



Committee on Rules of Origin

MODALITIES FOR THE CALCULATION OF "PREFERENCE UTILIZATION"

NOTE BY THE SECRETARIAT¹

Revision

The 2015 Nairobi Ministerial Decision ([WT/L/917/Add.1](#)) on rules of origin for least developed countries (LDCs) mandates the Committee on Rules of Origin (CRO) to agree on modalities for the calculation of utilization rates (Paragraph 4.3). These modalities have been agreed to by Members in 2016-2017 (item 3.3 in [G/RO/M/67](#) and item 4.4 in [G/RO/M/68](#)). This revised note updates a previous one prepared by the Secretariat which assisted Members in these discussions. It reflects methodological issues which have been recently raised in the CRO in relation to the calculation of utilization rates.

1 DEFINING PREFERENCE UTILIZATION FOR PURPOSES OF THE WORK OF THE CRO

1.1. There are many possible definitions of the term "preference utilization". For example, utilization of trade preferences can be understood more generally as the ability of beneficiary countries to increase exports, attract productive investments, create jobs and increase income. According to this macro definition, successful beneficiaries would be those that "actively use preferences" to leverage economic development². Under this definition, factors that impede preferences from fully deploying their benefits include for example the absence of trade-related infrastructure, lack of resources, the lack of a clear export strategy, or also lack of knowledge at the firm level among other reasons.³

1.2. This general understanding of "preference utilization" is relevant. It seeks to answer the question: "to what extent are strategies in place to actively utilize trade preferences available and to promote economic development?". However, this definition is not specific enough to guide the work of WTO Members in the Committee on Rules of Origin (CRO). The answer the work of the CRO seeks to address is "to what extent are the applicable rules of origin and origin requirements facilitating or hindering the utilization of such preferences?".

1.3. For this reason, in the context of the work of the CRO, a more specific definition is needed. "Preference utilization" can be described simply as the extent to which trade flows which are eligible for trade preferences are in practice imported under these preferences rather than under Most Favoured Nation (MFN) conditions. In more technical terms, the preference utilization rate is the amount of imports which are granted a preferential tariff on entry, as a proportion of the total value of imports which may be eligible for a preferential tariff. Utilization rates therefore speak to the capacity of economic operators to actually seize market access opportunities which are available to them through reciprocal or non-reciprocal preferences.

¹ This document has been prepared under the Secretariat's own responsibility and is without prejudice to the positions of Members or to their rights and obligations under the WTO.

² This is the understanding taking in articles such as "AGOA Utilization 101", Mwangi S. Kimenyi, 23 March 2015. <https://www.brookings.edu/articles/agoa-utilization-101/> (accessed 28 July 2023) or "African Growth and Opportunity Act: Program usage, trends, and sectoral highlights", Landry Signé, 1 August 2022. <https://www.brookings.edu/articles/african-growth-and-opportunity-act-program-usage-trends-and-sectoral-highlights/> (accessed 28 July 2023).

³ Here's why US-Africa trade under AGOA has been successful for some countries but not others, Landry Signé, 11 July 2023. <https://www.brookings.edu/articles/heres-why-us-africa-trade-under-agoa-has-been-successful-for-some-countries-but-not-others/> (accessed 28 July 2023)

1.4. This definition enables the identification of trends in trade flows and hence offers an indicator about the impact that rules of origin and origin requirements have on the ability of businesses to tap into preference programmes.

2 UTILIZATION RATES AS A TOOL TO EXAMINE RULES OF ORIGIN

2.1. If a tariff preference is available, it would seem paradoxical that economic operators would pay MFN duties instead of utilizing trade preferences. This choice or incapacity to use preferences could, nevertheless, be explained by a variety of reasons, one of which relates to the design of rules of origin and origin-related documentary requirements. In fact, the granting of trade preferences requires compliance with specific conditions. In practice, a good must simultaneously satisfy three requirements:

- (i) A good must be wholly obtained in the beneficiary country or comply with minimum substantial transformation requirements (that is, satisfy general or product-specific rules of origin);
- (ii) a good must demonstrate compliance with such requirements by being accompanied by the prescribed proof of origin (namely, a certificate of origin delivered by a designated competent authority or certifying body, or a self-declaration of origin); and
- (iii) a good must in principle be directly consigned from the beneficiary country to the preference granting country to avoid any risks of further manipulation in third or transit countries or, in case of transit, goods must satisfy the prescriptions in relation to documentary evidence about non-manipulation (or non-alteration) in transit.

2.2. Only when all three requirements are met will the preferential tariff rate be granted by the customs authorities of the preference-granting, importing party.

