



Concept Paper
on
30% Local Value Addition Criteria for LDCs
in the Rules of Origin (RoO) of
D-8 Preferential Trade Agreement (PTA)

The People's Republic of Bangladesh
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A. Introduction

1. With the provisions of Article 34 of the “Preferential Trade Agreement (PTA) among D-8 Member States”, PTA officially entered into force among Iran, Malaysia, Nigeria and Turkey on 25 August 2011, Indonesia joined on 4 October 2011 and Pakistan on 08 February 2012. As per Article 27 of the PTA, a Supervisory Committee (SC) was established to replace the function of HLTO and to commence its work within 6 months upon entry into force of PTA. The Supervisory Committee is to undertake any function assigned to it under the provisions of the PTA and examine any other matter affecting the implementation of this Agreement. The first meeting of the Supervisory Committee of the PTA was held on 22 March 2012 in Istanbul, Turkey. So far, 4 (Four) Supervisory Committee meetings are held among the D-8 Member states after its inception in 2012.

2. As per the decision of the 2nd Trade Ministers Council (TMC) held in Islamabad in 16-17 February 2016, there will be a Special meeting of Supervisory Committee in May 2016 in Istanbul, Turkey to discuss the following two issues:

- a. To finalize the draft “Dispute Settlement”; &
- b. To discuss the issue of 30% local value addition criteria for LDCs in D-8 PTA Rules of Origin.

3. This Concept Paper basically focuses on the above 2nd issue namely 30% local value addition criteria for LDCs in D-8 PTA Rules of Origin (RoO) which was raised by Bangladesh.

B. Background

4. The D-8 PTA Rules of Origin (RoO) came into force on 25 August 2011. But, Bangladesh could not ratify it because Bangladesh’s proposal to reduce the value addition criteria to 30 percent from 40 percent has not yet been accepted by the contracting member countries. Bangladesh repeatedly raised this issue in different D-8 forums as non- inclusion of this provision for LDCs goes against the interest of Bangladesh. The issue is a long pending one. The submission document that was placed in the 4th SC meeting justifying the demand of Bangladesh is **Annexed-1** herewith.

C. LDCs (Least-Developed Countries) Issue:

5. The 4th Supervisory Committee (SC) Meeting and 2nd Trade Ministers Council (TMC) Meeting of D-8 PTA was held during 16-17 February, 2016 in Islamabad, Pakistan. Again the proposal of Bangladesh regarding her request to have 30% local value addition criteria for the

LDCs was raised in these two meetings. In the SC meeting it was decided that Bangladesh would prepare a ‘**Concept Paper**’ regarding the issue. However, the TMC meeting decided that the issue of Bangladesh will be discussed in the Special Meeting of the SC to be held in Turkey in May 2016.

6. The 4th Meeting of the SC decided that a Concept Paper will be prepared on the three issues cited below:

- i) What is the nature of S&D treatment under other forums enjoyed by LDCs;
- ii) What legal changes are involved if member states agree on Bangladesh’s proposal; &
- iii) What is the legal position regarding this proposal by Bangladesh when even they have not yet ratified the PTA.

The three issues mentioned above are discussed briefly below:

Issue no i). What is the nature of S&D Treatment under other forums enjoyed by LDCs

7. In different Regional Trade Agreement (RTA) forums LDCs always get S&D treatment. For example, as an LDC, Bangladesh enjoys S&D treatment in different forums. So far, Bangladesh has signed five RTAs. Three of them are Preferential Trade Arrangements/Agreements (PTAs) and other two Free Trade Area (FTA) Agreements. The PTAs and FTAs are:

A. PTA (Preferential Trade Arrangements/Agreements)

- Preferential Trade Agreement among D-8 Member States (D-8);
- Asia-Pacific Trade Agreement (APTA); and
- Trade Preferential System among OIC Member Countries (TPS-OIC).

B. FTAs (Free Trade Area Agreements)

- Agreement on South Asian Free Trade Area (SAFTA); and
- Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC FTA).

8. These all agreements contain S&D treatment for the LDCs including Bangladesh. There are two types of S&D treatment. **Firstly**, local value addition criteria in the Rules of origin. **Secondly**, longer transition period to implement Tariff Reduction Program. D-8 PTA allows LDCs the longer tariff reduction period but yet to allow flexible rules of origin. And as the present issue in the D-8 is for value addition criteria of the RoO so the benefits in the RoO

under different PTAs/FTAs enjoyed by the LDCs (signed by Bangladesh) are shown in the following Table 1.

