per cent in 2003, but figures from Table 3 also show that 97 per cent of this value is accounted for by imports into just two markets – Japan and the US. Japan provides duty-free treatment to 51 per cent of its imports from LDCs and the US to 62 per cent. Other developed countries offer duty-free access to 100 per cent, or at least 95 per cent, of products originating from LDCs.

(ii) The number of duty-free tariff lines over the total number of tariff lines. Using this method, the US has almost 82 per cent of its total lines duty free (and if the lines with positive duties but no imports from LDCs are eliminated, this figure jumps to 94 per cent) although, in terms of value, 38 per cent of LDC exports to the US are dutiable. Similarly, Japan can claim to have only 1 per cent of its lines applying a duty to LDC imports, or 86 per cent of its lines duty free. Yet, in value terms, almost 50 per cent of imports are dutiable.

[2] A non-exhaustive list of preferences granted to LDC exports in developed and developing countries can be found in Annex 2 of WT/COMTD/LDC/W/38 (TN/MA/S/19) of 22 February 2006

Table 3: Tariff treatment of LDC exports in selected developed country markets, 2003

		Number of Tariff Lines				Imports (millions $US)			Duty-Free Status (per cent)	
		MFN	LDC			MFN	LDC			
Market	Sector	Total	Dutiable	With Imports	Dutiable with Imports	Total	Total	Dutiable	Tariff Lines	Imports
Australia		**6,102**	**0**	**655**	**0**	**84,366**	**89**	**0**	**100**	**100**
	Agri	773	0	73	0	3,975	14	*0*	100	100
	NonAg	5,329	0	582	0	80,392	135	0	100	100
Canada		**8,497**	**97**	**1569**	**1**	**234,984**	**769**	**0**	**98.9**	**100**
	Agri	1,372	97	194	1	14,531	36	0	92.9	100
	NonAg	7,125	0	1375	0	220,454	733	0	100	100
European Communities		**10,404**	**67**	**3517**	**19**	**992,010**	**13,705**	**120**	**99.4**	**99.1**
	Agri	2,115	42	505	17	66,248	1,562	120	98.0	92.3
	NonAg	8,289	25	3012	2	925,762	12,143	*0*	*99.7*	*100*
Japan		**9,296**	**1,350**	**776**	**89**	**376,941**	**1,564**	**766**	**85.5**	**51.0**
	Agri	1,858	938	121	31	37,152	177	5	49.5	97.2
	NonAg	7,438	412	655	58	339,789	1,387	760	94.5	45.2
New Zealand		**7,414**	**59**	**521**	**3**	**18,439**	**31**	***0***	**99.2**	***100***
	Agri	1,026	36	51	2	1,543	7	*0*	*96.5*	*100*
	NonAg	6,388	23	470	1	16,896	24	*0*	*99.9*	*100*
Norway		**7,165**	**261**	**509**	**2**	**39,765**	**81**	***0***	***96.4***	***100***
	Agri	1,337	258	55	2	2,724	12	*0*	*80.7*	*100*
	NonAg	5,828	3	454	0	37,041	70	0	99.9	100
Switzerland		**8,477**	**1,167**	**818**	**47**	**96,177**	**118**	**5**	**86.2**	**95.7**
	Agri	2,227	1,156	185	47	6,418	41	5	48.1	87.8
	NonAg	6,250	11	633	0	89,759	77	0	99.8	100
United States		**10,496**	**1,911**	**1421**	**581**	**1,196,833**	**10,489**	**3,991**	**81.8**	**62.0**
	Agri	1,808	274	183	3	49,988	361	2	84.8	99.4
	NonAg	8,688	1,637	1238	578	1,146,845	10,128	3,989	81.2	54.5

Source WTO.

III. Market Access in Developing Countries

8. Preferences by developing countries can generally be classified into three categories:
   (i) non-reciprocal preferential market access schemes;
   (ii) preferential market access granted on a bilateral or regional basis; and
   (iii) the Global System of Trade Preferences (GSTP).

9. However, preferential access offered by developing countries to LDCs is limited in terms of its depth and coverage, and market access conditions facing LDC exports in these markets are determined primarily by MFN rates.

IV. DFQF Market Access Requirements

10. The main exports, by value, from LDCs consist of petroleum products, garments, aluminium and gemstones and come from a small number of LDCs (mainly, by value, from Angola, Yemen, Sudan, Equatorial Guinea, Bangladesh, Mozambique, DR Congo, Tanzania, Cambodia and Guinea). These exports account for well over 50 per cent of the total value of imports from LDCs, with petroleum products taking up a large share of this value.

11. An examination of the IDB shows that tariff lines which are not free of quotas and duties are mainly those of export interest to LDCs. Chapters 1 to 24 of the Harmonized System are agricultural goods and most tariffs applied to LDC products by developed countries are either in these Chapter Headings or those which apply to textiles and apparel, which is another sector in which LDCs have a competitive advantage.

12. Of equal importance to LDCs as DFQF market access is the ability to take advantage of the improved market access conditions on offer. There are a number of examples where imports from LDCs, theoretically, are not dutiable, but where duties are paid. This is true, for example, for EU15 imports of garments from LDCs despite the fact that the LDC GSP of the EU covers "everything-but-arms" (arms being Chapter Head 93). The reason for this is that all imports into developed countries under existing GSP schemes must conform to the particular GSP Rules of Origin. If origin is not conferred, perhaps because the process is complicated (as is the case for the EU's GSP Rules of Origin for textiles and garments as these products have to go through a "double-transformation" process, meaning that, in effect, garments should be manufactured from cloth originating from the LDCs) or expensive to prove, then the import is charged the MFN tariff.

