



Generalized System of Preferences

HANDBOOK ON THE RULES OF ORIGIN OF THE EUROPEAN UNION





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PREFACE

The series of handbooks on the Generalized System of Preferences (GSP) promotes greater awareness among exporters and government officials in developing countries on trading opportunities available under the GSP and other preferential trade arrangements and a better understanding on applicable rules and regulations with a view to facilitating their effective utilization. The series comprises the following publications:

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Handbook on the Scheme of Australia
(UNCTAD/ITCD/TSB/Misc.56)
Handbook on the Scheme of Canada
(UNCTAD/ITCD/TSB/Misc.66/Rev.1)
Handbook on the Scheme of the European Community
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Addendum: Handbook on the Rules of Origin for the Scheme of the European Community
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Handbook on the Scheme of Japan
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(UNCTAD/ITCD/TSB/MISC.52)
Trade Preferences for LDCs: an Early Assessment of Benefits and Possible Improvement
(UNCTAD/ITCD/TSB/2003/8)

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INTRODUCTION

On 1 January 2011 the reform of the rules of origin for the European Union Generalized System of Preferences (GSP) went into force and introduced four major changes in the rules for determining origin. First, while previously the same rules of origin applied to developing countries and least developed countries (LDCs), the new rules frequently include separate provisions for LDCs to address concerns about their capacity constraints. The origin-determining requirements for developing countries have also been modified. Second, "the List of Products and Working or Processing Operations which Confer Originating Status" has been simplified to some degree, and the product-specific origin requirements contained in the current List differ from those in the previous List. Third, important changes have been made in the cumulation provisions that expand the possibility of cumulation. Fourth, the new procedures will be effective from 1 January 2017, at which time the system of registered exporters and self-certification will be introduced. By then the governments of beneficiary countries are expected to have made necessary preparations, including the installation and management of electronic databases in their customs operations to implement the new procedures.

In light of these changes, the UNCTAD secretariat has prepared this Handbook on the new rules. The Handbook replaces Part II of the Generalized System of Preferences Handbook on the Scheme of the European Community (UNCTAD/ITCD/TSB/Misc.25/Rev.3), which discussed the previous European Union GSP rules of origin.

The sources of the information for the Handbook include:

- Commission Regulation (EU) No. 1063/2010 of 18 November 2010 amending Regulation (EEC) No. 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No. 2913/92 establishing the Community Customs Code;
- The European Union's *Rules of Origin for the Generalized System of Preferences: A guide for Users*, European Commission, December 2010.

The articles referred to in the Handbook are those from the Commission Regulation (EU) No. 1063/2010. The term "new" European Union GSP rules of origin is referred to as "current" European Union GSP rules of origin (or current rules of origin) in the following texts of this Handbook.

A. ORIGIN-DETERMINING CRITERIA

The origin-determining criteria are fundamental to the rules of origin. They determine how and when a product can be considered as originating in a GSP beneficiary country. Unchanged from the previous rules, a product is considered as originating in a beneficiary country if it has been wholly obtained, or sufficiently worked or processed with wholly or partly imported materials (Article 72).

1. PRODUCTS WHOLLY OBTAINED

Article 75 lays down a list of products that are considered to be wholly obtained in a country. Products are included in this category by virtue of the total absence of imported input used in their production.

The definitions are the same as the previous rules of origin, except for fisheries products taken from the sea outside territorial waters, that is, outside the 12-mile zone. For these products the conditions for fisheries vessels have been simplified. Previously there were some requirements on nationalities of masters, officers, and crews, but these conditions have been eliminated. Also, requirements for ownership of fisheries vessels have been simplified, and as explained in the subsequent paragraph following the list below, cumulation of conditions for fisheries vessels is permitted.

Under the current rules of origin 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 fit only for the recovery of raw materials;
- (k) Waste and scrap resulting from manufacturing operations conducted there;
- (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).

The terms "its vessels" and "its factory ships" in (h) and (i) shall apply only to vessels and factory ships which meet the following requirements (a), (b) and either (c) or (d):

- (a) They are registered in the beneficiary country or in a European Union Member State;
- (b) They sail under the flag of the beneficiary country or of a European Union Member State;
- (c) They are at least 50 per cent owned by nationals of the beneficiary country or of European Union Member States, or alternatively,
- (d) They are owned by companies which have their head office and their main place of business in the beneficiary country or in European Union Member States and which are at least 50 per cent owned by the beneficiary country or European Union Member States or public entities or nationals of the beneficiary country or European Union Member States.

Cumulation is allowed in meeting these conditions, and they may each be fulfilled in European Union Member States or in different beneficiary countries insofar as all the beneficiary countries benefit from "cumulative origin – regional cumulation" discussed in 3(c).

2. PRODUCTS THAT ARE SUFFICIENTLY WORKED OR PROCESSED WITH WHOLLY OR PARTLY IMPORTED MATERIALS

When imported inputs are used to manufacture a finished product, the rules of origin require that these non-originating materials be sufficiently worked or processed to be considered as originating in the beneficiary country.

