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Guidance on the EU Generalised Scheme of Preferences and its Rules of Origin

For Government Authorities and Private Sector Stakeholders in Myanmar

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Important notice for readers:

This Handbook is designed to help readers to understand the EU GSP, its Rules of Origin, and the related rules and regulations, but it is not a legal text. The sole legal provisions are those contained in the EU regulations cited in this document and duly adopted as well as published in the Official Journal of the European Union.

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¹ A first version of this handbook was written by Stefan F. Moser. This version has been updated by GIZ GmbH.

Foreword by H.E. Kristian Schmidt

Ambassador of the European Union to Myanmar

We live in fascinating and stimulating times for Myanmar. Who would have thought, a decade or so ago, that Myanmar would be the “Next Big Thing in Asian business” and one of the most dynamic emerging market in ASEAN?

Few countries in the world are blessed with such potential: an abundance of resources below and above ground, a strategic location, a resourceful population and plenty of goodwill from the international community. Myanmar has all the potential to become the next big player in its region.

As partners in Myanmar's transition, the EU is doing its share in many ways, also on trade policy: since 2013, Myanmar exporters can take full advantage of preferential market access to the EU deriving from the EU Generalised Scheme of Preferences (GSP), the most generous unilateral trade preferential system the EU can offer to its partners.

Under the so-called “Everything But Arms” (EBA) treatment, Myanmar companies now enjoy duty-free and quota-free access to a European market of over 500 million consumers for all Myanmar products except for arms and ammunitions.

A good understanding of the EU GSP scheme and its Rules of Origin is essential for the private sector. This Handbook provides invaluable tools that can help companies take full advantage of this commercial opportunity.

To further facilitate imports from GSP beneficiary countries, the EU is implementing the Registered Exporter (REX) system since the beginning of 2017. Application of the REX System in Myanmar is expected to start in January 2018.

It will significantly simplify export procedures for Myanmar companies as they will be able to give statements on origin themselves. The data presented in the Handbook show that, among preference-eligible exports, preferences were used for 96% of all such exports in 2016. This is a very high EBA utilisation rate compared to other eligible countries.

Since the first edition of this Handbook was published in March 2014, exports from Myanmar to the EU have increased by 151% (from € 392 million in 2014 to € 985 million in 2016), while the total trade between Myanmar and the EU increased from € 886 million in 2014 to € 1551 today. The EU is also Myanmar's fifth largest export destination (7.1% of total Myanmar's exports).

This revision is due to the need of providing government authorities and private sector stakeholders with reliable and up to date information about the EU Generalised Scheme of Preference and its Rules of Origin.

We hope that this manual will serve as a useful tool to further strengthen EU-Myanmar economic relationships.

Kristian Schmidt

Foreword by U Zaw Min Win

President of the Republic of the Union of Myanmar Federation of Chambers of Commerce and Industry (UMFCCI)

Ties between the EU and Myanmar have been growing stronger since the opening of the EU Office in Yangon on 28 April 2012. In 2013, significant milestones indicative of the burgeoning relationship were marked with the reinstatement of the GSP in July 2013 and the visit of then EU High Representative Catherine Ashton during the first EU-Myanmar Task Force from 13-15 November.

The EU's commitment to advance Myanmar's sustainable economic development has been implemented through the large number of European companies exploring trade and investment opportunities in Myanmar, and bringing with them the promotion of transparency; innovation and technology transfer; and international environmental, health and work and safety practices, elevating not only Myanmar's economic growth, but its preparedness for integration into a larger more competitive global community.

The reinstatement of GSP translates into greater access to European markets for Myanmar and potential greater investment from European firms, with Myanmar's strength in its human and natural resources previously limited to Asian export markets. Since the reinstatement of GSP, Myanmar has shown the highest increase in trade exports to European countries in the fisheries and apparel industries. Duty and quota – free access to European markets for its goods makes Myanmar an attractive place to invest, which in turn can accelerate the various levels of economic and social transformation already taking place, thereby promoting long-term sustainable inclusive growth.