13. There is an obvious need for LDCs to expand the volume and values of existing exports and diversify their export bases. The developed and some developing countries could assist LDCs to do this by improving market access for LDCs by removing tariffs for not only existing exports but also to remove tariffs on goods in which LDCs have a comparative or competitive advantage. This, combined with a simple and single set of criteria conferring origin, would assist LDCs to not only expand the values and volumes of exports but also to diversify their export bases, which would have obvious welfare benefits to not only the poor in LDCs but also for consumers in importing countries.

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Duty Free Quota Free Market Access
for Least Developed Countries

Submission by the LDC Consultative Group in WTO in pursuant to the announcement of 18th January 2007 in the Federal Register Vol. 72, No. 11 requesting the public to submit written comments on the 2005 WTO Ministerial Decision on Duty-free Quota-free Market Access for the Least Developed Countries[1]

14th March 2007

Introduction

1. 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. These comments are due to be submitted in electronic format to FR0704@USTR.EOP.GOV not later than 15th March 2007.

2. The Trade Policy Staff Committee (TPSC) of USTR is seeking comments from the public addressing the range of issues that may affect implementation of the WTO Hong Kong Ministerial Decision on Duty-Free Quota-Free Market Access in order to inform the planning process.

Background to the Decision

3. The Hong Kong 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

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[1] Attached to this submission are two papers:
Annex II: TN/CTD/W/30, TN/MA/W/74, TN/AG/GEN/20
Annex III: TN/CTD/W/31, TN/MA/W/78, TN/AG/GEN/23

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.

4. It should be remembered that Doha Round is, as agreed by all, a development round. Paragraph 42 of the Doha Ministerial Declaration of 2001 specifically states, *inter alia* that:

We recognise that the integration of the LDCs into the multilateral trading system requires meaningful market access, support for the diversification of their production and export base, and trade-related technical assistance and capacity building.

5. Meaningful market access is interpreted as duty-free, quota free market access, which is in line with the provision in Paragraph 42 of the Doha Ministerial Declaration:

We agree that the meaningful integration of LDCs into the trading system and the global economy will involve efforts by all WTO Members. We commit ourselves to the objective of duty-free, quota-free market access for products originating from LDCs.

6. Despite this commitment to providing duty-free, quota-free market access to LDCs, the LDC Group has been fighting hard for its implementation. The United States has been one of the developed countries which have tried to limit the percentage of products which would benefit from duty-free quota free market access into developed countries.

Rationale from the DFQFMA Request

7. The Doha Development Agenda rests on the assumption that the process of globalization, with trade as one of its central pillars, offers opportunities that has potential to benefit all. Furthermore, trade is a development tool that can allow countries to develop economically. It recognises the fact that developing countries, and in particular, LDCs, may not have sufficiently large domestic markets to allow producers to realise economies of scale, which means that these producers are not competitive even in areas where they have a comparative advantage. However, the DDA also recognises that developing countries need a period of time, and financial and technical assistance, to adjust to a liberalised trading system. If developing countries are not given some flexibility and assistance to adjust to a more liberal trading environment, the effects of trade liberalisation will have the opposite effects of those envisaged in that developing countries will become worse off, their populations will get poorer and the attainment of the Millennium Development Goals will take longer.

8. The WTO Membership has long recognised the need for flexibility to be provided to developing countries, as well as the need for technical and financial assistance and has, accordingly made Special and Differential Treatment (SDT) for developing countries, in particular LDCs, an integral part of the Doha Development Agenda. SDT is discussed in the WTO's Committee on Trade and Development (CTD) and implementation issues are discussed by the CTD in Special Session (CTDSS) The DFQFMA request has been on the CTDSS agenda since March 2005, when WTO Members agreed that priority should be given to five LDC Agreement-specific proposals, one of which was the DFQFMA proposal. As implementation issues are still not resolved, DFQFMA remains on the CTDSS agenda.

9. The need to provide SDT to LDCs should not be treated as altruistic behaviour on the part of the developed countries. If, through provision of SDT and the implementation of the DDA, Least Developed Countries can grow out of poverty through trade, this will be a win-win situation for everyone. The LDCs will drastically reduce their dependence on aid; their poverty will no longer be a blot on the conscience of the rest of the world; and, economic growth and increased incomes in LDCs will translate into increased import of goods and services from developed countries.

10. The response to the DFQFMA Ministerial Decision from some developed countries has been disappointing. A few developed countries believe that they need to protect their sensitive domestic sectors against whatever competition the LDCs can offer. By delaying and restricting implementation of the DFQFMA provision the WTO Membership is at best slowing down the pace of economic growth in the LDCs and so delaying the process through which 700 million people will be able to move out of poverty.

11. The DFQF initiative for the LDCs is a "trade creation" initiative, arising out of reducing market barriers or increased market openings. Hence, it is in

conformity with the general approach of the United States to work towards increasing trade flows.

Past Concerns

12. In the run-up to the Hong Kong Ministerial meeting in December 2005, the USTR argued that:

- DFQFMA could not be "bound", as requested by the LDCs, as this would mean a binding of zero tariffs into the US's Schedule of Commitments. Responding to US concerns, the LDCs have requested developed countries to provide DFQFMA in a way that is stable, secure and predictable, in a manner that assures potential investors that the enhanced market access provisions will not be removed or changed. However, it was left upto the developed countries to decide how this can be done.