In particular, sufficient working or processing is defined as follows:

Products which are not wholly obtained in the beneficiary country concerned within the meaning of Article 75 shall be considered to originate there, provided that the conditions laid down in the list in annex 13a for the goods concerned are fulfilled. (Article 76)

The list in annex 13a is entitled the List of Products and Working or Processing Operations which Confer Originating Status (the Product List), and it is annexed to Commission Regulation (EU) No. 1063/2010, which is appended to the Handbook.

While the previous Product List prescribed origin-determining requirements for around 500 products and was approximately 80 pages in length, the current rules of origin have unified these requirements to some degree, and the pages of the Product List has been reduced to half. The simplification of the Product List is beneficial for the administration of the rules of origin for both producers and customs officers. In order to identify the origin requirements for a specific product, an exporter needs to establish the tariff classification of the product under the Harmonized System (HS) and check the conditions laid down in the list for that specific product. Also, the exporter has to fulfil the horizontal requirements that are applied to all products with imported materials.

The following sections discuss the basic provisions for determining origins for products with imported materials, highlighting the changes made from the previous rules of origin.

(a) Allowance for the use of non-originating inputs for products originating in LDCs

The current rules of origin contain the origin-determining requirements which are specific to LDCs in an effort to address the problem of capacity constraints in LDCs. The two major improvements in this regard include:

- (i) Allowance for the use of non-originating materials has been increased for many manufactured products originating in LDCs;
- (ii) Use of imported fabric is allowed for apparel products to be considered as originating, that is, there is a single transformation requirement (see example 3, below).

Previously, the value-added criteria often required 60 per cent or higher domestic content for LDCs, but under the current rules of origin it has been reduced to 30 per cent. For apparel products to obtain originating status, these products had to be assembled with fabrics that had been woven or knitted domestically, that is, there was a double transformation requirement. The change from double to single transformation requirement is a particularly significant improvement for LDCs, as these countries mostly do not possess the capacity to meet the double transformation requirement for apparel products.

For agricultural products the rules of origin are identical for developing-country and LDC beneficiaries.

(b) Allowance for the use of non-originating inputs for products originating in developing countries

While the increase is smaller than that for LDC beneficiaries, allowance for the use of non-originating materials has also been increased for developing-country beneficiaries for many manufactured products classified under HS Chapters 34, 39, 40, 66, 71, and 84 to 94.

(c) Tolerance level (Article 79)

The term tolerance level signifies the allowance for the use of non-originating materials in the manufacture of a given product, which is not permitted by the rule in the Products List. In the previous rules of origin the tolerance level was up to 10 per cent of the ex-works price of the product. Tolerance levels under the current rules have been modified as follows:

- (i) For agricultural products except Chapters 1 and 3, and processed fishery products of Chapter 16, tolerance levels are increased to 15 per cent of the weight of the product;
- (ii) For manufactured products except Chapters 50 to 63 (textiles and clothing), tolerance levels are increased to 15 per cent of the ex-works price of the product.

For textiles and clothing, refer to the instructions indicated in Notes 6 and 7 of Part I of the Product List.

(d) Use of reference periods in the calculation of non-originating materials

The current rules of origin allow the use of reference periods to smooth out fluctuations in prices and exchange rates. Values of non-originating materials can be the average of the previous fiscal year, or if that is not available, over a shorter period, but not less than three months.

(e) Examples of origin-determining requirements*Example 1a: Change of tariff heading requirements*

The origin-determining requirements included in the Product List are largely change of tariff heading or value addition requirements, except where specific processing or operations required are indicated. Example 1a illustrates a case where a producer has an option between the two origin-determining methods.

Let us suppose that a producer in a beneficiary country manufactures dolls that are classified under HS heading 9502 from imported plastics and fabrics that are classified under HS headings 3910 and 5208, respectively. The dolls cannot be considered as wholly obtained in one country because the producer has used imported materials. Therefore, it is essential to know if these imported materials can be considered to have undergone sufficient working or processing according to the conditions laid down in the Product List. In this case, the producer has to refer to the requirements indicated in the Product List, as detailed in the example below (see table 1, an excerpt from the Product List). The doll is classified under HS heading 9502, and hence falls under HS Chapter 95.

Table 1. An excerpt from the Product List relevant to dolls manufactured from imported plastics and fabrics

HS HEADING NO.	DESCRIPTION OF PRODUCT	WORKING OR PROCESSING CARRIED OUT ON NON-ORIGINATING MATERIALS THAT CONFERS ORIGINATING STATUS
(1)	(2)	(3)
Ex Chapter 95*	Toys, games and sports requisites; parts and accessories thereof, except for:	Manufacture from materials of any heading, except that of the product <i>or</i> Manufacture in which the value of all the materials used does not exceed 70 per cent of the ex-works price of the product
Ex 9506	Golf clubs and parts thereof	Manufacture from materials of any heading, except that of the product. However, roughly shaped blocks for making golf-club heads may be used.

* The term "ex" denotes that the rule does not apply to the whole chapter, but only to those parts of it for which a specific rule is not provided. In the case of Chapter 95 there is a specific rule for product ex 9506 (that is, parts of this heading only).