2.3. It is for this reason that utilization rates have been proposed as a useful indicator to monitor and assess the effectiveness of preferences in general and of preferential rules of origin in particular⁴. The full utilization of a preference indicates that all import requirements were met: the rule of origin and other origin requirements were fully complied with. Conversely, the non-utilization of a preference indicates that the importer either chose not to claim a preference or was unable to meet all the requirements to claim it. As a result, this could be an indicator that the applicable origin requirements are either too stringent or not well understood.

2.4. It should be noted, nonetheless, that there are also limitations to the use of utilization rates as a tool to examine the impact of rules of origin. In fact, utilization rates could be low for reasons which are not necessarily related to the design of a rule of origin or its administrative requirements. Common explanations include that the economic operator is not aware that a preference is available or that the operator prefers to pay MFN duties because the preferential margin is not sufficiently attractive (that is, the preferential margin does not work as an incentive to use the preferences) to cover the costs related to fulfil origin requirements.

2.5. Another explanation for low utilization rates is that imports are receiving tariff preferences under other available preferential schemes. If multiple preferences are available, economic operators may opt for the scheme that offers equivalent or greater preferential advantages. For example, they might prefer to use a reciprocal regional trade agreement (RTA) instead of a non-reciprocal preferential trade agreement (PTA) due to better knowledge about the requirements, or a more attractive preferential margin or less restrictive rules of origin. The same reasoning applies when other tariff concessions are available, such as temporary tariff concessions or duty drawback schemes.

2.6. It is for this reason that the WTO Secretariat has proposed to complement the analysis of utilization rates with that of "non-utilization" or "underutilization".⁵ Underutilization rates demonstrate the extent to which trade occurs under MFN conditions, even though imports would be

⁴ For instance, a communication of the LDC Group reported the utilization for preferential exports from LDCs to Canada; the EU; Japan; and the US and examined extensively how rules of origin could be impacting utilization rates (document [G/RO/W/148](#)).

⁵ See as well [G/RO/W/185](#), [G/RO/W/187](#), [G/RO/W/187/Rev.1](#), [G/RO/W/203](#), [G/RO/W/204](#), [G/RO/W/212](#).

eligible for one or more preferences. Therefore, "non-utilization" or "underutilization" rates offer a complementary tool to identify areas in which origin requirements could have a restrictive impact.

2.7. In sum, rules of origin have a direct impact on the ability of traders to use trade preferences. Utilization rates are therefore a useful tool to assess the appropriateness or the restrictiveness of rules of origin requirements. However, since other factors may also influence the ability of producers to export under trade preferences, no definite conclusions can be drawn from utilization rates alone.

3 CALCULATION METHODOLOGIES

3.1. Preference utilization is the proportion of imports which actually receive preferential tariff treatment when imported out of the total imports which could benefit from any tariff preference. Because the utilization rate is a ratio of many transactions within a given time period, it is expressed as a percentage value between 0 and 100. Generally, however, not all imports necessarily qualify for preferences; hence utilization rates should consider only trade which would be, all conditions being met, eligible to receive preferential treatment. This information is compiled by customs, based on the treatment granted to importers at the moment of importation.

3.2. There are different possible methodologies to calculate preference utilization rates. Below is a description of some of the main possible calculation methodologies⁶:

- (a) The first option is to base Preference utilization rates (pur^{value}) on the **"reported value" of preferential imports**: that is, the value of those imports that have reportedly benefited from a preferential duty scheme as a proportion of imports on tariff lines eligible for preferential duty treatment. This method sheds light on the utilization of individual preference programmes and disregards the availability of other tariff preferences. Tariff lines with a zero MFN duty rate are excluded from the calculations, as a preferential scheme does not offer any additional advantages for these lines.

Members agreed to use this methodology to calculate the rates of utilization of individual preference programmes in the context of the CRO.

	$pur_i^{value} = \frac{\sum_j \sum_p PTA_{i,j,p}^{reported}}{\sum_j \sum_p PTA_{i,j,p}^{eligible}}$	
pur_i^{value} :	PREFERENCE UTILIZATION RATE (%) based on import value (or quantity) by preference granting Member	
where:	i	= preference granting Member
	j	= preference receiving Member
	p	= product
	$PTA^{reported}$	= imports reported to have taken place under the PTA preferential duty scheme
	$PTA^{eligible}$	= imports under any eligible tariff line, i.e. preferential duty < MFN duty rate.

- (b) A second option could be to base preference utilization rates (pur^{value}) on the **sum of "reported value" of imports under both PTA and other preferential schemes** (either Regional Trade Agreements (RTAs) or other temporary or special tariff concessions). This methodology compares the amount of imports that have benefited from a tariff preference with the amount of imports that would be eligible for preferences under any existing scheme. This methodology takes into account the existence of any preferential tariff opportunity and does not focus on a single scheme. Tariff lines with a zero MFN duty rate are excluded from calculations, as a preferential scheme does not offer any additional advantage for these lines.