- DFQFMA could not be provided to all LDCs and for all products. The argument not to provide DFQFMA to all products and all countries was based on the fact that some Asian LDCs are already competitive in developed country markets, especially in apparel and garments so do not need assistance in terms of improved market access. It was suggested that if Asian countries were provided with market access along the same lines as sub-Saharan African countries are provided market access under the Africa Growth and Opportunity Act (AGOA), these Asian countries would take market share away from AGOA countries. However, the LDCs have maintained their demands for DFQFMA to cover all products and all LDCs. The first reason for this is because the Ministerial Decision taken at Hong Kong is a multilateral decision and there can be no discrimination between LDCs. The second reason is that there is no evidence to suggest that if Asian producers of garments and apparel were provided with DFQFMA they would take market access away from other LDCs. The US market is large enough to absorb all foreseeable increase in LDC exports, making competition among LDCs very unlikely. On the other hand, it is more probable that the end result would be greater market access for all LDCs and, if demand in developed countries was inelastic, market would be taken away from the larger developing country producers rather than other LDCs. Finally, if an LDC is doing well in an export sector, that LDC should be encouraged and not penalized for its successes.

Current LDC Market Access into the USA

13. Details of exports from LDCs into developed countries are given in Table 1. As can be seen from Table 1, in 2004 LDC preferential trade into the EU (Cotonou and GSP/EBA preferences), Japan (GSP preferences) and the US (AGOA and GSP preferences) was worth about US$10.5 billion. If petroleum oil is excluded, the value of this trade was worth about US$6.2 billion. The total value of all LDC exports in 2004 into the US, excluding

petroleum oil, was less than US$0.2 billion. Given that the total value of imports into the United States is worth over US$10 billion per year, LDC preferential trade (excluding petroleum oil) would have to grow by over 500 percent to even get to a value of 1 percent of the United States imports.

14. At present, LDCs could be said to be discriminated against when it comes to market access into the United States in that LDCs are subject to higher average tariffs than tariffs applied against imports from other US trading partners. This is an area where the United States has yet to meet an obligation that it undertook as part of the Millennium Development Goals. As can be seen from the data in Table 2, the average tariffs that the United States imposes on imports from LDCs is almost five times higher than the average tariff imposed on imports from OECD countries. Many of those dutiable products are textile and apparel goods that face very high duties.

Table 1: LDC Exports under Preferences to EU, Japan and US (2004)

Country	Total received imports	Agric Products ('000 US$)	Non-Agric Products ('000 US$)	All ('000 US$)
EU	GSP/ACP received imports of all LDCs	439,444	5,153,191	5,592,635
	E.U. TOTAL	*439,444*	*5,153,191*	*5,592,635*
JAPAN	GSP received imports of ALL LDCs	6,729	436,467	443,196
	JAPAN TOTAL	*6,729*	*436,467*	*443,196*
USA.	AGOA received imports of LDCs/AGOA	40,765	3,400,888	3,441;653
	GSP received imports of LDCs excl. AGOA	2,792	1,058,834	1,061,626
	U.S. TOTAL	*43,557*	*4,459,722*	*4,503,279*
	U.S. TOTAL (excl. Petroleum)	*43,557*	*130,526*	*174,083*
	GRAND TOTAL	**489,730**	**10,049,380**	**10,539,110**

Source: UNCTAD

Table 2

Tariffs on U.S. Imports from the Most and the Least Developed Countries, 2005

	Share of Total U.S. Imports	Percentage of Imports Entering on the Basis of: MFN Dutiable	MFN Duty-Free	Preferential Programs	Free Trade Agreement	Average Tariff
LDCs	1.1	25.8	7.2	67.1	0.0	3.8
OECD Members	58.8	26.3	47.4	0.1	26.2	0.8
All U.S. Imports	100.0	30.3	48.8	5.0	15.9	1.4

Source: Calculated from U.S. International Trade Commission data.

15. United States trade policy is not geared to the granting of preferences to LDCs *per se*. While there are now provisions in US law that offer special recognition to LDCs, as a subset of developing countries, the US tends to place more emphasis on geographical location and political factors, rather than on income level, when determining preferences. Being an LDC in itself is neither a necessary nor sufficient condition to benefit from US preferential trade programmes. However, two of these programmes, the GSP scheme and AGOA, do extend better treatment to the poorest beneficiaries. The range of

goods that are eligible for duty-free treatment under the GSP is much wider for LDCs than it is for other developing countries, but US law does not specify the standards by which the LDCs are determined.

Steps which can be taken by the US to improve LDC Market Access

16. For most LDCs, either apparel or petroleum predominates in their exports to the US. Combined, these sectors made up 81.8 percent[2] of all US imports from LDCs in 2003. Over 80 percent of exports into the US from LDCs and which are covered by preferences (GSP and AGOA) are classified in only fifteen tariff lines.

17. At present the US provides DFQF market access to only 82% of products originating from LDCs. When implementing the HK decision, The US should however, choose the minimum level of 97% tariff lines to remove tariffs on almost all imports from all LDCs. Then the US government shall take steps to progressively achieve compliance with the obligations of providing 100% DFQFMA to LDCs. The LDCs should be informed of the timeline that the US government envisages for implementing the mandate of full duty-free quota-free market access for LDC products.

18. If the United States are to provide market access to LDCs in an economically meaningful way it will need to provide DFQFMA in tariff lines in which the LDCs already export but in which MFN preferences are not provided.

19. The LDC Group urges that it be consulted on the tariff lines which the US will continue to place restriction on for LDCs.

20. The provision of DFQFMA should be done with rules of origin which are not restrictive. The Hong Kong Ministerial Decision (Annex F) says that WTO Members should ensure that preferential rules of origin applicable to imports from LDCs are transparent and simple, and contribute to facilitating market access. This Decision is not legally enforceable and does not provide for the establishment of any working group or specification of modalities to ensure that rules of origin are not an obstacle to the utilisation of trade preferences. The LDC Group has recently put forward a draft (TN/CTD/W/30, TN/MA/W/74, TN/AG/GEN/20) that could serve as a concrete proposal to address this issue. However, the suspension of the negotiations has not permitted further discussions of this proposal.