As shown by the above excerpt, in the case of goods listed under HS Chapter 95 for which a specific rule is not provided, the list provides for two alternative origin criteria between which the exporter can decide:

- (i) The change of tariff heading rule;
- (ii) The percentage-value-addition criterion.

Thus, the doll can obtain originating status under (i). Under the change of tariff heading rules the non-originating materials must be classified under HS headings which differ from HS 9502. Given that the plastic and the cotton used are classified under HS headings 3910 and 5208, we can say that the plastic and the cotton have been sufficiently worked or processed and that the doll qualifies as an originating product.

Example 1b: Value addition requirement

Let us suppose that the producer of dolls in example 1a uses imported doll parts of which the HS heading is 9502. In this case, the option (i) change of tariff heading rule cannot be used. The unit ex-price of the doll is \$100, and the value of the imported doll parts is \$65. The Product List for dolls specifies that the value of imported inputs must not exceed 70 per cent of the ex-works price of the product. Thus, the doll can obtain originating status under (ii), the percentage-value-addition criterion, as the imported component of the doll accounts for 65% of the ex-price of the doll.

The term “value” in the list means the customs value (defined as the customs value determined in accordance with the 1994 Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (GATT)) at the time of the importation of the non-originating materials used or, if this is not known and cannot be ascertained, the first ascertainable price for the materials in the territory concerned.

The term ex-works price in the Product List means the price paid for the product which was obtained from the manufacturer where the final working or processing is carried out. Ex-works price includes the value of all the materials used and all other costs related to its production and profit, minus any internal taxes which are, or may be, payable when the product obtained is exported.

Example 2: Tolerance level

The same producer discussed in example 1 now wants to use imported eyes for the dolls as they are cheaper than the domestic ones. Also, this producer has to apply the change of tariff heading criterion, as the non-originating materials used exceed 70 per cent of the ex-works price of the product. The use of imported dolls’ eyes is not allowed under the change of tariff heading criterion, as dolls’ eyes are classified under the same heading (HS 9502) as dolls. The tolerance rule, however, allows the use of dolls’ eyes if they amount to not more than 15 per cent of the ex-works price of the doll.

Example 3: Single and double transformation requirements for apparel products

For apparel products (HS Chapters 61 and 62), the requirements are single transformation for LDCs, and double transformation or specific processing together with value-added criterion for developing countries. Table 2 shows an excerpt from the Product List for HS Chapter 62.

- (i) For LDCs, apparel products assembled in a beneficiary country using imported fabric can obtain originating status.
- (ii) For developing countries, to obtain originating status yarns have to be woven to make fabrics, and apparel products have to be made from these fabrics. Yarns can be imported. Alternatively, imported unprinted fabrics could be used if printing and at least two operations indicated are performed, provided that the value of the unprinted fabric does not exceed 47.5 per cent of the ex-works price of the apparel product.

Table 2. An excerpt from the Product List for HS Chapter 62

HS HEADING NO.	DESCRIPTION OF PRODUCT	WORKING OR PROCESSING CARRIED OUT ON NON-ORIGINATING MATERIALS THAT CONFERS ORIGINATING STATUS	
(1)	(2)	(3)	
Ex Chapter 62	Articles of apparel and clothing accessories, not knitted or crocheted; except for:	(a) LDCs Manufacture from fabric	(b) Other beneficiary countries Weaving accompanied by making-up (including cutting) or Making-up preceded by printing accompanied by at least two preparatory or finishing operations (such as scouring, bleaching, mercerizing, heat setting, raising, calendaring, shrink resistance processing, permanent finishing, decatizing, impregnating, mending and burling), provided that the value of the unprinted fabric used does not exceed 47.5 per cent of the ex-works price of the products.*

* In the Product List contained in Commission Regulation (EU) No. 1063/2010, the alternative requirements for developing countries have footnotes instructing to consult introductory notes 6 and 7 for the List. In this example, however, they are omitted for simplification.

3. OTHER IMPORTANT PROVISIONS FOR THE ORIGIN-DETERMINING CRITERIA

In addition to the origin-determining criteria discussed above (sections 1 and 2), there are other important provisions for determining origin that apply to all products regardless of the origins of the materials used. This section discusses these provisions.

(a) *Insufficient working or processing*

The European Union rules of origin include the list of what is considered as insufficient working or processing, and these operations can never confer origin no matter how much they are carried out. The previous list has been slightly amended, and the current list reads as follows (Article 78):

- (1) Preserving operations to ensure that the products remain in good condition during transport and storage;
- (2) Breaking-up and assembly of packages;
- (3) Washing, cleaning; removal of dust, oxide, oil, paint or other coverings;
- (4) Ironing or pressing of textiles and textile articles;
- (5) Simple painting and polishing operations;
- (6) Husking and partial or total milling of rice; polishing and glazing of cereals and rice;
- (7) Operations to colour or flavour sugar or form sugar lumps; partial or total milling of crystal sugar;
- (8) Peeling, stoning and shelling of fruits, nuts and vegetables;
- (9) Sharpening, simple grinding or simple cutting;
- (10) Sifting, screening, sorting, classifying, grading, matching (including the making-up of sets of articles);
- (11) Simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations;
- (12) Affixing or printing marks, labels, logos and other like distinguishing signs on products or their packaging;

- (13) Simple mixing of products, whether or not of different kinds; mixing of sugar with any material;
- (14) Simple addition of water or dilution or dehydration or denaturation of products;
- (15) Simple assembly of parts of articles to constitute a complete article or disassembly of products into parts;
- (16) A combination of two or more of the operations specified in points (1) to (15);
- (17) Slaughter of animals.

