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Rules of Origin

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Update of the impact assessment on Rules of origin for the Generalised System of Preferences (GSP)

Waiver

This supplementary report commits only the Commission services involved in its preparation and does not prejudice the final form of any decision to be taken by the Commission.

Subject: GSP rules of origin reform: evolution of the proposal and main substantive features of its final version; examination of the latter in the light of the impact assessment's preliminary conclusions

Purpose of this document

This document seeks to explain the main substantive changes which have been introduced into the proposal since the production of its initial version of October 2007.

Nature of the proposal

The final proposal was elaborated after two years and a half of discussions within the Community Customs Code – origin section – Committee. These discussions were conducted, and the resulting amendments were introduced into the initial proposal, with the main principles of the Communication of 16 March 2005 (COM(2005) 100 final) in mind: simplification and development-friendliness remain the main objectives of the reform. There are elements of simplification and relaxation for all beneficiary countries, in particular LDCs. The proposal is based on a widely recognised approach of origin determination, which is laid down in the Communication of 2005: at the first place there is the distinction between whole obtaining and sufficient processing. Sufficient processing may take the following forms and/or their combinations depending on the sector: requirement for the limitation of the foreign content which ensures the incorporation of sufficient amount of originating materials (or 'local value content') in the products, change of tariff classification or meaningful specific processing operations. The choice to move away from an approach strictly based on a single method was made after an in-depth reflection and intense consultations with stakeholders who urged the Commission services to consider the absolute need to respect the differing needs of distinct industrial sectors and advocated in favour of the maintaining, where considered indispensable, of a sector-based approach. The final version of the proposal is thus less radically streamlined than its initial version based on a single method, but it still does respond to the general principles of the reform outlined in the 2005 Communication as it contains many simplifications compared to the current rules, plus targeted relaxation, in particular for least developed countries.

Essential elements of the substance of the proposal

The general tolerance rule

The general tolerance rule is relaxed: the share of non-originating materials permitted is increased from 10% to 15% of the ex-works price of the final product, with the exception of agricultural and processed agricultural products, for which a 15% tolerance in weight is introduced, the weight concept being more appropriate for these products. For agricultural and processed agricultural products, the weight concept offers stability which cannot be guaranteed by thresholds expressed in percentages of value, which are subject to fluctuations of currencies and prices in the world markets for these products. As evidenced, at first place, by the results of large-scale consultations with concerned industries' associations on the draft list rules for agricultural and processed agricultural

products, and, secondly, by the outcome of discussions with Member States, the 15% general tolerance in weight is a balanced solution for the said products.

Sufficient working or processing

On the basis of the positions expressed by Member States and industrial sectors on the initial proposal of 2007 it became clear that the proposal to have a single method based on value added was not acceptable.

After drawing this conclusion the Commission services decided to move to alternative methods in a number of sectors. This was the position of most Member States. The reasons advanced were many, but included the specific, sensitive nature of the sectors concerned and commodity prices as well as exchange rate volatility.

It was also accepted that simplification does not require a single method, since manufacturers and even traders are in general specialised and those operating in the steel sector for example are not interested in what happens with textiles, they want only a rule which works for themselves. The conclusion drawn from the reactions to the initial proposal submitted on 29 October 2007 was therefore that the reform should move away from the apparent simplification stemming from a single method to seek simplification and development-friendliness on a sector-by-sector basis.

The alternative methods are change of tariff heading (CTH) or specific processing requirements, depending on the case.

In terms of possibilities for relaxation alternative methods are not more limiting than the value-added method, and may offer relaxation, e.g. through appropriate value-added thresholds.

The sectors where the use of methods other than the value added method was found to be justified include agricultural and processed agricultural products, steel and non ferrous metals, chemicals, footwear, textiles and clothing, as well as smaller sectors which have argued their specific nature (clock and watch industry, leather industry, sugar, wine and cigar producers, etc.). In particular as regards agricultural products, the value added method was found wholly inappropriate and uncontrollable. To avoid too many disparate rules, which would run counter to the aim of simplification, a chapter-based, or wherever possible a section-based approach was followed where appropriate without making existing rules more stringent for particular products. Finally the final draft proposal represents an appropriate balance between relaxation (where appropriate) and protection of sensitive products.

