

Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code

TITLE II

FACTORS ON THE BASIS OF WHICH IMPORT OR EXPORT DUTIES AND OTHER MEASURES IN RESPECT OF TRADE IN GOODS ARE APPLIED

CHAPTER 1

Origin of goods

Subsection 2

Definition of the concept of originating products applicable within the framework of the GSP of the union

Article 41

General principles(Article 64(3) of the Code)

The following products shall be considered as originating in a beneficiary country:

- (a) products wholly obtained in that country within the meaning of Article 44;
- (b) products obtained in that country incorporating materials which have not been wholly obtained there, provided that such materials have undergone sufficient working or processing within the meaning of Article 45.

Article 42

Principle of territoriality(Article 64(3) of the Code)

1 The conditions set out in this Subsection for acquiring originating status shall be fulfilled in the beneficiary country concerned.

2 The term 'beneficiary country' shall cover and cannot exceed the limits of the territorial sea of that country within the meaning of the United Nations Convention on the Law of the Sea (Montego Bay Convention, 10 December 1982).

3 If originating products exported from the beneficiary country to another country are returned, they shall be considered as non-originating unless it can be demonstrated to the satisfaction of the competent authorities that the following conditions are fulfilled:

- a the products returned are the same as those which were exported, and
- b they have not undergone any operations beyond that necessary to preserve them in good condition while in that country or while being exported.

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Article 43

Non-manipulation(Article 64(3) of the Code)

1 The products declared for release for free circulation in the Union shall be the same products as exported from the beneficiary country in which they are considered to originate. They shall not have been altered, transformed in any way or subjected to operations other than operations to preserve them in good condition or the adding or affixing of marks, labels, seals or any other documentation to ensure compliance with specific domestic requirements applicable in the Union, prior to being declared for release for free circulation.

2 The products imported into a beneficiary country for the purpose of cumulation under Articles 53, 54, 55 or 56 shall be the same products as exported from the country in which they are considered to originate. They shall not have been altered, transformed in any way or subjected to operations other than operations to preserve them in good condition, prior to being declared for the relevant customs procedure in the country of imports.

3 Storage of products may take place provided they remain under customs supervision in the country or countries of transit.

4 The splitting of consignments may take place where carried out by the exporter or under his responsibility, provided that the goods concerned remain under customs supervision in the country or countries of transit.

5 Paragraphs 1 to 4 shall be considered to be complied with unless the customs authorities have reason to believe the contrary; in such cases, the customs authorities may request the declarant to provide evidence of compliance, which may be given by any means, including contractual transport documents such as bills of lading or factual or concrete evidence based on marking or numbering of packages or any evidence related to the goods themselves.

Article 44

Wholly obtained products(Article 64(3) of the Code)

- 1 The following shall be considered as wholly obtained in a beneficiary country:
- a mineral products extracted from its soil or from its seabed;
 - b plants and vegetable products grown or harvested there;
 - c live animals born and raised there;
 - d products from live animals raised there;
 - e products from slaughtered animals born and raised there;
 - f products obtained by hunting or fishing conducted there;
 - g products of aquaculture where the fish, crustaceans and molluscs are born and raised there;
 - h products of sea fishing and other products taken from the sea outside any territorial sea by its vessels;
 - i products made on board its factory ships exclusively from the products referred to in point (h);
 - j used articles collected there that are fit only for the recovery of raw materials;
 - k waste and scrap resulting from manufacturing operations conducted there;

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- l products extracted from the seabed or below the seabed which is situated outside any territorial sea but where it has exclusive exploitation rights;
 - m goods produced there exclusively from products specified in points (a) to (l).
- 2 The terms ‘its vessels’ and ‘its factory ships’ in paragraph 1(h) and (i) shall apply only to vessels and factory ships which meet each of the following requirements:
- a they are registered in the beneficiary country or in a Member State;
 - b they sail under the flag of the beneficiary country or of a Member State;
 - c they meet one of the following conditions:
 - (i) they are at least 50 % owned by nationals of the beneficiary country or of Member States, or
 - (ii) they are owned by companies:
 - which have their head office and their main place of business in the beneficiary country or in Member States, and
 - which are at least 50 % owned by the beneficiary country or Member States or public entities or nationals of the beneficiary country or Member States.
- 3 The conditions of paragraph 2 may each be fulfilled in Member States or in different beneficiary countries insofar as all the beneficiary countries involved benefit from regional cumulation in accordance with Article 55(1) and (5). In this case, the products shall be deemed to have the origin of the beneficiary country under which flag the vessel or factory ship sails in accordance with point (b) of paragraph 2.

The first sub-paragraph shall apply only provided that the conditions laid down in Article 55(2)(a), (c) and (d) have been fulfilled.

Article 45

Sufficiently worked or processed products(Article 64(3) of the Code)

- 1 Without prejudice to Articles 47 and 48, products which are not wholly obtained in the beneficiary country concerned within the meaning of Article 44 shall be considered to originate there, provided that the conditions laid down in the list in Annex 22-03 for the goods concerned are fulfilled.
- 2 If a product which has acquired originating status in a country in accordance with paragraph 1 is further processed in that country and used as a material in the manufacture of another product, no account shall be taken of the non-originating materials which may have been used in its manufacture.

Article 46

Averages(Article 64(3) of the Code)

- 1 The determination of whether the requirements of Article 45(1) are met, shall be carried out for each product.

