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*(Information)*INFORMATION FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES
AND AGENCIES

EUROPEAN COMMISSION

Communication from the Commission — Setting out conditions, in the context of preferential tariff arrangements, for informing economic operators and Member State administrations of cases of reasonable doubt as to the origin of goods**(Text with EEA relevance)**

(2012/C 332/01)

1. Introduction

In its communication COM(97) 402 of 23 July 1997 the Commission established an action plan aimed at changing the way in which preferential tariff arrangements are administered.

The measures proposed (second subparagraph of paragraph 9.3.2) included more systematic use of an early-warning system for importers whenever there is reasonable doubt as to the origin of goods covered by such arrangements. On this basis, the Commission decided to inform economic operators more systematically when such cases were brought to its attention, by means of notices to importers published in the *Official Journal of the European Union* (C series). The Commission also published communication 2000/C 348/03 of 5 December 2000 ⁽¹⁾ in which it established the conditions for providing this information.

The Commission confirmed these orientations in its communication COM(2005) 100 of 16 March 2005, in which it recalled that notices to importers were among the precautionary measures to be used in the event of insufficient control by exporting countries' competent authorities or their failure to cooperate. This communication also stressed that controls on preferential imports should be improved and targeted through risk analysis so as not to hinder legitimate trade flows. In the light of these orientations and the experience acquired since 2000, the Commission considers it appropriate to publish a revised version of its communication of 5 December 2000. It is the purpose of this communication, which replaces the earlier one.

The information will continue to be published in such a way that operators and Member States' customs administrations can take the necessary action — the former to safeguard their own economic interests ⁽²⁾ and the latter to protect the financial interests of the European Union.

In publishing the information, the Commission will bear in mind that it should not interfere with any on-going enquiries, whether at national or European Union level, in connection with preferential arrangements.

⁽¹⁾ OJ C 348, 5.12.2000, p. 4.

⁽²⁾ The refusal of the preferential treatment, on the ground that there is reasonable doubt as to the originating status of the imported goods, may give rise to a customs debt. After publication of the notice, the person liable may not plead good faith in order to be eligible for repayment or remission of import duties, as follows from the wording of the fifth subparagraph of Article 220(2)(b) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ L 302, 19.10.1992, p. 1).

Just because there has not been any notification of reasonable doubt concerning a particular country or product, this does not necessarily mean there is no problem. In particular, this is without prejudice to specific measures, such as import guarantees, which may be required from time to time in individual cases. Operators must therefore continue to be extremely vigilant at all times when implementing the arrangements, especially when it comes to preferential proofs of origin.

2. Cases where information from the Commission may be needed

The main circumstances liable to give rise to reasonable doubt as to origin are the following (non-exhaustive list) ⁽¹⁾:

- lack of initial administrative cooperation, either through a failure to provide the names and addresses of customs or governmental authorities responsible for issuing or checking proofs of origin (certificates of origin, movement certificates and documents made out by exporters certifying origin), or through a failure to provide specimens of stamps used to authenticate the certificates;
- lack or inadequate quality of administrative cooperation in verifying proofs of origin;
- general economic or scientific information that casts doubt on whether a particular product or country is capable of meeting the origin criteria (e.g. lack of fabric industry in a country which exports large quantities of clothing, or lack of a fishing fleet where there are large exports of fish products — unless cumulation of origin is possible or an aquaculture sector has been developed);
- administrative structures or practices for managing preferential arrangements in beneficiary or partner countries are found to be inadequate;
- goods systematically imported into countries covered by preferential arrangements, from countries not entitled to preferential treatment and re-exported without apparent further processing, as far as this can be ascertained from trade statistics;
- sharp increase, without a satisfactory explanation, in imports of sensitive goods covered by several indicators of risk of fraud, or simultaneous irregularities (e.g. shoes exported from a region where some, but not all, neighbouring countries, are subject to anti-dumping duties, enjoy liberalised trade or qualify for tariff preferences);
- findings of fraud or irregularities, particularly as a result of enquiries in beneficiary or partner countries entitled to tariff preferences;
- findings with respect to the adoption or potential application by a beneficiary or partner country of legislative or administrative provisions conflicting with the ones applicable under the preferential regime in question.