The main purpose of this list is to ensure that the working or processing which takes place in the beneficiary country is an activity which brings real economic benefit to the country. It is also used in the rules on cumulation of origin discussed in 3(c).

It is important to bear in mind that if an operation is not listed as insufficient, this does not necessarily mean that it is sufficient. The exporter must also consult with the Product List which indicates what are considered sufficient working and processing for a specific product.

(b) Territorial requirements and non-manipulation principle

Working or processing outside the territory of the beneficiary country without prejudice to cumulation, is not permitted. The rules of origin stipulate that originating products lose their originating status if they are exported from the beneficiary country to another country and are returned, unless it can be demonstrated that, first, the products returned are the same as those that were exported, and, second, they have not undergone any operations beyond those necessary to preserve them in good condition while in that country or while being exported (Article 73).

Previously, these requirements were enforced by the direct transport rule, which obliged exporters to submit to the European Union customs authorities the documents issued by the customs authorities of third countries certifying that the products were unaltered. The current rules of origin have abolished this requirement, which has been replaced with a more flexible non-manipulation principle (Article 74). Consequently, compliance with the territorial requirements and the non-manipulation principle are considered as satisfied unless the customs authorities have reason to believe the contrary. In cases of doubt, 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.

Furthermore, storage of products or consignments, and splitting of consignments, may take place where carried out under the responsibility of the exporter or of a subsequent holder of the goods. The products must remain under customs supervision in the country(ies) of transit (Article 74).

The territorial requirements and non-manipulation principle apply *mutatis mutandis* when cumulation provisions discussed below are exercised.

(c) Cumulation

The GSP rules of origin are, in principle, based on the concept of single-country origin, that is, the origin requirements must be fully met within one exporting preference-receiving country, which must also be the country where the finished products are manufactured. Cumulation, however, permits beneficiary countries to consider inputs from other countries as originating content, and the European Union GSP rules of origin allow several possibilities for cumulation.

Cumulation with the European Union, Norway, Switzerland and Turkey

Cumulation is allowed for products originating in the European Union (Article 84), as well as for products originating in Norway, Switzerland, and Turkey (Article 85 paragraphs 1 to 4). Previously, Turkey was not included in the cumulation system. It should be noted, however, that cumulation with the three countries is allowed by reciprocity when the three countries provide the possibility for cumulation for European Union originating inputs under their respective GSPs. For example, the European Union GSP rules of origin allow an Indonesian car exporter to cumulate inputs originating in Norway into its products only if the Norwegian GSP rules of origin allow the exporter to cumulate the same inputs originating in the European Union into its products. In most cases,

cumulation is allowed reciprocally; nevertheless, exporters should verify whether it is the case for the products concerned.

Agricultural products (HS Chapters 1 to 24) are excluded from cumulation with the three countries.

In order to benefit from the cumulation provisions, a beneficiary country must carry out working or processing that goes beyond the operation described in 3(a) of this Handbook and meet the provisions of territorial requirements and the non-manipulation principle discussed in 3(b).

Regional cumulation (Article 86 paragraphs 1 to 4)

The provisions for regional cumulation permit beneficiary countries in a regional group to consider inputs from other beneficiary countries within the same group as originating content. The underlying objectives of regional cumulation are to promote regional development and to ease the origin requirements. Under the previous rules of origin, three regional groups – Group I, the Association of South-East Asian Nations (ASEAN), Group II (Andean Community, Central American Common Market and Panama) and Group III, the South Asian Association for Regional Cooperation (SAARC) – were able to apply the provisions of regional cumulation. For the current rules of origin, in addition to these groups, Mercosur (Argentina, Brazil, Paraguay and Uruguay) has been included for the regional cumulation provisions. Consequently, the following four regional economic groups can utilize the regional cumulation system:

Group I: Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, the Philippines, Singapore, Thailand and Viet Nam;

Group II: Plurinational State of Bolivia, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Peru and the Bolivarian Republic of Venezuela;

Group III: Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka;

Group IV: Argentina, Brazil, Paraguay and Uruguay.

The following secretariats of the regional groups are responsible for transmitting information on the undertakings of its member countries to ensure compliance with cumulation requirements and verification of proof of origin to the European Commission:

- Group I: General secretariat of ASEAN;
- Group II: Andean Community – Central American Common Market and Panama Permanent Joint Committee on Origin;
- Group III: Secretariat of SAARC;
- Group IV: Secretariat of Mercosur.

In order to benefit from regional cumulation, the countries of the regional groups must ensure compliance with the rules of origin and provide the administrative cooperation necessary to ensure their correct implementation. The secretariat of the regional group concerned or another competent joint body representing all the members of the group in question must notify the Commission on these undertakings. Where countries in a regional group have already completed the procedures prior to 1 January 2011, a new undertaking is not required.

