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EU consultation paper on the future of rules of origin

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Report Highlights:
The European Commission has published a consultation paper of the future of EU rules of origin.
Rules of origin define which country a product is considered to come from which can be important when preferential trade agreements exist.
The Commission is seeking input from the international trading community, by March 1, as it seeks to review the operation of its current system. Links to the green paper, as well as the full text of a Commission Press Release explaining the background to this issue are included in this report.

Includes PSD Changes: No
Includes Trade Matrix: No
Unscheduled Report
Brussels USEU [BE2]
[E2]

The European Commission has published a Green Paper on the future of its rules of origin system which concerns preferential trade agreements, particularly from developing countries. The report is available from:

http://europa.eu.int/comm/taxation_customs/customs/origin/rules_origin/rules_of_origin_en.htm

Reproduced below is the text from the Commission website about this Green Paper, as well as the Commission Press Release which explains the context behind the paper.

Visit our website: our website **www.useu.be/agri/usda.html** provides a broad range of information on EU trade rules and agri-food policy as well as giving easy access to USEU reports, trade information and other practical information. In addition, more information can be found on the Foreign Agricultural Service of USDA website at http://www.fas.usda.gov/

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E23117	EU restricts cumulation rules for rice and sugar imports from LDCs	6/20/03

*USDA Internal Report

http://europa.eu.int/comm/taxation_customs/customs/origin/rules_origin/com2003_787_final_en.pdf:

Consultation: The future of rules of origin in preferential trade arrangements

On 18 December 2003, the European Commission opened a wide-ranging debate on the rules of origin applied in preferential trade arrangements.

These arrangements are intended, through the elimination of or reductions in customs duties, to stimulate reciprocal trade in goods as well as access to the Community market for products of developing countries. They are relevant only if the tariff preferences apply to products actually obtained in the beneficiary country concerned, to products which "originate" there.

The Green Paper (COM/2003/787) which the Commission has just adopted (IP/03/1766, MEMO/03/261) on this subject shows how the context and the objectives of these arrangements have evolved, as well as the impact of this evolution on the definition of rules of origin.

An initiative is necessary in three areas:

- the determination of the origin of products,
- control of the proper application of rules of origin and
- the procedures establishing the respective responsibilities of operators benefiting from the preferences and of the public authorities.

The Commission invites all interested parties to contribute to this reflection exercise by 1 March 2004.

A questionnaire has been prepared for this purpose (The questionnaire is in PDF format, if you encounter any problems during submission of this e-form, please print it out and send it to the address mentioned below). It is strongly recommended that you use this to make your contribution. Contributions may be sent to the following electronic address:

taxud-greenpaper-origin@cec.eu.int

The Commission department responsible for the follow-up of the Green Paper and the handling of contributions is:

Directorate General «Taxation and Customs Union»
Customs Policy – Rules of origin
TAXUD/B/4
European Commission
B-1049 BRUSSELS

European Commission Press Release on the Green Paper on the future of rules of origin:

http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=MEMO/03/261|0|RAPID&lg=EN&display=

Green Paper on the future of the preferential origin rules frequently asked questions

DN: MEMO/03/261 Date: 18/12/2003

MEMO/03/261

Brussels, 18 December 2003

(see also IP/03/1766)

What are preferential trade arrangements and what is their impact?

The European Union uses preferential trade arrangements to give preferential treatment to imports from given countries. This is done either by concluding regional economic integration agreements that create free trade areas or customs unions or by unilateral action (primarily with a view to the development of the beneficiary countries).

How extensive are such arrangements and what imports do they cover?

The EU is involved in about forty preferential arrangements with countries or groups of countries and imports from these countries or groups of countries account for about two-thirds of the Community's annual imports worth some €1000 billion. However, imports for which a preference is actually requested account for just 45% of imports from these countries and 21% of the Community's total annual imports. You can find more information on the Community's preferential imports in Annex I to the Green Paper.