21. The granting of DFQF facility to LDCs is a first, and necessary, condition to helping them expand their exports. It creates a "potential" demand for their products. The next, and fundamental, effort must be made by the LDCs themselves. To take advantage of the potential, the LDCs must increase their capacity and find markets for their products. This supply-response is not assured; but without the DFQF facility, it may take much longer to achieve, if at all.

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[2] TN/CTD/W/31, TN/MA/W/78, TN/AG/GEN/23

22. The world will be closely following the developments in the US, in this area. The LDCs have approached other developing countries for this facility; many have responded favourably and have made public announcements. Early action in the US will encourage many others in the developing world to act immediately to provide DFQF facility to the LDCs.

23. It is recognized that applied tariffs are coming down. If the high ambition of the Doha Round is maintained, duties on industrial goods will come down drastically. Hence, LDCs will have a very small window of opportunity to take advantage of any DFQF facility that may be given to them. It is vital that the DFQF facility be extended to LDCs as early as possible to be of meaningful economic value to them.

Annex I

Tariff Treatment of United States Imports from LDCs (2003) - Top 50 HS 4-Digit Items, Imports for Consumption, Customs Value ('000 US$)

					Tariffs Foregone	
HS Item and Product Description	**2003 Imports from LDCs**	**LDC Tariff Paid**	**LDC Tariff Rate**	**MFN Tariff Rate**	**Existing Preferences**	**Potential Preferences**
Products that Enjoy Margins of Preference	***8,884,208***	***430,921***	***4.85***	***6.45***	***142,504***	***573,425***
2709: Petroleum Oils & Oils From Bituminous Minerals, Crude	4,882,919	259	0.01	0.28	13,413	13,672
6204: Women's or Girls' Suits, Dresses, Skirts, etc. not Knit	817,437	104,862	12.83	15.22	19,552	124,414
6110: Sweaters, Pullovers, & Similar Articles, Knit or Crocheted	781,332	105,864	13.55	18.21	36,417	142,281
24 other 4-digit items	2,402,520	219,936	9.15	12.20	73,122	293,058
Products that Do Not Enjoy Preferential Treatment in Practice	***969,735***	***152,604***	***15.74***	***15.74***	***0***	***152,604***
6205: Men's or Boys' Shirts, not Knit or Crocheted	329,837	67,170	20.36	20.36	0	67,170
6206: Women's or Girl's Blouses, Shirts, not Knit or Crocheted	194,204	33,394	17.20	17.20	0	33,394
6211: Track Suits, Ski-Suits & Swimwear, not Knit or Crocheted	110,063	18,912	17.18	17.18	0	18,912
8 other 4-digit items	335,631	33,128	9.87	9.87	0	33,128
Products that are Duty-Free on an MFN Basis	***681,897***	***0***	***0.00***	***0.00***	***0***	***0***
0905: Vanilla Beans	202,245	0	0.00	0.00	0	0
0306: Crustaceans, Live, Fresh, Chilled, Frozen etc.	99,477	0	0.00	0.00	0	0
7102: Diamonds, Whether or not Worked, But not Mounted or Set	66,773	0	0.00	0.00	0	0
9 other 4-digit items	313,402	0	0	0	0	0
SUBTOTAL:	10,535,839	583,525	5.54	6.89	142,504	726,029
ALL OTHER:	229,721	3,825	1.67			
TOTAL:	**10,765,560**	**587,350**	**5.46**			

Source: Calculations made by Craig Van Grasstek, mimeo, 2003

Notes on the Table:

Products that Enjoy Margins of Preference are products for which there is a difference between the "LDC Tariff Rate" and the "MFN Tariff Rate." Products that do not enjoy Preferential Treatment in Practice are products that are subject to duty on an MFN basis, and may be eligible for preferential treatment when imported from some LDCs, but for which in actual practice the observed payment of tariffs by LDCs ("LDC Tariff Rate") is at or above the "MFN Tariff Rate."

LDC Tariff Paid is the value of tariffs paid on imports from LDCs.

LDC Tariff Rate is the average tariff imposed on imports from LDCs (i.e., "LDC Tariff Paid" divided by "2003 Imports from LDCs" and expressed as a percentage).

MFN Tariff Rate is the average tariff for U.S. imports in that 4-digit category during 2003 for products that entered on an MFN basis. Note that in some cases the calculated percentage for the MFN tariff rate was higher than the calculated "LDC Tariff Rate," due to different compositions of

imports among the 8-digit items that fall within a 4-digit category. In those cases the value in the "MFN Tariff Rate" column was replaced with the value in the "LDC Tariff Rate" column, based on the conclusion that all of the imports from LDCs must have been entering on an MFN basis.

Current Savings is the value of tariffs that are not being paid by LDCs under the status quo. This is the difference between the "LDC Tariff Paid" and the tariff that would be paid if the imports paid the "MFN Tariff Rate" (i.e. "2003 Imports from LDCs" multiplied by the "MFN Tariff Rate").

Potential Savings is the value of tariffs that would not be paid by LDCs if all products imported from LDCs received duty-free treatment. This is the inverse of the value of the tariffs that would be paid if the imports were subject to the "MFN Tariff Rate" (i.e. "2003 Imports from LDCs" multiplied by the "MFN Tariff Rate").

Note that product descriptions are abbreviated.