Table 1: Privileges for the LDCs in the Rules of Origin under different RTAs

Name of Regional Agreements*	Value Addition Criteria			
	Local Content (Single country)		Regional Cumulation	
	Non-LDC	LDC	Non-LDC	LDC
TPS-OIC	Article-5 (1) Value addition requirement is 40% for non-LDCs;	Article-5 (2) Value addition requirement is 30% for LDCs;	Article 6.1 (b) The aggregate content originating in the territory of the Participating State is not less than 40% of its ex-works price	Article 6.1 (c) The aggregate content originating in a least developed Participating State not less than 30% of its ex-works price
APTA	Rule 3(a): Value addition requirement is 45% for non-LDCs;	Rule 10: Value addition requirement is 35% for LDCs;	Rule-4: Regional content requirement is not less than 60% of the f.o.b value for non-LDCs	Rule 10: Regional content requirement is not less than 50% of the f.o.b value for LDCs
SAFTA	Rule 8(ii): Value addition requirement is 40% plus CTH (Change of Tariff Heading) for Non-LDCs;	Rule 10: Value addition requirement is 30% plus CTH for LDCs;	Rule 9(a): SAARC cumulation, along with CTH regional content, requirement is not less than 50% of the F.O.B value.	
BIMSTEC	Rule 6.i.a (i): Local value added content is not less than 35% plus CTSH (Change of Tariff Sub Heading) for Non-LDCs	Rule 6.i.a (ii): Local value added content is not less than 30% plus CTSH for LDCs	Rule-8.(a). Regional content requirement is not less than 35% plus CTSH	Rule-8 (a). Regional content requirement is not less than 30% plus CTSH
D-8	RULE-4: A product shall be deemed to be originating if not less than 40% of ex-works price of it		RULE-5: The aggregate D-8 Contracting Members originating content on the final product is not less than 40% (No S&DT for LDC).	

Name of Regional Agreements*	Value Addition Criteria			
	Local Content (Single country)		Regional Cumulation	
	Non-LDC	LDC	Non-LDC	LDC
	content originates from a Contracting Member (No S&DT for LDC).			

*All Regional Agreements Rules of Origin Text are Annexed-2 herewith.

9. It is found from Table 1 that every RTA provides special and differential (S&D) treatment in local value added content for LDCs in the Rules of origin i.e.the S&D treatment for LDCs is permissible under the PTAs/FTAs. Unfortunately, no S&D treatment is allowed for LDCs in the D8 PTA. So inclusion of provision providing more favorable conditions of trade for the LDCs is necessary.

Issue No. 2: What legal changes are involved if member states agree on Bangladesh's Proposal

10. In D-8 PTA Rules of Origin, **RULE 4 & 5** will need amendments to accommodate S&DT for the LDCs. The changes are mentioned in Table 2.

Table 2: Proposed Changes in the D-8 PTA Rules of Origin Text

Original Text	Proposed Change
<p>RULE-4 (1)</p> <p>“For the purpose of 2(b), a product shall be deemed to be originating if not less than ‘40’ % of ex-works price of its content originates from a Contracting Member.</p>	<p>“For the purpose of 2(b), a product shall be deemed to be originating if not less than 40 % of ex-works price of its content originates from a Non-LDC Contracting Member and ‘30’ % of ex-works price of its content originates from an LDC Contracting Member.</p>
<p>RULE-4 (2) :</p> <p>“For the purpose of calculating local value added content the following method shall apply:</p> $\frac{\text{Ex Works Price} - \text{value of non-Originating materials}}{\text{Ex Works Price}} \times 100 \geq 40$	<p>“For the purpose of calculating local value added content the following method shall apply:</p> $\frac{\text{Ex Works Price} - \text{value of non-Originating materials}}{\text{Ex Works Price}} \times 100 \geq 40\% \text{ for Non- LDCs Or } \geq 30\% \text{ for LDCs}$

Original Text	Proposed Change
RULE-5 D-8 Contracting Members originating content on the final product is not less than 40%	D-8 Non LDC and LDC Contracting Members originating content on the final product is not less than 40 % and 30% respectively.

Issue No. iii: What is the legal position regarding this proposal by Bangladesh when even they have not yet ratified the PTA.

11. It is required to amend Rule 4 & 5 of Rules of Origin (RoO) text for inclusion of the proposal by Bangladesh according to the Rule 20 of the RoO.
12. Now for modification/amendment of the Rules of Origin (RoO), Rule 20 requires fulfillment of the procedure described in Article 30 of the D-8 PTA.
13. According to Article 30 of the D-8 PTA the Contracting Members may amend the RoO of the Agreement through mutual consent of all Contracting Members and subsequently through a protocol agreed by the Trade Ministers Council (TMC). In Article 30 of the PTA there is no bar for a Member State (who is not a Contracting Member, say Bangladesh) to propose any amendment /modification, but it lies with the Contracting Members only for decision. So, Bangladesh can propose the changes to be brought in the RoO which may be consented by the Contracting Members and subsequently agreed by the TMC.
14. So the legal position (regarding the proposal by Bangladesh when even they have not ratified the PTA) is that Bangladesh can propose modification and amendments as a member state and there is legally no bar in it.