The EU extends active support and assistance to Myanmar's Peace Process Initiatives the success of which will open up new regions of the country for socio-economic development for EU Businesses to participate and share the benefits on a win-win basis.

UMFCCI as the National Apex NGO promoting Myanmar's private sector deeply appreciates the European Union's kind contributions to Myanmar Development and we look forward to working more closely with the EU for improving our trade and investment and further enhancing our relations as long term partners for mutual benefit and growth.

U Zaw Min Win

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LIST OF ACRONYMS

ASEAN	Association of South East Asian Nations
BOI	Binding Origin Information
CMP	Cutting, Making & Packing
CO	Certificate of Origin
DC	Developing Country
EBA	Everything But Arms
EEZ	Exclusive Economic Zone
EU	European Union
FDI	Foreign Direct Investment
FTA	Free Trade Agreement
FZ	Free Zone, consisting of a closed area with or without buildings or warehouses that stays under customs control
GATT	General Agreement on Tariffs and Trade of 1948, afterwards integrated in the Marrakesh Agreement in 1994
GSP	Generalised Scheme of Preferences
HS	Harmonised Commodity Description and Coding System
ILO	International Labour Organisation
ISO	International Standards Organisation
LDC	Least Developed Country
MoC	Ministry of Commerce
MFN	Most Favoured Nation
REX	Registered Exporter System (applicable from 2017)
RKC	Revised Kyoto Convention (International Convention on the Simplification and Harmonization of Customs procedures)
RTA	Regional Trade Agreement
SEZ	Special Economic Zone
TARIC	Online Customs Tariff Database of the EU
UN	United Nations
UNCLOS	UN International Convention of the Law of the Seas (1982 Montego Bay Convention)
UNCTAD	United Nations Conference on Trade and Development
WCO	World Customs Organization
WTO	World Trade Organization

1 BACKGROUND

1.1 LAUNCH OF THE GSP INITIATIVE IN THE UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT (UNCTAD)

In 1964, the first Secretary General of UNCTAD launched the idea that developed industrialised countries should unilaterally grant preferences on imports of products from developing countries to help their economic development. The relevant decision was taken in Resolution 21 (ii) at the UNCTAD II Conference in New Delhi in 1968. The generalised, non-reciprocal, non-discriminatory scheme of preferences in favour of developing countries with special treatment for least developing countries was born.

1.2 MOST FAVOURED NATION TREATMENT (MFN) AND MARKET ACCESS TO THE EU

However, the principle of the General Agreement on Tariffs and Trade (GATT)/World Trade Organisation (WTO) “most-favoured nation” (MFN) treatment was still a stumbling block, as it generally forbids unilateral trade preferences for only a select category of GATT/WTO members. At the time the GATT Agreement was conceived, only Regional Trade Agreements (which include free trade agreements and customs unions – GATT Art. XXIV) were exempted from the general MFN principle. Thus, the General Council of the GATT/ WTO had to grant a so-called waiver in 1970, recognising that the Generalised Scheme of Preferences (GSP) constitutes another exception from the GATT/WTO principles on MFN treatment. This waiver enabled industrialised countries to grant preferential tariff treatment on an autonomous basis to products from developing countries and least developed countries (DCs and LDCs). It is the privilege and at the discretion of each individual country (“donor country”) to choose which developing country (“beneficiary country”) is covered by its own scheme, which products are to be included in the scheme, and how to determine the applicable customs duties. However, there is a requirement to treat similar developing countries in a similar way. The European Union, Australia, Canada, New Zealand, Japan, Norway, the USA, Turkey and Switzerland, among others, all have a GSP in place, although these differ in terms of product scope and country coverage.

With regard to the EU, there are three basic scenarios applicable to products that access the EU market:

- WTO MFN tariff treatment;
- Preferential access based on a free trade agreement; and
- Preferential access for developing countries, unilaterally granted in the form of the Generalised Scheme of Preferences – based on the set of rules unilaterally prescribed by the EU.