National **Retail** Federation
The Voice of Retail Worldwide

March 15, 2007

Gloria Blue
Executive Secretary
Trade Policy Staff Committee
Office of the U.S. Trade Representative
600 17th Street, NW
Washington, DC 20508

RE: <u>The 2005 WTO Ministerial Decision on Duty-Free Quota-Free Market Access for Least Developed Countries</u>

Dear Ms. Blue:

On behalf of its members in the U.S. retail industry, the National Retail Federation (NRF) submits these comments on the 2005 World Trade Organization (WTO) Ministerial Decision on Duty-Free Quota-Free (DFQF) market access for least developed countries, pursuant to the request published in 72 Fed. Reg. 2316 (January 18, 2007). The **National Retail Federation (NRF)** is the world's largest retail trade association, with membership that comprises all retail formats and channels of distribution including department, specialty, discount, catalog, Internet, independent stores, chain restaurants, drug stores and grocery stores as well as the industry's key trading partners of retail goods and services. NRF represents an industry with more than 1.6 million U.S. retail establishments, more than 24 million employees - about one in five American workers - and 2006 sales of $4.7 trillion. As the industry umbrella group, NRF also represents more than 100 state, national and international retail associations. www.nrf.com.

NRF applauds WTO Members, including the United States, for their decision to undertake the DFQF initiative. Job-generating economic growth stimulated by trade is one key way to lift millions of people around the world out of poverty. Numerous economic studies demonstrate that increased access to international markets will lift millions of people out of poverty. For example,

Anderson *et al*[1] estimate that complete multilateral liberalization of trade in goods and elimination of all agricultural subsidies will cut the number of people in "extreme poverty" (defined as those living on no more than $1 a day) in developing countries by 32 million. Using a broader definition of poverty (those living on $2 a day or less), they estimate that full trade liberalization would benefit 66 million people. The United States, one of the most developed countries in the world, has a special obligation to promote this growth to the fullest extent possible. While of course there is poverty in America, it pales in comparison to that experienced by families in the least developed countries.

Not only is full and ambitious support for DFQF the right thing to do, it is in our own self-interest. With 95 percent of the world's consumers living outside the United States, combating this poverty builds new markets for U.S. goods and services, which in turn supports and grows trade-related jobs here in the United States. Recent research by Baughman and Francois[2] estimates that total trade (exports and imports, of goods and services) today supports nearly one in five U.S. jobs. They also found that, as the U.S. economy has become more open over the last decade, the number of jobs related to trade has more than doubled.

In addition, creating economic and employment opportunity in developing countries helps promote geo-political stability. This benefit is clearly a critical component in our nation's effort to confront the dangers of international terrorism, civil strife, and other conflicts around the globe.

Therefore, NRF strongly urges the Trade Policy Staff Committee (TPSC) to recommend that the United States fully embrace the DFQF initiative, that it implement it for 100 percent of all U.S. tariff lines, that it not use narrow rules of origin to restrict its benefits to least developed countries and their American customers, and that it implement the initiative immediately, in advance of the conclusion of the Doha round.

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1 K. Anderson, W. Martin and D. van der Mensbrugghe, "Market and Welfare Implications of Doha Reform Scenarios," Chapter 12 in K. Anderson and W. Martin, eds., *Agricultural Trade Reform and the Doha Agenda* (World Bank and Palgrave McMillan UK, 2006).

2 Laura M. Baughman and Joseph Francois, "American Jobs and Trade: The Impact of U.S. Trade on U.S. and State-Level Employment," prepared for the Business Roundtable, February 2007.

Important Elements of a Solid DFQF Initiative

We have learned much, both good and bad, from the many preference programs the United States has extended to developing countries since 1974. The DFQF initiative should keep the good and jettison the bad.

Among the "good" lessons, we know that many U.S. duties do present significant cost hurdles to importing products from any country, but particularly least developed countries, and programs that eliminate those duties do encourage trade with the beneficiary countries. We know that those costs savings, creating business for poor countries, also improve the competitiveness of U.S. manufacturers who use the imported products as inputs to U.S. production or as equipment used to make goods in the United States. The duty cost savings also benefit American families: the retail business is highly competitive and retailers look for every penny of cost savings they can pass on to their customers.

The "bad" lessons include restrictions inserted into the preference programs, typically to appease the protectionist objectives of some domestic industry that feels threatened by import competition. These restrictions make sourcing from least developed countries under the preference program difficult for importers as well as exporters, as they require knowledge of the rules of origin many do not have, and an exposure to legal and financial penalties for even small mistakes. Examples include the "yarn forward" rule of origin in the African Growth and Opportunity Act (AGOA), which makes sourcing apparel from sub-Saharan Africa nearly impossible (and consequently the inclusion of an exception to that rule was needed to ensure that this initiative could actually promote trade in these products). Other restrictions are more sweeping: the exclusion from benefits of broad categories of products that just happen to be the products least developed countries are most competitive at making: apparel and footwear are two significant examples. The conclusion is that the value and commercial viability of market access is directly dependent on what the rules are – bad rules that are overly complicated and restrictive kill trade; good rules that are consistent with how companies actually conduct business and manage their supply chains will promote trade and investment.

Another significant problem associated with current trade preference programs is their temporary nature. Congress must pass legislation to authorize them and typically this legislation has an expiration date. Lead times for retailers from the time a product is ordered to the time it arrives on a store shelf is typically six to nine months. Therefore, as a preference program expiration date approaches and the ability of Congress to pass a

timely extension becomes questionable, retailers and others are forced to make alternative sourcing plans.

Thus, the chief goal of preference programs – poverty reduction through increased trade – is frustrated by product restrictions and narrow rules of origin in current U.S. preference programs, and by their temporary nature. We should not make the same mistakes with the DFQF initiative.