Annex II of the Green Paper lists autonomous and contractual preferential arrangements (agreements establishing free trade areas) introduced by the Community. These arrangements are based on the origin of the products benefiting from tariff preferences and so the annex does not cover the customs union agreements between the Community and Turkey, Andorra and San Marino.

Why is the proportion of preferential imports relatively low?

There are many reasons for what is, overall, a relatively small proportion of preferential imports: the EU does not have any preferential arrangements with several of its major trading partners; many products are not subject to customs duty and therefore do not require preferential treatment; where there is a preferential arrangement, not all the products are necessarily eligible for preference; and so on. And apart from these factors related to the existence of a preferential arrangement, there are numerous cases where either the potentially eligible product does not satisfy the conditions (above all the conditions of origin) or traders abandon the idea of claiming the preference having weighed up the profit to be gained against the cost of obtaining the preference.

What are preferential rules for, and how do they function?

Preferential tariff measures are mainly based on the originating status of the eligible products. Originating status is the "preference passport" that, crucially, enables imported products to be regarded as obtained in the beneficiary country to all intents and purposes, and not merely shipped from there.

Preferential rules of origin are applied to ensure that a product qualifies for preferential tariff treatment (autonomous or contractual) and that preferential treatment is given only to products from the countries intended.

Some products clearly originate in a given country, because they are wholly obtained there from local raw materials. In most cases, however, the goods are the product of working or processing of non-originating, imported goods in the country concerned. If the product is to obtain originating status, the processing must be substantial enough to establish a genuine link between the product and the country. Criteria have therefore been established for each category of products (a change in the tariff heading, the percentage of value added, the specific process, or a combination of these criteria) to determine whether the operations carried out in a given country on non-originating materials used to obtain the products are sufficient to consider them as originating from that country. Certain minor operations ("minimal processes") never confer originating status on the goods.

How is the preferential origin of a product substantiated and checked?

Origin is currently certified by the authorities of the exporting country which has been granted the preference, either directly (by means of a certificate issued by these authorities) or indirectly (via an authorisation enabling exporters to demonstrate the origin). Checking origin therefore requires arrangements for close administrative cooperation between the exporting country and the importing country which grants the preference.

Why do we have accumulation of origin and what form does it take?

The criteria for sufficient working or processing used to determine the origin of a product apply in principle to all materials imported from a third country for use in obtaining the product in the country of export. In order to encourage regional economic integration, however, systems of accumulation of origin enable materials originating in partner countries to be exempted from the criteria, so as to make it easier for producers to draw on those countries for their supplies. Assuming the finished product acquires originating status, it is allocated to one or other of the partner countries involved in the operation according to specific provisions:

Bilateral accumulation involves two partners and allows a trader in country A to use materials originating in country B as if they originated in A, and vice versa, with the origin criteria applying only to non-originating goods; it is therefore sufficient for the operation carried out in A to have been "more than minimal" to obtain A origin for the goods; this form of accumulation is applied in all the bilateral agreements concluded by the Community and in its autonomous preferential arrangements (Generalised preference schemes, separate measures for the Western Balkans, Overseas Countries and Territories (OCT) procedure).

Diagonal accumulation is based on the same principle but involves at least three partners who must have established a network of free trade agreements among themselves incorporating the same rules of origin and providing for this type of accumulation; the prototype of this form of accumulation is "pan-European" accumulation, involving the Community, the EFTA countries, the countries of central and eastern Europe and Turkey.

Regional GSP accumulation is a form of diagonal accumulation involving members of a regional group of beneficiary countries (the Association of South-East Asian Nations, for example) with a view to conferring originating status on products intended for export to the Community with a view to obtaining generalised preference; in this case, originating status is allocated to the country in which the "more than minimal" operation was carried out and where value was added at least equal to the customs value of the originating materials from the other countries in the group which were used in manufacture.