1.3 LEAST DEVELOPED COUNTRIES AND THEIR SPECIAL TREATMENT (“EVERYTHING BUT ARMS”)

Overall, GSP proved to be successful, but not for all countries. Indeed, some developing countries increased their economic development more than others. Their products increased their position in major markets like the European Union and the United States. Another phenomenon also favoured more advanced developing countries with a strong economic basis: after the idea of the GSP was launched, two major rounds of WTO negotiations, combined with sector-specific initiatives, drastically cut customs tariffs “*erga omnes*” on all imports, and above all on industrial goods. This phenomenon is often called “tariff erosion”, meaning that the initially high tariff preferences for developing countries progressively melt down through the multilateral efforts to reduce tariffs on imports globally.

This led to the initiative that LDCs should receive more trade preferences than those already in place. The initiative aimed at the complete elimination of tariffs by donor countries on imports of products from LDCs, thus enabling them to develop their economies more quickly, enhance their industrial base, and attract more foreign direct investment (FDI). In this way, LDCs would be able to integrate more readily into the world economy, and reach the Millennium Development Goals (MDGs) faster.

In February 2001, the EU adopted Regulation (EC) 416/2001, the so-called “Everything But Arms (EBA) Regulation”, granting duty-free and quota-free access to imports of all products from LDCs, except arms and ammunition, without any quantitative restrictions, except for the most sensitive products bananas, sugar and rice, which were fully liberalised a few years later.

The EU considers the EBA scheme as the most beneficial GSP scheme for LDCs worldwide. In 2014, EBA beneficiaries accounted for exports to the EU worth € 17 billion – 34% of all the imports under the EU’s Generalised Scheme of Preferences (GSP), which provides tariff reductions for developing countries.²

2 THE GSP OF THE EUROPEAN UNION (EU)

2.1 MAIN CONTENT

The EU has applied the GSP since 1971. Currently, the EU GSP provides non-reciprocal preferential access to the EU market to up to 92 developing countries and territories, although some of those countries have graduated from GSP in recent years. The primary objective of the GSP is to contribute to the reduction of poverty and the promotion of sustainable development and good governance.

The current scheme applies since 1 January 2014 and is valid for ten years, after which it will likely continue, though some changes may be possible. However, the EBA scheme applicable to LDCs had no predetermined end date.

² Source: Report on the Generalised Scheme of Preferences covering the period 2014-2015, available at http://trade.ec.europa.eu/doclib/docs/2016/january/tradoc_154180.pdf

The main thrust of the reformed GSP scheme is:

- (1) to concentrate GSP preferences on countries most in need. A number of countries, which do not require GSP preferences to be competitive, no longer benefit from the scheme;
- (2) to reinforce the incentives for the respect of core human and labour rights, environmental and good governance standards through the GSP+ arrangement;
- (3) to strengthen the effectiveness of the trade concessions for LDCs through the "Everything but Arms" scheme. Indeed limiting GSP to fewer beneficiaries reduces the competitive pressure and makes the preferences for LDCs more meaningful; and
- (4) to increase predictability, transparency and stability (See Section 5).

See:

[REGULATION \(EU\) No 978/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2012 applying a scheme of generalised tariff preferences](#)

There are three main variants (arrangements) of the scheme:

- the **standard GSP scheme**, which offers generous tariff reductions to developing countries. Practically, this means partial or entire removal of tariffs on two thirds of all product categories. Many key products, especially among agricultural products, are not covered by the standard GSP scheme (e.g., rice, bananas and sugar).
- the **"GSP+" scheme**, in which **enhanced preferences** allow full removal of tariffs on essentially the same product categories as those covered by the general arrangement. These are granted to countries which ratify and implement core international conventions relating to human and labour rights, environment and good governance;
- the **Everything but Arms" (EBA) scheme** for least developed countries (LDCs), which grants **duty-free quota-free** access to all products, except for arms and ammunitions.