Objections

Not surprisingly, some objections have been raised from the usual quarters to including certain products of key importance to least developed countries within the scope of the 97 percent minimum coverage of the DFQF initiative. The objectors claim that they would be adversely impacted should their products be among the eight-digit tariff lines included in the U.S. DFQF program. Objectors notably include the U.S. textile industry.

NRF strongly believes it would be a mistake for the TPSC to accept the objections of U.S. textile interests to the inclusion of textile and apparel products from the initiative. By its own admission, textile industry profits were up over 9 percent from 2005-2006.[3] This gain follows a 65 percent increase in profits from 2004-2005![4] (U.S. Government data for 2004-2005 put the profit increase even higher, 84 percent. 2006 data are not yet available.) The textile sector is not an industry that is vulnerable to import competition from least developed countries, including Bangladesh and Cambodia.

Most products exported by least developed countries (LDCs) fall within a relatively narrow set of tariff lines. About 96 percent of U.S. imports from LDCs (by value) are concentrated in about 200 10-digit tariff lines. About 35 of these lines cover products (oil, gemstones, coffee, metal ores, etc.) that have no or trivial tariffs, and for which there clearly is no case for exclusion from the DFQF initiative. The remaining 165 tariff lines are basically high-tariff products, such as textiles, clothing, footwear, and certain protected agricultural products such as

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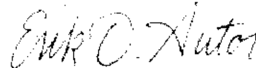
3 National Council of Textile Organizations, "NCTO's Year-End Economic and Trade Review for the Textile Industry," January 29, 2007, http://www.ncto.org/newsroom/pr200701.asp

4 National Council of Textile Organizations, "NCTO's Year-End Economic and Trade Review for the Textile Industry," January 10, 2006, http://www.ncto.org/newsroom/yr2005.pdf.

sugar, which comprise the most likely targets for exclusion. However, products made by the U.S. footwear industry comprise only 17-20 tariff lines. Thus, the largest percentage of the tariff lines of high-tariff manufactured products fall in textile and apparel categories. A DFQF initiative that excludes these products could easily meet a 97 percent duty-free-quota-free standard. Exclusion of these products from the DFQF initiative would be a grave mistake. Their inclusion in the initiative is critical to the ability of developing countries to grow economically and compete successfully in the global economy and for deriving any real benefit for U.S. consumers.

NRF appreciates the opportunity to comment on the DFQF initiative and looks forward to working with the TPSC as the Doha negotiations proceed. Should you have any questions please contact me at (202) 626-8104 or by e-mail at autore@nrf.com.

Sincerely,



Erik O. Autor
Vice President, Int'l Trade
Counsel

March 15, 2007

Ms. Gloria Blue
Executive Secretary
Trade Policy Staff Committee
Office of the U.S. Trade Representative
Washington DC 20006

Regarding: Comments on the 2005 WTO Ministerial Decision on Duty-Free, Quota-Free Market Access for Least Developed Countries

Dear Ms. Blue:

As the national trade association for the U.S. textile industry, the National Council of Textile Organizations (NCTO) is pleased to offer advice on the issue of the Duty-Free, Quota-Free (DF/QF) commitment made by the U.S. government during the Hong Kong Ministerial.

NCTO would like to note up front that, unless carefully managed, the impact of the DF/QF commitment is likely to fall harder on the U.S. textile industry and its workers than any other sector and it is appropriate that textile concerns regarding this initiative be carefully considered.

Such an impact could occur because two LDCS – Bangladesh and Cambodia - have emerged during the last decade as "super-competitors" in the textile arena. As a unit, these two countries are the second largest apparel exporters to the United States, out exporting Mexico, each of the CAFTA countries, and the entire ANDEAN/AGOA regions combined, all of which already receive duty-free treatment. Over the last two years, Bangladesh and Cambodia have taken large amounts of market share away from other LDCs and developing country markets, including those which represent the major export markets for the U.S. textile industry. As a sign of their competitive strengths, they have accomplished this while paying regular duty and competing against all other LDCs which have quota free, duty-free access[1].

It is revealing to note that even under a duty-paying scheme Bangladesh and Cambodia are among the few countries in the entire world, <u>and the only LDCs</u>, to benefit from the 2005 quota phase-out[2]. Exports of apparel from these two countries have increased by an average of 32 percent since 2005, while the rest of the LDC countries have experienced double digit declines, including a 27 percent decline by the AGOA countries. In addition, the NAFTA/CAFTA region has also experienced double digit declines.

[1] African LDCs under the AGOA program and Haiti under the HOPE Act.
[2] China is the other big winner.

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Not coincidentally, Bangladesh and Cambodia ship almost the identical product mix[3] – trousers, knit shirts, underwear – as do the CAFTA and NAFTA regions and the other LDCs. From a U.S. textile perspective, because the CAFTA and NAFTA regions buy mostly U.S. yarns and fabrics, losses in the NAFTA/CAFTA region invariably lead to losses in jobs and plant closures in the United States.

This is the key reason that any DF/QF outcome which sacrifices these valuable and job sustaining export markets would force the industry to oppose the Doha Round.

In addition, NCTO encourages the TPSC to review carefully the potential global ramifications, both political and economic, of allowing super competitive LDCs such as Bangladesh and Cambodia to receive duty-free access in textiles and apparel. Such an action would likely eliminate remaining African textile and apparel production and cause widespread job losses in the Western Hemisphere. The TPSC should also examine what effect DF/QF would have on key allies in the war on terror, including Pakistan, Jordan, Egypt and others that depend on access to the U.S. market in order to employ hundreds of thousands of workers. These countries also ship similar product mixes similar to Bangladesh and Cambodia's.