The following conditions apply to the use of the regional cumulation. Where the qualifying operation laid down in the Product List is not the same for all countries involved in cumulation, that is, LDC and non-LDC beneficiaries, the origin of products exported from one country to another country of the regional group for the purpose of regional cumulation shall be determined on the basis of the rule which would apply if the products were being exported to the European Union (Article 86 paragraph 2(a)).

The materials listed in annex II of Commission Regulation (EU) No. 1063/2010 (some agricultural and processed agricultural products) are excluded from regional cumulation in the following two cases (Article 86 paragraphs 3(a) and (b)):

- (i) In the case that the tariff preference applicable in the European Union is not the same for all the countries involved in the cumulation (for example, tariff preferences given for LDCs, non-LDCs and GSP-plus beneficiaries);
- (ii) In the case that the materials concerned would benefit, through cumulation, from a tariff treatment more favourable than the one they would benefit from if directly exported to the European Union.

With regard to Group I, it should be noted that although Singapore is not a beneficiary of the European Union GSP due to graduation from the scheme, products originating in Singapore can be cumulated within the group (see example 4).

The situation of the Republic of the Union of Myanmar, on the other hand, is different. Council Regulation (EC) No. 552/97 has temporarily withdrawn benefits of the European Union GSP from the country, and it is prohibited from participating in Group I regional cumulation. Hence, inputs originating in Myanmar cannot be cumulated. However, reflecting the recent change in the country, the European Commission has adopted a proposal to bring the country back under the EU GSP scheme. The proposal is pending for the approval by the Council and the European Parliament.

In order to benefit from the regional cumulation provisions, the country concerned must carry out operations that go beyond the ones set out in Article 78 or in the Product List (Article 86 paragraph 4). If this is not the case, the product concerned will have as country of origin the country of the regional group which accounts for the highest share of the customs value of the materials used originating in other countries of the regional group (see example 4). The previous rules of origin had a requirement that for a country to benefit from regional cumulation it was necessary to add the value greater than the highest customs value of the products used originating in any one of the other countries in the group. This requirement has been abolished in the current rules of origin, making regional cumulation easier than before.

Example 4: Regional cumulation

The Product List requires that cars classified under HS heading 8702 must not incorporate more than 50 per cent of imported inputs in the case of developing countries. A car manufactured in Indonesia, for example, may incorporate the following inputs (table 3):

Table 3. Example of a calculation of originating inputs under regional cumulation

Inputs (car manufacturing)	Value (United States dollars)	Imported percentage
Inputs originating in Singapore*	1 500	n/a
Inputs originating in Thailand	1 000	n/a
Inputs originating in Cambodia**	2 000	n/a
Inputs originating in Japan	4 500	45
Value added in Indonesia (local content, labour costs, profits)***	1 000	n/a
Total (ex-works price)	10 000	-

* Note that Singapore has been withdrawn from the list of beneficiary countries in application of the country graduation mechanism, but its inputs may still be used in application of the regional cumulation rules.

** If the rules of origin are separate for LDCs and non-LDC beneficiaries, to determine whether the inputs from Cambodia are originating or not the rules for LDCs will be applied.

*** Note that for the Indonesian car to obtain originating status, the works done in Indonesia must go beyond the ones set out in Article 78 or in the Product List. Otherwise, the car obtains Cambodian origin as the country shares the highest customs value of the materials used among the four ASEAN countries.

According to the regional cumulation provision of the regulation, the materials imported from Singapore, Thailand and Cambodia will not be taken into account in calculating the percentage of

imported inputs, as the materials already originate in the respective countries. Therefore, only the components imported from elsewhere (in this hypothetical case, Japan, which is not an ASEAN member country) are to be considered imported inputs. As the amount of the inputs from Japan is \$4,500, equal to 45 per cent of the export price, and as this is under the 50 per cent limit, the car will be considered as originating in Indonesia and will be entitled to preferential treatment under the GSP arrangements.

Example 5: Documentary requirements for regional cumulation

An exporter in the Plurinational State of Bolivia wishes to export a finished product that contains imported inputs originating in Honduras and Panama (Group II). The Bolivian exporter will have to submit to the competent authority two certificates of origin Form A relating to the inputs originating in Honduras and Panama, respectively, and issued by the competent authorities in each of these countries. On the basis of these two certificates, the competent authority in the Plurinational State of Bolivia will then issue the final certificate of origin Form A relating to the finished product to be exported.

Cumulation between Groups I and III (Article 86 paragraphs 5 and 6)

The current European Union GSP rules of origin have made cumulation between countries in Groups I and III possible. To make the interregional cumulation operational the authorities of a Group I or Group III beneficiary country must make a request to the European Commission. The countries concerned in Group I and Group III must ensure compliance with the rules of origin including the administrative cooperation to ensure the correct implementation of the rules, and they have to notify jointly the Commission of their undertaking. The request for the interregional cumulation addressed to the Commission must be supported by evidence that the requirements to benefit the cumulation are met. The Commission shall decide on the request, and it will publish in the *Official Journal of the European Union (C series)* the date on which the cumulation between countries of Group I and Group III takes effect, together with the countries involved in that cumulation and, where appropriate, the list of materials in relation to which the cumulation applies.