3. Form and content of the information

- 3.1. In such circumstances, the Commission will publish in the *Official Journal of the European Union* (C series) a notice to importers explaining that there is reasonable doubt as to the originating status of imports of all or some of the products declared as originating in a particular country covered by preferential tariff arrangements.

⁽¹⁾ Where the explanatory notes concerning Pan-Euro-Mediterranean Protocols on Rules of Origin (OJ C 83, 17.4.2007, p. 13) refer to 'reasonable doubt', this only concerns individual cases where doubt may occasionally arise as to the goods' real origin, mainly for reasons of form. Similarly, measures to suspend tariff preferences taken by the Commission under provisions applying to certain autonomous arrangements (namely in respect of the Generalised System of Preferences pursuant to Articles 16 to 19 of Regulation (EC) No 732/2008 of 22 July 2008 (OJ L 211, 6.8.2008, p. 1), certain trade preferences pursuant to Article 10 of Regulation (EC) No 55/2008 of 21 January 2008 (OJ L 20, 24.1.2008, p. 1) and certain exceptional trade measures pursuant to Article 10 of Regulation (EC) No 1215/2009 of 30 November 2009 (OJ L 328, 15.12.2009, p. 1)) concern cases beyond 'reasonable doubt'.

In parallel and following the appropriate procedures, the Commission will pass on any relevant information to the competent authorities of the Member States and to the authorities of the beneficiary or partner country concerned.

- 3.2. Annexed to the present Communication is the list of notices to importers which were published in the past in cases of reasonable doubt as to the origin of goods and are valid as of the date of publication of this Communication. This list, which is for information only, will be uploaded on the Commission's thematic website on the customs union ⁽¹⁾ and subsequently updated on this website only. Such information should be considered as indicative since only the publication of a notice to importers in the *Official Journal of the European Union* (C series), informing economic operators and Member States' administrations of cases of reasonable doubt as to the origin of goods, bears the consequence set out in Article 220(2)(b) of the Community Customs Code.

4. Action following publication

- 4.1. Once a notice to importers has been published, the Member States' customs authorities shall carry out a risk analysis of the trade flow concerned by the notice. On this basis, they will then decide which documentary evidence of the origin of the goods in question shall be sent, along with a statement of the reasons for the request, for post-clearance verification to the competent authorities of the country benefiting from the preference. Pending the results of the verification, all precautionary measures judged necessary by each Member State's customs authority should be taken to secure payment of any applicable duties. These measures should comply with the procedures laid down in the agreement or autonomous preferential arrangements concerned.
- 4.2. The appropriate EU-level forum (Council groups, Customs Code Committee, or any other committee) will examine the situation on the basis of which the notice to importers was published, by considering the results of the post-clearance verification or any other relevant information.

Depending on the conclusions reached, the Commission will decide that the reasonable doubt:

— no longer exists, in which case it will publish a notice to importers to that effect in the *Official Journal of the European Union* (C series) withdrawing or amending the earlier notice,

or

— remains. In this case and where the preferential arrangement concerned is either of an autonomous nature or a free-trade agreement concluded by the EU in which the possibility to temporarily withdraw or suspend preferences is foreseen, it may recommend or, where appropriate, decide that the preferential tariff treatment in question be suspended or temporarily withdrawn, in full or in part. In case of other free-trade agreements, it will refer the matter to the relevant joint customs committee established by the agreement concerned or any other appropriate body.

⁽¹⁾ http://ec.europa.eu/taxation_customs/index_en.htm

ANNEX

Notices to importers published in cases of reasonable doubt as to the origin of goods which are valid as of the date of publication of the present Communication

Scope of notice	No of notice	Published in
Imports of sugar into the Community from countries in the western Balkans	2002/C 152/05	OJ C 152, 26.6.2002, p. 14
Imports of garlic into the Community	2005/C 197/05	OJ C 197, 12.8.2005, p. 8
Imports of high-content sugar products	2007/C 265/07	OJ C 265, 7.11.2007, p. 6
Imports of textile products from Bangladesh into the Community	2008/C 41/06	OJ C 41, 15.2.2008, p. 8
Imports of tuna from Colombia and El Salvador into the EU	2010/C 132/05	OJ C 132, 21.5.2010, p. 15
Imports from Israel into the EU	2012/C 232/03	OJ C 232, 3.8.2012, p. 5