Under the general GSP and the GSP+ scheme, tariff preferences take the form of either duty-free access or reductions in the otherwise applicable standard tariffs – covering roughly 66% of tariff lines (at 8-digit level of the European Union Customs Code ("the Code" - Council Regulation (EU) No 952/2013)). Around 9% of tariff lines are not covered, and around 25% of tariff lines are already at MFN zero, meaning they are not relevant for GSP preferences.

Under the Everything but Arms scheme LDCs enjoy duty-free quota-free access to EU markets (except for arms and ammunitions, for which MFN duties range from 0% to 3.2%). This means 99.8% of all tariff lines are covered. Unlike other GSP arrangements, the EBA does not expire.

2.2 MYANMAR AND THE EU GSP

Myanmar is part of the UN list of LDCs and therefore qualifies to benefit from the EU Everything But Arms initiative. In the ASEAN region, only Laos and Cambodia have the same LDC status and amongst other neighbouring countries, only Bangladesh benefits from EBA.

The EU is the largest single market worldwide with approximately half a billion inhabitants. 28 EU Member countries are connected together in a Customs Union, meaning that the EU is a single customs territory with a common external customs tariff. This means also that the EU GSP is applied in all EU Member States in the same way. The EU market represents a great opportunity for Myanmar, while Myanmar has a strong attraction for FDI from the EU thanks to

its status as a LDC, reasonable labour costs, the improving political context, and a predicted economic surge.

Myanmar was withdrawn by the EU from the list of GSP countries in 1997 (Council Regulation 552/97), based on article 9 of Regulation (EC) No 3218/94, and article 9 of Regulation (EC) No 1256/96, which provided that preferences could be withdrawn in circumstances including the serious and systematic practice of any form of forced labour, as defined by ILO Conventions No. 29 and 105. Since the political changes in 2011, and based on the positive assessment by the ILO on the progress by Myanmar towards eradicating forced labour, the European Commission proposed, on 12 September 2012, to reinstate trade preferences to Myanmar. The relevant regulation was published in the Official Journal of the EU on 29 June 2013 and entered into force on 19 July 2013. The trade preferences applied retroactively from 13 June 2012, which was the day when the ILO Conference adopted its positive decision on Myanmar.³

The following provides some basic statistics on the use of EBA by Myanmar.

- In 2016, about 87% of EU imports from Myanmar were in products for which EBA preferences are available. In EBA, such preferences are always zero duty rates.
- Other imports are in products that are either MFN zero or imports under special import regimes. Examples of major EU imports from Myanmar that fall under MFN zero are precious stones, beans and lentils. Wood also falls almost completely under MFN zero.
- Among preference-eligible imports, preferences are used for 96% of all such imports (by value). This is a fairly high share, also when compared to other preference-eligible countries, and likely due to flexible rules of origin in the TCF (textiles, clothing, footwear) sector.

The following table provides an overview of EU imports from Myanmar by import regime:

Table: EU imports from Myanmar in 2016 by import regime

Type of import	EU imports in 2016 from Myanmar in EUR million	Share of total	Explanation
Total EU imports from Myanmar	983,1	100,0%	
of which MFN zero	95,1	9,7%	Rules of origin are not relevant for such products
of which MFN positive and eligible for preferences	859,3	87,4%	Note that there are practically no imports that are not "eligible" since EBA covers all products other than arms and ammunition
of which preference-eligible, and preference was used	827,1	84,1%	The overall utilization rate was therefore (32m/859m) = 96.3%
of which preference-eligible, and preference was not used	32,2	3,3%	
Special import regimes (inward or outward processing); unknown import regime	28,8	2,9%	Almost all of these imports also occur duty-free under either MFN or GSP / EBA
Source: Own calculations using Eurostat data			

³ See: [REGULATION \(EU\) No 607/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 12 June 2013 repealing Council Regulation \(EC\) No 552/97 temporarily withdrawing access to generalised tariff preferences from Myanmar/ Burma](#)