However, where the relevant rule is based on compliance with a maximum content of non-originating materials, in order to take into account fluctuations in costs and currency

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rates, the value of the non-originating materials may be calculated on an average basis as set out in paragraph 2.

2 In the case referred to in the second sub-paragraph of paragraph 1, an average ex-works price of the product and average value of non-originating materials used shall be calculated respectively on the basis of the sum of the ex-works prices charged for all sales of the products carried out during the preceding fiscal year and the sum of the value of all the non-originating materials used in the manufacture of the products over the preceding fiscal year as defined in the country of export, or, where figures for a complete fiscal year are not available, a shorter period which should not be less than three months.

3 Exporters having opted for calculations on an average basis shall consistently apply such a method during the year following the fiscal year of reference, or, where appropriate, during the year following the shorter period used as a reference. They may cease to apply such a method where during a given fiscal year, or a shorter representative period of no less than three months, they record that the fluctuations in costs or currency rates which justified the use of such a method have ceased.

4 The averages referred to in paragraph 2 shall be used as the ex-works price and the value of non-originating materials respectively, for the purpose of establishing compliance with the maximum content of non-originating materials.

Article 47

Insufficient working or processing(Article 64(3) of the Code)

1 Without prejudice to paragraph 3, the following operations shall be considered as insufficient working or processing to confer the status of originating products, whether or not the requirements of Article 45 are satisfied:

- a preserving operations to ensure that the products remain in good condition during transport and storage;
- b breaking-up and assembly of packages;
- c washing, cleaning; removal of dust, oxide, oil, paint or other coverings;
- d ironing or pressing of textiles and textile articles;
- e simple painting and polishing operations;
- f husking and partial or total milling of rice; polishing and glazing of cereals and rice;
- g operations to colour or flavour sugar or form sugar lumps; partial or total milling of crystal sugar;
- h peeling, stoning and shelling, of fruits, nuts and vegetables;
- i sharpening, simple grinding or simple cutting;
- j sifting, screening, sorting, classifying, grading, matching (including the making-up of sets of articles);
- k simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations;
- l affixing or printing marks, labels, logos and other like distinguishing signs on products or their packaging;
- m simple mixing of products, whether or not of different kinds; mixing of sugar with any material;
- n simple addition of water or dilution or dehydration or denaturation of products;
- o simple assembly of parts of articles to constitute a complete article or disassembly of products into parts;

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- p slaughter of animals ;
- q a combination of two or more of the operations specified in points (a) to (p).

2 For the purposes of paragraph 1, operations shall be considered simple when neither special skills nor machines, apparatus or tools especially produced or installed for those operations are required for their performance.

3 All the operations carried out in a beneficiary country on a given product shall be taken into account when determining whether the working or processing undergone by that product is to be regarded as insufficient within the meaning of paragraph 1.

Article 48

General tolerance(Article 64(3) of the Code)

1 By way of derogation from Article 45 and subject to paragraphs 2 and 3 of this Article, non-originating materials which, according to the conditions set out in the list in Annex 22-03 are not to be used in the manufacture of a given product may nevertheless be used, provided that their total value or net weight assessed for the product does not exceed:

- a 15 % of the weight of the product for products falling within Chapters 2 and 4 to 24 of the Harmonized System, other than processed fishery products of Chapter 16;
- b 15 % of the ex-works price of the product for other products, except for products falling within Chapters 50 to 63 of the Harmonized System, for which the tolerances mentioned in Notes 6 and 7 of Part I of Annex 22-03, shall apply.

2 Paragraph 1 shall not allow to exceed any of the percentages for the maximum content of non-originating materials as specified in the rules laid down in the list in Annex 22-03.

3 Paragraphs 1 and 2 shall not apply to products wholly obtained in a beneficiary country within the meaning of Article 44. However, without prejudice to Articles 47 and 49(2), the tolerance provided for in those paragraphs shall nevertheless apply to the sum of all the materials which are used in the manufacture of a product and for which the rule laid down in the list in Annex 22-03 for that product requires that such materials be wholly obtained.

Article 49

Unit of qualification(Article 64(3) of the Code)

1 The unit of qualification for the application of the provisions of this Subsection shall be the particular product which is considered as the basic unit when determining classification using the Harmonized System.

2 When a consignment consists of a number of identical products classified under the same heading of the Harmonized System, each individual item shall be taken into account when applying the provisions of this Subsection.

3 Where, under General Interpretative rule 5 of the Harmonized System, packaging is included with the product for classification purposes, it shall be included for the purposes of determining origin.

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Article 50

Accessories, spare parts and tools(Article 64(3) of the Code)

Accessories, spare parts and tools dispatched with a piece of equipment, machine, apparatus or vehicle which are part of the normal equipment and included in the ex-works price thereof, shall be regarded as one with the piece of equipment, machine, apparatus or vehicle in question.

Article 51

Sets(Article 64(3) of the Code)

Sets, as defined in General Interpretative rule 3(b) of the Harmonized System, shall be regarded as originating when all the component products are originating products.

When a set is composed of originating and non-originating products, the set as a whole shall however be regarded as originating, provided that the value of the non-originating products does not exceed 15 % of the ex-works price of the set.

Article 52

Neutral elements(Article 64(3) of the Code)

In order to determine whether a product is an originating product, no account shall be taken of the origin of the following which might be used in its manufacture:

- (a) energy and fuel;
- (b) plant and equipment;
- (c) machines and tools;
- (d) any other goods which do not enter, and which are not intended to enter, into the final composition of the product.

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