The minimum operation requirements applied for the regional cumulation also apply to the cumulation between countries of Group I and Group III.

Extended cumulation (Article 86 paragraphs 7, 8 and 9)

The current European Union GSP rules of origin provide the possibility for beneficiary countries to cumulate with countries with which the European Union has concluded free trade agreements (FTAs) in accordance with Article XXIV of GATT (for example, Mexico, Chile), provided that each of the following conditions is met:

- (i) The countries involved in the cumulation have undertaken to comply or ensure compliance with the European Union GSP rules of origin and to provide the administrative cooperation necessary to ensure their correct implementation with regard to the European Union and also between themselves.
- (ii) The undertaking referred to in point (i) has been notified to the Commission by the beneficiary country concerned.

Materials originating in a country with which the European Union has concluded an FTA will be considered to originate in the beneficiary country if a more than minimal operation is performed there, that is, operations which go beyond those set out in article 78 or in the Product List.

For extended cumulation, the rules laid down in the relevant FTA determine the origin of the materials used and the documentary proof of origin required. On the other hand, for the origin of the products to be exported to the European Union, the rules under the European Union GSP will apply. For example, an exporter in Thailand can cumulate originating material in Chile, which has an FTA with the European Union. In this case, whether the material is originating or not is determined by the rules of origin for the European Union–Chile FTA, and the documentary proof of origin for the material has to be the one used for this FTA. For the origin of the product manufactured in Thailand incorporating material from Chile, the rules of origin for the European Union GSP will apply.

The authority of a beneficiary country must request the European Commission for authorization to use extended cumulation. The request must include a list of the materials concerned by the cumulation and it needs to be supported with evidence that the conditions laid down in points (i) and (ii) above are met. The Commission will decide on the materials which may be subject to extended cumulation.

Where the materials concerned change, another request needs to be submitted. Agricultural products (HS 1 to 24) are excluded from extended cumulation.

The Commission will publish in the *Official Journal of the European Union (C series)* the date on which the extended cumulation takes effect, together with the countries involved in that cumulation and the list of materials to which the cumulation applies.

(d) Derogations (Article 89)

While in the previous rules of origin the provisions on derogation were applicable only to LDCs, the current rules of origin extend the possibility of derogation to developing countries. Also, the circumstances and conditions in which derogations may be granted are redefined as follows.

Following a European Commission's initiative or in response to a request from a beneficiary country, a beneficiary country may be granted a temporary derogation from the European Union GSP rules of origin where:

- (i) Internal or external factors temporarily deprive the country of the ability to comply with the origin requirements where it could do so previously;
- or
- (ii) The country requires time to prepare itself to comply with the origin requirement rules.

The derogation will be limited to the duration of the effects of the internal or external factors giving rise to it or the length of time needed for the beneficiary country to achieve compliance with the rules.

A request for a derogation needs to be made in writing to the Commission stating the reasons why a derogation is required with appropriate supporting documents.

B. CONTROL OF ORIGIN AND ADMINISTRATIVE COOPERATION

The second part of the rules of origin relates to the procedures for control of origin and administrative cooperation, which have to be observed for eligibility for the European Union GSP. This section discusses these procedures.

1. PROCEDURES APPLICABLE UNTIL 31 DECEMBER 2016

Until 31 December 2016 the procedures under the previous rules of origin apply. The information on the procedures included in *Generalized System of Preferences: Handbook on the Scheme of the European Community* (UNCTAD/ITCD/TSB/Misc.25/Rev.3)¹ is valid, except articles referred to in the document. The following are the corresponding articles of Commission Regulation (EU) No. 1063/2010 for subheadings D.1 to D.4 in the Handbook:

- Article 97l for D.1: Completion and issue of certificates of origin Form A;
- Article 97l paragraph 4 for D.2.1: Issue of duplicates of certificate of origin Form A;
- Article 97l paragraphs 2 and 3 for D.2.2: Certificates of origin Form A issued retrospectively;
- Article 97(k) paragraph 5 for D.2.3: Time limit for presentation of certificates of origin Form A;
- Article 97(n) paragraph 2 for D.2.4: Presentation of certificates of origin Form A after expiry of the time limits;
- Article 97(r) for D.2.5: Discrepancies between statements made in certificates of origin Form A and those in other documents;
- Article 97(p) for D.2.6: Issuance and acceptance of replacement certificates of origin Form A by the European Union, Norway, and Switzerland;
- Article 97(m) paragraphs 1 to 4 for D.3: Invoice declaration;
- Article 97(s), 97(t) and 97(u) for D.4: Verification.

For D.2.6, Turkey should be added to Norway and Switzerland.