Finally, the value added method is not abandoned in the final draft proposal but is present where appropriate, both on its own and as an alternative method in parallel with other rules, e.g. a rule based on CTH. This is due to its advantages of being a simple and flexible method, flexibility meaning notably the possibility to differentiate between LDCs and other developing countries. However, in order to avoid that different wordings create confusion, this notion of minimum local content has been converted into the more familiar and user-friendly concept of limitation of content of non-originating materials.

Conditions for fisheries vessels

These conditions are simplified. Two currently applicable conditions, namely, the crew requirement and the nationality requirement of the ship master and officers, are eliminated.

Cumulation of origin

The conditions for applying regional cumulation, which is a type of cumulation existing also in the rules in force, have been relaxed. The value added criterion has been eliminated. The only requirement retained is that more than a minimal operation must be performed in the country in which cumulation takes place on materials originating in other member countries of a cumulation group.

The proposal contains four new types/cases of cumulation, each of those could be regarded as a significant evidence of relaxation efforts.

Firstly, an extended cumulation with EU's FTA partner countries, and, secondly, a so-called cross-regional cumulation possibility between regional cumulation groups I and III, are introduced. Thirdly, a new regional cumulation group is created (group IV comprising the 4 Mercosur member countries: Argentina, Brazil, Paraguay and Uruguay). And finally, the proposal introduces cumulation in the EU's GSP beneficiary countries of materials originating in Turkey. Under certain conditions the products obtained using such cumulation in beneficiary countries and exported to the EU will qualify for the EU's GSP preferential treatment. As a customs union partner already applying a GSP scheme and rules of origin similar to EU's, Turkey has been requesting to use such cumulation, already available for several years to economic operators in two other EU's neighbouring countries, Norway and Switzerland.

Reliable mechanisms of implementation and control for all new cases of cumulation are provided in the proposal. For all cases of regional cumulation, both existing and new, the proposal also provides for a list of products (sensitive agricultural and processed agricultural products where today regional cumulation is possible in theory but not in practice) which should be excluded from this type of cumulation. This list is included in annex 13b of the draft final proposal.

Registered exporters

The present system of certificates of origin issued by the authorities is out of date in an electronic world, but experience has also proven it to be inadequate in terms of control. It also results in a drain on own resources. A new system of self-certification by registered exporters (REX) is one of three integral pillars of the reform outlined explicitly in the Communication of 2005, and there are many good elements in its favour. However, the final draft proposal acknowledges that the introduction of a registered exporter system needs to be carefully managed and accordingly proposes deferring its application until 1 January 2017 at the earliest precisely because of the need to ensure trouble-free technical implementation. An examination of the readiness of beneficiary countries to implement REX will be carried out by Commission services before 1 July 2016. In case some beneficiary countries are not ready by that date, the start date of application of the REX system may be postponed until 1 January 2020 upon request of beneficiary countries or on the Commission's initiative. The Commission will undertake a final examination of the state of readiness of beneficiary countries before 1 July 2019. It may make further recommendations on the basis of that final examination.

The simplified and modernised certification procedures will be beneficial for all traders and there is no evidence that importers will refrain from using GSP, given the significant benefits they should reap from the more relaxed rules of origin offered by the future new rules.

Essential procedural elements and consultation of interested parties

Committee discussions and written positions of Member States. Consultation of industries

The Customs Code Committee, Origin section has completed a thorough analysis of the draft regulation. Member States have completed consultations, in particular with national industries. EU industries have also been widely consulted by the Commission services.

Positions of EU GSP beneficiary countries

The Commission has acted transparently. The proposal has been available online, thus those interested could consult it and submit comments.