Among products imported from Myanmar that are dutiable, and therefore in principle eligible for zero preferences (except for arms and ammunitions), imports were dominated by the TCF sector, followed by rice and fish:

- In 2016, about 86% of EU imports from Myanmar of preference-eligible products were TCF products. Preferences were used for 97% of such imports.
- Other product categories of importance for preferences are cereals (rice) and fish. Products besides TCF, rice and fish are of very minor importance.
- Preference margins are high for TCF (MFN: mostly 12% for garments, up to 17% for footwear), rice (MFN: 128 €/t or 175 €/t)⁴ and fish (MFN: mostly 8-20%).
- Preference utilization is very high for TCF, cereals and fish. For other product categories, utilization can be fairly low, but note that trade in some items, such as machinery, could include re-exports (i.e., products of non-Myanmar origin).

The following table provides more details on preferential EU imports from Myanmar by HS chapter.

⁴ The average EU import price from Myanmar in 2016 was 333 €/t, which means the preference margin is fairly high in ad valorem terms.

Table: EU imports of preference-eligible products by product category

HS Chapter (shaded red: TCF - textiles, clothing, footwear)	EU imports in 2016 from Myanmar in EUR million	Share of total	Share for which preferences are used
Total TCF (HS 41, 42, 50-67)	740,1	86,1%	96,9%
Total other	119,1	13,9%	92,1%
by HS Chapter			
62 ARTICLES OF APPAREL AND CLOTHING ACCESSORIES, NOT KNITTED OR CROCHETED	449,7	52,3%	96,9%
61 ARTICLES OF APPAREL AND CLOTHING ACCESSORIES, KNITTED OR CROCHETED	216,2	25,2%	97,8%
10 CEREALS	55,4	6,4%	99,9%
64 FOOTWEAR, GAITERS AND THE LIKE; PARTS OF SUCH ARTICLES	52,5	6,1%	96,5%
03 FISH AND CRUSTACEANS, MOLLUSCS AND OTHER AQUATIC INVERTEBRATES	36,0	4,2%	99,0%
42 ARTICLES OF LEATHER; SADDLERY AND HARNESS; TRAVEL GOODS, HANDBAGS AND SIMILAR CONTAINERS; ARTICLES OF ANIMAL GUT (OTHER THAN SILKWORM GUT)	14,1	1,6%	92,8%
85 ELECTRICAL MACHINERY AND EQUIPMENT AND PARTS THEREOF; (...)	5,6	0,6%	30,0%
39 PLASTICS AND ARTICLES THEREOF	3,7	0,4%	76,4%
94 FURNITURE; BEDDING, MATTRESSES, MATTRESS SUPPORTS, (...)	3,6	0,4%	56,7%
65 HEADGEAR AND PARTS THEREOF	2,8	0,3%	96,5%
95 TOYS, GAMES AND SPORTS REQUISITES; PARTS AND ACCESSORIES THEREOF	2,5	0,3%	85,0%
40 RUBBER AND ARTICLES THEREOF	2,3	0,3%	98,7%
58 SPECIAL WOVEN FABRICS; TUFTED TEXTILE FABRICS; LACE; TAPESTRIES; TRIMMINGS; (...)	2,3	0,3%	91,9%
90 OPTICAL, PHOTOGRAPHIC, CINEMATOGRAPHIC, MEASURING, (...)	2,0	0,2%	85,3%
44 WOOD AND ARTICLES OF WOOD; WOOD CHARCOAL	1,9	0,2%	63,7%
78 LEAD AND ARTICLES THEREOF	1,8	0,2%	100,0%
16 PREPARATIONS OF MEAT, OF FISH OR OF CRUSTACEANS, MOLLUSCS OR OTHER AQUATIC INVERTEBRATES	1,4	0,2%	100,0%
46 MANUFACTURES OF STRAW, OF ESPARTO OR OF OTHER PLAITING MATERIALS; BASKETWARE AND WICKERWORK	1,2	0,1%	81,2%
63 OTHER MADE-UP TEXTILE ARTICLES; SETS; WORN CLOTHING AND WORN TEXTILE ARTICLES; RAGS	1,1	0,1%	57,1%
67 PREPARED FEATHERS AND DOWN AND ARTICLES MADE OF FEATHERS OR OF DOWN; (...)	0,9	0,1%	81,8%
07 EDIBLE VEGETABLES AND CERTAIN ROOTS AND TUBERS	0,6	0,1%	61,2%
Other	1,4	0,2%	