U.S. Government Commitment

From an industry perspective, it is imperative that the United States maintain its current position that the DF/QF commitment is part of a single undertaking and that there is no "early harvest". An "early harvest" would not only jeopardize industry support for a Doha Round conclusion but would also generate serious complications regarding textile negotiations in the Round.

In addition, under no circumstances should the 97 percent figure be increased. Doing so would ensure a strong political reaction in the United States while unleashing the negative consequences already described in many other critical regions around the world.

NCTO also believes that it is essential that the United States government retain the ability to make its own decisions, in consultation with Congress, regarding which tariff lines are included in any duty-free, quota-free arrangement. This means that there can be no definitive WTO list of which items are included in a DF/QF arrangement but instead that individual WTO members are allowed to make their own determinations about which products are included and under what rules of origin. Finally, the U.S. government should make sure that its final DF/QF undertaking cannot be appealed to a WTO dispute body but instead that the U.S. government and the U.S. Congress retain overall authority to enforce the U.S. commitment.

If these strictures are adopted, the U.S. textile industry believes that U.S. job losses and production declines from a 97 percent DF/QF arrangement can be minimized. Accordingly, job losses in the CAFTA/NAFTA/AGOA regions as well as from major apparel exporters such as Pakistan, Egypt and Jordan can also be dramatically reduced. However, this will require that apparel items sensitive to the U.S. industry, the CAFTA/NAFTA regions and other countries be excluded from a DF/QF arrangement.

[3] Made almost entirely of subsidized Chinese fabrics and yarns.

We also note that even with such exclusions, Bangladesh and Cambodia would reap enormous benefits, potentially worth billions of dollars, because they would still receive zero duty benefits in the vast majority of tariff lines in the textile and apparel chapter[4]. This trade is now dominated by China but a carefully structured DF/QF arrangement would enable these two countries to take back a significant portion of this lucrative market which is worth tens of billions of dollars today. We believe that from a political, economic and security perspective, this is by far the preferable route to go and we look forward to working with the government to ensure that it takes place.

Please let me know if we can supply any specific trade figures or be of any further assistance.

Sincerely,

Cass Johnson
President

[4] Only a minority of textile and apparel tariff lines are still considered sensitive by the domestic industry.

EMBASSY OF THE REPUBLIC OF UGANDA

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OUR REFERENCE C/POL/AGOA

March 15, 2007

The Honorable Susan C. Schwab
United States Trade Representative
600 17th Street NW
Washington, DC 20508

Dear Ambassador Schwab:

In response to USTR's request for comments from various stakeholders on the initiative to provide duty free and quota-free market (DFQF) market access for Least Developed Countries globally, I am pleased to provide initial comments with the hope that there would be further opportunities to discuss this important trade issue in more detail.

The implications of a DFQF market access initiative, of course, would be the greatest for sub-Saharan Africa as it is the only region of the world getting poorer. By providing AGOA-type benefits for LDS's globally, it is clear that the margin of preference currently enjoyed by African nations under AGOA would be eliminated.

The African Union presently has a high-level meeting of Trade Ministers scheduled for May 2007 in Brazzaville, Congo. Clearly, the issue of creating a single preference program and the resulting implications for Africa will be discussed in great detail. In light of the gravity and potential impact of this proposal on African nations, we urge you to allow more time for African leaders to assess the impact and discuss possible alternatives before the United States advances a DFQF proposal.

Since 32 out of the 42 LDCs that benefit from US preference programs are located in Africa, legislation that addresses LDCs will have the most implication on our continent. African industries were already forced to take several steps backward in 2005 with the phase-out of the global textile and

apparel quotas. For example, Bangladesh and Cambodia each exported more than twice apparel to the US in 2006 than all 37 AGOA countries combined. Therefore, it is essential to give governments in Africa adequate time to evaluate the proposed trade agenda and its potential impact.

Please be assured of my best wishes and regards.

Sincerely:

Professor Perezi K. Kamunanwire
AMBASSADOR

Universal Leaf Tobacco Company, Inc.

Richmond, Virginia 23260

March 15, 2007

Ms. Gloria Blue
Executive Secretary, Trade Policy Staff Committee
Office of the United States Trade Representative
Room F516
600 17th Street, N.W.
Washington, D.C., 20508

RE: Trade Policy Staff Committee Request for Comments; Duty-Free, Quota-Free Market Access for Least Developed Countries

Dear Ms. Blue:

On behalf of Universal Leaf Tobacco Company, Inc. ("Universal"), I am writing in regard to your request for public comments on considerations relating to the "Decision that Members adopted at the Sixth Ministerial Conference of the World Trade Organization (WTO) in December 2005 on duty-free, quota-free ("DFQF") market access for the least developed countries ("LDC")." Universal appreciates the opportunity to submit comments on this important issue.

Universal, which is headquartered in Richmond, Virginia, is one of the world's largest independent leaf tobacco merchants and processors. As a leaf tobacco merchant, Universal is an intermediary between the tobacco growers of the world and the final product manufacturers. We do not manufacture any consumer products. Instead, we buy leaf tobacco from farmers that has been grown and harvested in North America, including the United States ("U.S."), South America, Latin America, Europe, Africa, and Asia. After we purchase the leaf, we process it, which means that we remove the stem from the leaf in a threshing process, and then we pack the stem and the leaf separately for sale. Universal has operations in more than 35 countries around the world, including many LDCs, where we employ more than 25,000 permanent and seasonal workers and where we work with hundreds of thousands of small farmers.