This formula has the advantage of considering tariff preferences received under any preferential scheme available. It offers a more comprehensive view of the benefits being received by LDCs. However, it could lead to wrong assumptions about the utilization of individual preference programmes.

⁶ Other methodologies are possible, including, for instance, one based on customs duties paid (described in paragraph 3.2(b) of [G/RO/W/161](#)). For a more general discussion, see A. Keck, and A. Lendle, (2012) "New evidence on preference utilization", WTO Staff Working Paper ERSD-2012-12, revised for the Journal of International Economics.

$pur_{i,p}^{value} = \frac{\sum_j \sum_p PTA_{i,j,p}^{reported} + Others_{i,j,p}^{reported}}{\sum_j \sum_p Preference_{i,j,p}^{eligible}}$	
$pur_{i,p}^{value}$:	PREFERENCE UTILIZATION RATE (%) based on import value (or quantity) by preference granting Member
where:	i = preference granting Member j = preference receiving Member p = product $PTA_{i,j,p}^{reported}$ = imports reported to have taken place under the PTA preferential duty scheme $Others_{i,j,p}^{reported}$ = imports reported to have taken place under other preferential duty scheme $Preference_{i,j,p}^{eligible}$ = imports under any eligible tariff line, i.e. preferential duty < MFN duty rate.

- (c) Finally, one approach which avoids the shortcomings of the methods described above is one which focuses on "non-utilization" or "under-utilization" instead of utilization. The underutilization rate corresponds to eligible trade entering under the Most Favored Nation (MFN) status despite being available for preferential treatment under any available scheme:

$puur_{i,p}^{value} = \frac{\sum_j \sum_p MFN_{i,j,p}^{pref\ eligible}}{\sum_j \sum_p Preference_{i,j,p}^{eligible}} = 1 - \frac{\sum_j \sum_p PTA_{i,j,p}^{reported} + Others_{i,j,p}^{reported}}{\sum_j \sum_p Preference_{i,j,p}^{eligible}}$	
$puur_{i,p}^{value}$:	PREFERENCE UNDERUTILIZATION RATE (%) based on import value by preference granting Member
where:	i = preference granting Member j = preference receiving Member p = product $PTA_{i,j,p}^{reported}$ = imports reported to have taken place under the PTA preferential duty scheme $Others_{i,j,p}^{reported}$ = imports reported to have taken place under other preferential duty schemes. $MFN_{i,j,p}^{pref\ eligible}$ = imports under any eligible tariff line, i.e., preferential duty < MFN duty rate that are <u>reported to have taken place</u> under the Most Favored Nation (MFN) status. $Preference_{i,j,p}^{eligible}$ = imports under any eligible tariff line, i.e. preferential duty < MFN duty rate.

3.3. In sum, using both the rates of utilization of individual preferential schemes and the rates of "non-utilization" of any available scheme offer advantages and disadvantages. As a result, both methods of calculation are complementary and can be usefully combined to identify schemes, sectors or products for which rules of origin could be hindering preferential market access for LDCs.

4 DATA NOTIFICATION AND LIMITATIONS

4.1. A corollary for the calculation of utilization rates (irrespective of the method chosen) is the availability of complete data sets describing trade between preference-granting Members and beneficiary LDCs. In fact, data available with the WTO Secretariat is based on Members' annual notification of tariff and trade data (imports) in compliance with the Transparency Mechanism for Preferential Trade Agreements (PTA), established by General Council Decision on 14 December 2010 ([WT/L/806](#)). Members shall notify, on an annual basis⁷:

- (a) Applied MFN import tariffs at the national customs tariff nomenclature (at the most detailed level, for example HS codes with 8, 9, or 10 digits, as normally applied by the Member's customs administration);
- (b) Import statistics in the same national tariff nomenclature as the corresponding MFN applied tariffs for the same year (i.e. same HS version and with the same level of disaggregation), including value (in USD or national currency) and volume (quantity and unit), by country of origin and by tariff line;
- (c) Data elements required by the Transparency Mechanism for Preferential Trade Arrangements⁸, which include:
 - (i) Preferential applied tariffs and import statistics, for preferences by developed countries to developing and least-developed countries in accordance with the Generalized System of Preferences (GSP)⁹, including the list of countries or separate customs territories on which they apply.

⁷ See [G/MA/367](#), paragraph 1.1.

⁸ See [WT/L/806](#), Section D, paragraphs 15-17, and Annex 1.

⁹ Paragraph 2(a) of the Enabling Clause.