Source: Own calculations based on Eurostat data

2.3 CONDITIONS ATTACHED TO THE EU GSP

In order to benefit from GSP, beneficiary countries and exporters need to fulfil conditions laid out in two EU Regulations: On the one hand the EU GSP regulation itself, and on the other hand the EU GSP rules of origin regulation.

The new GSP regulation mentions the following circumstances that could lead to the suspension or withdrawal of preferences for Myanmar:

- Serious and systematic violations of core principles laid down in core human and labour rights ILO/UN conventions;
- Unfair trading practices (supply of raw materials) (but only after the competent WTO body determines such a failure);
- Missing administrative cooperation, for instance serious shortcomings in customs controls;
- Upgrade from Least Developed Country (LDC) to Developing country (DC);
- Replacement of the GSP with another preferential arrangement that provides essentially the same benefits (e.g., a free trade agreement between Myanmar and the EU);
- Safeguard measures to protect EU producers, where the exports from the beneficiary country pose a serious threat to local EU producers.

The following could also lead to the temporary withdrawal of the GSP:

- Serious shortcomings in customs controls on the export or transit of drugs (illicit substances or precursors), or failure to comply with international conventions on anti-terrorism and money laundering;
- In the field of fisheries, serious and systematic infringement of the objectives adopted by regional fishery organisations concerning the conservation and management of fishery resources.

The main conditions that goods or products of Myanmar have to meet, in order to benefit from the EU GSP, are covered in the next Chapter, which deals with the EU GSP rules of origin.

3 THE RULES OF ORIGIN OF THE EU GSP

3.1 WHAT ARE RULES OF ORIGIN AND WHY ARE THEY NECESSARY?

All goods that are traded internationally are either wholly produced with inputs from a single country, or produced with inputs from two or more countries. Depending on the origin of a product, the tariff treatment could be different; that is why rules of origin have to sieve and sort out the products depending on where they have been obtained.

In the context of the GSP, the donor country, meaning the European Union, wants to make sure that tariff preferences are given only to products from a beneficiary country. In other words, the purpose of rules of origin is to define which goods qualify for preferential treatment and, conversely, which products are excluded from preferential treatment. This is true above all for products from LDCs which benefit from the most generous preferences possible: zero tariffs and quota free access to the EU market. The EU GSP rules of origin make sure that products from Myanmar are either wholly obtained in Myanmar or have undergone a sufficient degree of transformation to be considered as originating in Myanmar. At the same time, the rules of origin

and their thresholds are designed to ensure a specific level of domestic production (as well as promoting FDI, transfer of know-how, etc.), contributing to economic development in line with the goals of the EU GSP.

Rules of origin also effectively prevent circumvention of the EU GSP preferences, avoiding for instance simple transshipments through Myanmar, or repackaging operations.

Note: Preferential GSP treatment applies to physical goods only, not to services or non-material products (e.g. intellectual property).

3.2 PRECONDITIONS AND LEGAL BASIS

For an export from Myanmar to benefit from the EU GSP, four preconditions have to be met:

- a) The goods must above all **originate** in Myanmar in accordance with the EU GSP rules of origin.
- b) A **valid proof of origin** must be submitted (certificate of origin Form A or an invoice declaration, or an exporter declaration under the new REX system as explained below).
- c) The goods need to be **shipped directly to the EU (with certain exceptions) and should not be altered or transformed when transported** from Myanmar to the EU.
- d) The beneficiary country has to comply with a series of **administrative obligations** (i.e. the notification of the competent authorities issuing the certificate of origin Form A, and granting administrative cooperation in respect of the verification of proofs of origin).