Universal supports the U.S. offer to provide DFQF treatment for LDCs for 97 percent of its import tariff lines as it relates to the successful implementation of the results of the negotiations under the Doha Development Agenda. Although the remaining three percent of import tariff lines are undefined at this time, we are concerned that leaf tobacco (Tariff Line 2401) might be one of the products that falls into the remaining three percent of import tariff lines and might be excluded from the DFQF offer for LDCs. Universal strongly favors including leaf tobacco in

the DFQF offer. There are customers in the United States who are interested in purchasing leaf tobacco from these countries and providing DFQF treatment would afford a number of the poorest countries in the world access to the U.S. market, thereby increasing their opportunities to expand exports and needed foreign exchange earnings.

To a larger degree, but as it relates to imports of flue-cured and burley leaf tobacco to the United States, Universal believes that there is justification for the current tariff rate quota ("TRQ") system to be liberalized through global trade talks. We believe that the TRQ system is no longer necessary due to recent domestic events in the tobacco industry as well as circumstances that have taken place in countries that were once major competitors with the United States as it relates to leaf tobacco production.

Since 1995, imports of most all types of flue-cured and burley tobaccos into the United States have been limited by the TRQ system. The TRQ system, which was designed to permit 150,000 metric tons (approximately 331 million pounds) of imported leaf into the United States on an annual basis, was adopted by the U.S. government in large part to protect two entities – the federal tobacco price support program and U.S. growers – from increases in imported leaf.

Imports of flue-cured and burley leaf tobaccos were a concern at that time because any unsold domestic leaf was acquired by tobacco stabilization cooperatives in North Carolina, Kentucky, and Tennessee using government loans provided by the Commodity Credit Corporation. If the quantity of this tobacco became too large or if it could not be resold for a profit, the loans could be forfeited thus creating a loss for the U.S. government. As a result, the TRQ system was established to safeguard the federal tobacco price support system, which controlled the amount of leaf grown and marketed in the United States via licenses that were issued to U.S. growers. Further, the federal tobacco program also set market price supports that guaranteed that U.S. growers received high prices for their leaf production.

The federal tobacco price support program, which was created in the 1930s, was historically one of the most effective and efficient farm programs in the United States. However, during the latter course of its seventy years-plus existence, it became so inflexible due to rigid and antiquated rules that it was not able to react and effectively respond to changes in global and domestic leaf markets. As a result of this inflexibility, U.S. leaf became overpriced and non-competitive in the global market, exports dropped, and U.S. growers were forced to grow smaller and smaller quantities of leaf. These circumstances transpired dramatically between 1998 and 2004.

In response to these artificial and non-competitive forces that caused the domestic market to be depressed, the U.S. Congress – with the strong support of the domestic growing community – voted to terminate the federal tobacco program in October 2004. Furthermore, the Congress also authorized payments of almost $10 billion in direct compensation to U.S. growers for the loss of the program, their federal licenses to produce leaf tobacco, and price supports. Domestic growers now operate under free market conditions, and they are allowed to produce and sell as much leaf as they choose in the U.S and world markets.

It should be noted that as result of the buyout and the direct compensation that is being paid to growers during a 10-year period, a number of growers have exited the market and an argument can be made for the need of more supply of leaf tobacco, especially of quality burley tobacco

which is in high demand by the major domestic cigarette manufacturers. Liberalizing the restrictions on imported leaf tobacco potentially could reduce the need or incentive of manufacturers to move a portion of their production offshore, principally cigarettes bound for the export market. Such a scenario would help to keep more investments and jobs in the United States, especially in a number of rural and suburban communities in the mid-Atlantic region.

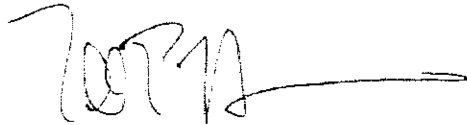
Despite the termination more than two years ago of the federal tobacco program that the TRQ system was created to protect, the TRQs have not been eliminated. Universal believes that because the rationale for creating the TRQ system no longer exists, the system should be liberalized as soon as possible. Furthermore, much has changed in the world leaf tobacco market since 1995, and the TRQ system does not take these changes into consideration. For example, world production patterns have changed during the last decade, and some countries that received quotas based on historical trade (e.g., Zimbabwe, Chile, Guatemala) are no longer able to supply their quota. During this same period of time, other countries, mainly LCDs in Africa such as Mozambique and Zambia, have become significant leaf tobacco producers but are virtually unable to access the U.S. market because they do not have a quota under the 1995 TRQ design.

In addition to the aforementioned global market changes, administrative mechanisms within the TRQ system that were supposed to be implemented to ensure that unused quotas were reallocated to other suppliers have never been utilized. As a result, imports have been significantly less than originally intended, even when the federal tobacco program was making U.S leaf less competitive in the world market and constricting the amount being produced in the United States.

In conclusion, Universal is supportive of the U.S. offer to provide DFQF treatment to LDCs for 97 percent of its import tariff lines upon the successful completion of the Doha global trade talks, and we strongly urge that leaf tobacco (Tariff Line 2401) be among the products included in the DFQF treatment. On the broader issue, but as it relates to the importation of leaf tobacco into the United States, Universal believes that there is no longer any economic justification for the continuation of the TRQ system as it stands today because the federal tobacco price support system has been terminated. Furthermore, U.S. growers have been compensated for the loss of the program, vast changes in global production have taken place, and administrative tools that were designed to allow the TRQ system to adapt to changes in the marketplace have not been implemented or utilized.

Again, Universal appreciates the opportunity to submit comments relating to DFQF market access for LDCs, and we thank you for your consideration of our comments.

Sincerely,



Todd P. Haymore
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