- (ii) Preferential applied tariffs and import statistics, in case of preferential treatment accorded by any Member to products of least-developed countries, including the list of countries or separate customs territories on which they apply.
- (iii) Preferential applied tariffs and import statistics, in case of non-reciprocal preferential arrangements authorised under the WTO Agreement, including the list of countries or separate customs territories on which they apply.

4.2. In addition, Members are *encouraged*¹⁰ to submit comprehensive applied tariff and import information, to the extent possible and particularly when the information is already publicly available in a national website, by notifying the following information:

- (a) Applied non-MFN tariffs, including:
 - (i) Preferential tariffs applied in the context of regional trade agreements (for example free trade agreements or customs unions), including arrangements under Article XXIV of the GATT 1994 and Paragraph 2(c) of the Decision on "Differential and More Favourable Treatment Reciprocity and Fuller participation of Developing countries" (Enabling Clause)¹¹. The submission should include list of countries or separate customs territories covered by each of these agreements; and
 - (ii) Other applied non-MFN tariffs, for example tariffs applied on imports originating in non-WTO Members, if applicable, including the list of countries or separate customs territories on which they apply.
- (b) Preferential import statistics under regional trade agreements (for example free trade agreements or customs unions), including arrangements under Article XXIV of the GATT 1994 and Paragraph 2(c) of the Enabling Clause. They should include the value (in USD or national currency) and volume (i.e. quantity and unit), disaggregated by country of origin, by tariff line, and by the duty regime under which each product was imported. The statistics should distinguish at the tariff line level, and for each of the beneficiary partners, the imports entered under MFN conditions from the imports entered under preferential conditions.
- (c) *Ad valorem* equivalents (AVEs) of non-*ad valorem* (NAV) duties, as calculated by the Member.
- (d) Applied internal taxes and other duties and charges (ODCs), when available at the tariff line level.
- (e) Imports or proportion of imports (value and volume) under tariff rate quotas (TRQs) for each identified tariff line associated with the relevant TRQ, in particular in case the in-quota and out-of-quota imports are recorded under the same tariff line code. In case the data corresponds to a bound TRQ, the TRQ identification (TQ ID) as contained in the CTS.

4.3. This information should include a list of countries or separate customs territories covered by each agreement and preferential import statistics, such as value and volume (quantity and unit) of imports, disaggregated by country of origin, tariff line, and duty regime. It is crucial to distinguish imports entered under Most Favored Nation (MFN) scheme from those under preferential schemes at the tariff line level for each beneficiary partner. While the practice is not compulsory, Members are encouraged to submit comprehensive data, including tariff lines entering regional trade agreements, to avoid any potential inconsistencies in calculating preference utilization rate and preference underutilization rate.

4.4. Second, the preference regime notified to the WTO by some Members might be the duty scheme as "requested" or "claimed" by economic operators (e.g. importers), not necessarily the scheme actually applied after customs clearance. As a result, figures for preferential trade may be somewhat overestimated.

¹⁰ Paragraph 1.2 of [G/MA/367](#)

¹¹ Decision of 28 November 1979, GATT document [L/4903](#). Paragraph 2(c) provides that: "Regional or global arrangements entered into amongst [developing country Members] for the mutual reduction or elimination of tariffs and, in accordance with criteria or conditions which may be prescribed by the CONTRACTING PARTIES, for the mutual reduction or elimination of non-tariff measures, on products imported from one another".

4.5. Third, data may also be impacted by variations of duty rates during the year. In fact, Members' import data notifications to WTO IDB are annual and would not capture temporary variations. This may be particularly important if seasonal duties or tariff rate quotas are applied.

4.6. Lastly, the comparison between preferential and MFN duties may also be affected if a non-*ad valorem* duty is used. In such cases, the conversion into *ad valorem* equivalents is necessary.¹²

5 ACCESSING UTILIZATION RATES THROUGH WTO TOOLS

5.1. The WTO Secretariat provides access to preferential import data to Members and authorized users through its Tariff Analysis Online portal (<http://tao.wto.org>). The enhanced functionality of the tariff line report allows to consult import data for preferential trade arrangements (as notified to the Secretariat following the adoption of the PTA Transparency Mechanism outlined in document [WT/L/806](#)). Aggregated summary statistics can be consulted on the PTA online database (<http://ptadb.wto.org>). Both online resources provide access to preferential import data in accordance with the "Decision on the Modalities and Operation of the Integrated Database" adopted by the Committee on Market Access (see document [G/MA/367](#)).

5.2. As PTA preference granting Members are subject to notify detailed import statistics by tariff line, it is possible to calculate preference utilization rates for each PTA notified by Members using simply the methodology described in paragraph 3.2(a) above.

¹² A detailed explanation of non-*ad valorem* duties and their conversion can be found in the WTO Secretariat Note in document [TN/MA/20](#).