While under the previous rules there were no such provisions, the current rules of origin include provisions on low value consignments (Article 97(q)). Products sent as small packages from private persons to private persons or forming part of travellers' personal luggage can be admitted as originating products without requiring the Form A certificate or an invoice declaration. Such products should not exceed EUR 500 in the case of small packages or EUR 1,200 in the case of products forming part of travellers' personal luggage, and they should not be imported by way of trade. To meet the condition of not being imported by way of trade, they have to meet the following conditions:

- (a) The imports are occasional;
- (b) The imports consist solely of products for the personal use of the recipients or travellers or their families;
- (c) It is evident from the nature and quantity of the products that no commercial purpose is in view.

2. PROCEDURES APPLICABLE FROM 1 JANUARY 2017

As of 1 January 2017 the new procedures for control of origin and administrative cooperation will be effective. Consequently, the origin certificate forms that will be used prior to this date, such as the GSP Form A certificate, the invoice declaration and the movement certificate EUR.1, will be abolished. The new procedures will include a system of registered exporters who will issue statements of origin. The procedures will also require governments of beneficiary countries to establish the administrative structure, including the setting up and managing of the database on registered exporters. Beneficiary countries that cannot be ready for the implementation of the new procedures by 1 January 2017 will have a transition period, and for these countries the implementation date will be 1 January 2020. Under the new system, only registered exporters are

¹ See

<http://unctad.org/SearchCenter/Pages/Results.aspx?k=UNCTAD%2FITCD%2FTSB%2FMisc.25%2FR ev.3>

eligible to benefit from the European Union GSP, except when the total value of the originating products consigned does not exceed EUR 6,000 (Article 90).

The requirements of the new procedures for control of origin and administrative cooperation are discussed below. Some requirements are similar to those in the system applicable before 2017, but they are adapted for the new system.

(a) Responsibilities for the governments of beneficiary countries

(i) Establishment and management of the database on registered exporters

The competent authorities of beneficiary countries must establish and keep up to date at all times an electronic record of registered exporters located in their respective countries (Article 92). They shall accept applications submitted by candidate exporters to become registered exporters given that the application has been completed.

The record must contain the required information on registered exporters, including products intended to be exported under the scheme (indicative list of Harmonized System chapters or headings as considered appropriate by the applicant), dates from and until when the exporter is/was registered, the reason for withdrawal (for example, at the registered exporter's request, or withdrawal by the competent authorities). This data will only be available to competent authorities.

When the registered exporter intentionally or negligently draws up a statement on origin or any supporting document that leads to irregularly or fraudulently acquiring the GSP benefit, the competent authorities will withdraw the exporter from the record of registered exporters. Also, registered exporters who no longer meet the conditions for exporting any goods under the scheme, or no longer intend to export such goods, must be removed from the record (Article 93 paragraph 1).

The competent authorities must notify the European Commission of the national numbering system used for designating registered exporters (the number shall begin with the International Organization for Standardization (ISO) alpha 2 country code) (Article 91 paragraph 3), and render all necessary support when a request is made by the Commission for the proper management of control of origin and verification (Article 68 paragraph 2(a)).

The Commission must be immediately informed of any changes to the information contained in the record of registered exporters (Article 69 paragraph 2).

(ii) Control of origin

The competent authorities must carry out verifications of the originating status of products at the request of the customs authorities of the European Union Member States and also regular controls on exporters on their own initiative (Article 97(g)).

The controls need to ensure the continued compliance of exporters with their obligations. The authorities shall carry out the controls at intervals that have been determined by appropriate risk analysis criteria, and they have the right to request evidence and to carry out inspection of the exporter's accounts and, where appropriate, those of producers supplying the exporter and any other check considered appropriate.

Subsequent verifications of statements on origin will be carried out at random or whenever the customs authorities of the European Union Member States have reasonable doubts as to their authenticity, the originating status of the products concerned or the fulfilment of other requirements of the GSP rules of origin. The requesting European Union Member State shall set a six-month initial deadline to communicate the results of the verification, starting from the date of the verification request. If there is no reply within this period, or if the reply does not contain sufficient information to determine the real origin of the products, a second communication shall be sent to the competent authorities. This communication shall set a further deadline of not more than six months.

(iii) *Control of origin within the framework of cumulation*

The provisions related to the control of origin also apply to exports from the European Union to a beneficiary country for the purpose of bilateral cumulation and to exports from one beneficiary country to another for the purpose of regional cumulation (Article 971 paragraph 1).

To make regional cumulation operative, the countries of the regional group must ensure compliance with the rules of origin and provide the administrative cooperation necessary to ensure the correct implementation of the GSP rules of origin, both with regard to the European Union and between themselves (Article 86 paragraph 2(b)). These undertakings must be notified to the Commission by the secretariat of the regional group concerned.

The verifications of the originating status of products apply *mutatis mutandis* to requests sent to the authorities of Norway, Switzerland and Turkey for the verification of replacement statements on origin made out on their territory, requesting these authorities to further liaise with the competent authorities in the beneficiary country. For such requests, the deadline will be eight months. If there is no reply within this period, or if the reply does not contain sufficient information to determine the real origin of the products, a second communication shall be sent to the competent authorities. This communication shall set a further deadline of not more than six months.

For extended cumulation, the verifications of the originating status of products will be carried out in the same way as they would to provide such support to the customs authorities of the European Union Member States in accordance with the relevant provisions of the FTA concerned.