Total accumulation, on the other hand, is based on "accumulation of working"; the originating status of the goods is determined with reference to a package of working or processing operations carried out in the area formed by the countries involved; for this purpose, the processing carried out in country A is treated as having been carried out in country B if the non-originating product obtained in A is then reprocessed in B; this type of accumulation, or some variant of it, is found in preferential arrangements with the African, Caribbean and Pacific (ACP) states, OCT, Maghreb and EEA (in the latter, the European Economic Area is treated as one territory in which products may acquire EEA originating status through total accumulation.

Why is it essential to re-examine the rules for determination of the preferential origin?

The current preferential rules of origin are the product of years of effort over which they have gradually acquired a high level of sophistication as regards the conditions to be met for a product to qualify as originating. At the same time efforts have been made to harmonise them within the various preferential arrangements in theory to make it easier to understand and apply them.

In fact, harmonisation of the rules of origin does not make up for their complexity, especially as they only appear to be standardised and differ slightly between arrangements. Neither will the same rule have the same effect in determining the origin of a product depending on whether or not there is accumulation of origin and the scope of any accumulation. Lastly, harmonisation at all costs is often synonymous with a lack of flexibility and the inability of origin rules to adapt to changing economic requirements. The harmonised approach to preferential rules of origin thus seems to be faltering in the face of the common policies and the varied objectives of the preferential arrangements.

The Green Paper therefore recommends rebalancing the criteria for determining origin and the framework for implementing the rules of origin, which need to be re-examined and brought into line with the international climate and the objectives of the Community's preferential arrangements.

Why do the procedures for certifying and verifying preferential origin need to be revised?

The current system for administering and supervising the rules of origin is based essentially on administrative cooperation between the authorities of the importing country and those of the exporting country which certifies and verifies the origin of the products; the resources that can be devoted to implementing this system cannot continue to increase. At the same time, problems of day-to-day management of the arrangements, tackling irregularities and administrative cooperation are still evident and still represent an obstacle to fair trade and to the protection of the economic and financial interests involved.

The duty of administrative cooperation should mean that importing countries can depend on assistance from the exporting country in the event of problems, on the basis of mutual trust.

In practice, if the exporting country fails to provide the necessary assistance in combating fraud and checking compliance with the rules of origin, the importing country often ends up powerless to protect its legitimate interests.

It is therefore totally dependent on the goodwill and good faith of the exporting country, which is usually reluctant to take action, if it was responsible for issuing certificates incorrectly, or to conduct thorough checks in connection with an export operation.

A new distribution of responsibilities with regard to origin is needed between the authorities of the countries linked by preferential arrangements as well as between customs authorities and traders. It should, in particular, bring the authorities to refocus their attention on their natural function of supervision, while rethinking the purpose of and systems for mutual cooperation.

How can the preferential arrangements' vulnerability to fraud, the problems of applying the rules and of administrative cooperation be tackled?

The Commission communication of 23 July 1997 on the management of preferential tariff arrangements(1) identified problems that had arisen with the application of the preferential tariff arrangements and some solutions primarily designed to improve their effectiveness. These solutions have been only partially implemented. Efforts to improve training and assistance, for example, have not fully borne fruit and have proven limited.

The vulnerability of the preferential arrangements and the Commission's responsibility for their management and supervision were highlighted by the judgment of the Court of First Instance of the European Communities of 10 May 2001 in the "Turkish televisions" case.(2)

The Commission took immediate measures to ensure better compliance with the current rules and a case-by-case response to crisis situations.

It also sought to include specific clauses into preferential agreements enabling one party to insure itself against cases of fraud or failure by the other party to administer and check compliance with the terms of the agreement, and against the financial injury that might result from such failures.

It also undertook a thorough review, as part of which the Green Paper on the future of the rules of origin in preferential trade arrangements constitutes a step towards developing alternatives in the longer term to the current certification and supervision procedures.

(1) COM (97) 402 final. Conclusions of the Council (Internal Market) of 18 May 1998 European Parliament Resolution of 22 October 1998 (OJ C 341, 9.11.1998).

(2) Joint cases T-186/97 Kaufring AG and others.