(b) Registered exporters and their responsibilities (Articles 92, 93 and 94)

To be registered, exporters need to file an application with the competent authorities in their countries using the form, a model of which is set out on page 74 of Commission Regulation (EU) No. 1063/2010, which is appended to this Handbook. By the completion of the form exporters give consent to the storage of the information provided in the database of the Commission and to the publication of non-confidential data on the Internet.

Registered exporters that no longer meet the conditions for exporting any goods under the scheme, or no longer intend to export such goods, shall inform the competent authorities in the beneficiary country, who shall immediately remove the exporters from the record of registered exporters kept in that beneficiary country.

When registered exporters intentionally or negligently draw up a statement on origin or any supporting document which leads to irregularly or fraudulently obtaining the benefit of preferential tariff treatment, they will be withdrawn from the record of registered exporters kept by the beneficiary country concerned. Exporters who have been removed from the record of registered exporters may only be reintroduced into the record once they have proved to their competent authorities that they have remedied the situation that led to their withdrawal.

(c) Documentary requirements (Articles 95 and 96)

(i) *Statement on origin*

A statement on origin is made out by the registered exporter if the goods concerned can be considered as originating. A statement on origin must be provided by the exporter to the customer in the European Union and contain the particulars specified on page 76 of Commission Regulation (EU) No. 1063/2010, which is appended to this Handbook. A statement on origin shall be made out in either English or French.

When bilateral or regional cumulation, or cumulation between Group I and Group III is applied to the product concerned, the statement on origin made out by the exporter must, as the case may be, contain the indication "European Union cumulation", "regional cumulation", "*cumul UE*", or "*cumul regional*".

When cumulation with Norway, Switzerland or Turkey is applied, the exporter of a product shall rely on the proof of origin provided by its supplier and issued in accordance with the provisions of the GSP rules of origin of Norway, Switzerland or Turkey, as the case may be. In this case, the

statement on origin made out by the exporter shall contain the indication “Norway cumulation”, “Switzerland cumulation”, “Turkey cumulation”, “*cumul Norvège*”, “*cumul Suisse*”, or “*cumul Turquie*”.

When extended cumulation applies, that is cumulation with a country which has an FTA with the European Union, the exporter of the product shall rely on the proof of origin provided by its supplier and issued in accordance with the provisions of the relevant FTA between the European Union and the party concerned. In this case, the statement on origin made out by the exporter shall contain the indication “extended cumulation with country x” or “*cumul étendu avec le pays x*”.

A statement on origin needs to be made out for each consignment.

(ii) Length of validity of statement on origin

A statement of origin is valid for twelve months from the date of its making out by the exporter.

(iii) Record-keeping obligations

For the purpose of control of origin, exporters applying for European Union GSP benefits must maintain appropriate commercial accounting records for production and supply of goods qualifying for preferential treatment, keep all evidence and customs documentation relating to the material used in the manufacture, and keep these documents for at least three years from the end of the year in which the statement on origin was made out. These obligations also apply to suppliers who provide exporters with supplier declarations certifying the originating status of the goods they supply.

(iv) Statement on origin issued retrospectively

A statement on origin may exceptionally be made out after exportation (retrospective statement) on condition that it is presented in the European Union Member State of declaration for release for free circulation no longer than two years after the export.

(d) Low value consignments without requiring a statement on origin (Article 97(a))

Small packages of which the total value does not exceed EUR 500, or products of which the total value does not exceed EUR 1,200 and forming part of travellers’ personal luggage are exempt from the obligation to produce a statement on origin.

(e) Discrepancies between a statement on origin and those in other documents (Article 97(b) paragraphs 1 and 2)

The discovery of slight discrepancies between a statement on origin and those made in the documents presented to customs for the purpose of carrying out the formalities for importing the products shall not ipso facto render the certificate null and void, provided that it is duly established that the document corresponds to the products concerned.

(f) Presentation of statement of origin after expiry of the time limits (Article 97(b) paragraph 3)

Statements on origin which are submitted to the customs authorities of the importing country after the period of validity may be accepted, provided that the failure to submit these documents by the final date is due to exceptional circumstances. In other cases of belated presentation, the customs authorities of the importing country may accept the statements on origin, provided that the products have been presented to customs before expiry of the time limit.

(g) Procedures at release for free circulation in the European Union: Importers’ responsibilities (Article 97)

Importers in the European Union must make customs declarations for the products claiming for European Union GSP benefits by making reference to the statements on origin. Importers need to keep the statements on origin at the disposal of the customs authorities, which may request their

submissions for the verification of the declaration. Those authorities may also require a translation of the statement into the, or one of the official languages of the European Union Member State concerned. In cases where GSP benefits are not granted, for example due to false declaration on origin, importers are made liable to pay the full most-favoured nation duties on the products concerned. It is therefore recommended that importers should take reasonable steps to protect themselves from the liability, such as by including a protective clause in the commercial contract.

APPENDIX

Commission Regulation (EU) No. 1063/2010
of 18 November 2010 amending Regulation (EEC) No. 2454/93
laying down provisions for the implementation
of Council Regulation (EEC) No. 2913/92
establishing the Community Customs Code.