See: The Rules of Origin can be found in Articles 60 - 112 and Annexes 22-06, 22-07, 22-08, 22-09 and 22-10 of Commission Implementing Regulation (EU) 2015/2447 and Articles 37, 41 – 58 and Annexes 22-03, 22-04, 22-05 of Commission Delegated Regulation (EU) 2015/2446 (https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/customs/customs_duties/rules_origin/preferential/guide-annex_2_en.pdf).

3.3 “WHOLLY OBTAINED” GOODS

There are basically two types of rules of origin.

The first type relates to those goods that are “wholly produced” in one single country. In most cases, this rule applies to basic materials and natural products and not to manufactured goods. The EU GSP defines the following as being 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 waters 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)."

For defining the territory, the territorial waters and the exclusive economic zone (EEZ) of a country, the following applies:

- a) "Territory" means the internationally recognised borders of the country;
- b) The territorial waters is limited to 12 nautical miles from the shore line (as laid down in the United Nations Convention on the Law of the Sea – UNCLOS); and
- c) The Exclusive Economic Zone (EEZ) extends until 200 nautical miles from the shore line (UNCLOS).

For products of sea fishing and other products taken from the sea as mentioned in (h) above, fish caught within the territorial waters are considered to be wholly obtained. However, fish caught outside the territorial waters or on high seas are only considered to be wholly obtained and thus originating in Myanmar if they are caught by a vessel that satisfies the definition of "its vessel". The EU GSP RoO defines "its vessel" as:

- the vessel is registered in Myanmar or in an EU Member State; **and**
- the vessel sails under the flag of Myanmar or of an EU Member State; **and**
- The ownership has to be of a majority of Myanmar or EU Member States' citizens **or** of a company with its head office in Myanmar or in EU Member States, and with the additional requirement of majority ownership (public or private) by Myanmar or by EU Member States.

Examples of wholly obtained goods are:

- (i) Stones or iron ore extracted out of a quarry;
- (ii) Fresh milk obtained from cows farmed locally;
- (iii) Cheese produced exclusively from local milk;
- (iv) Rice harvested in Myanmar;
- (v) Fish fillets from fish produced by aquaculture in Myanmar (born and raised) or caught in the sea outside the territorial waters of Myanmar by a boat fulfilling the vessel conditions above;
- (vi) Coconut milk obtained from local coconuts;
- (vii) Wooden furniture from local wood, unpainted, using only local input materials.

3.4 SUFFICIENT TRANSFORMATION OF THIRD COUNTRY INPUTS – "SUFFICIENTLY WORKED OR PROCESSED PRODUCTS"

Products that are not wholly produced in a single country are made with one or more imported materials. The Rules of Origin define exactly what kind of transformation must occur to the imported material in order for the exported product to be considered as originating in the country of exportation. Substantial transformation is normally expressed or defined by one, or a combination of, the following methodologies: a required change in tariff classification to the imported material; a required degree of value that must be added to the imported material in

relation to the finished product; or the imported material must undergo a specifically listed operation or a particular form of manufacturing (processing rule).

Art. 45 of the Commission Delegated Regulation 2015/2446 refers directly to Annex 22-03, the so-called list rules. The list rules define the rules of origin applicable, depending on the Harmonised System (HS) classification of the goods concerned.

Note:

Unlike other Rules of Origin systems, e.g. those of the ASEAN Free Trade Area, the EU GSP Rules of Origin **do not** contain horizontal rules of origin on sufficiently worked or processed products that are applicable to all product categories. All origin rules are to be found exclusively in the product-specific list laid down in a special Annex.

3.5 THE LIST RULES

3.5.1 INTRODUCTION

The list rules contain several different rules of origin depending on the classification of the product concerned. They specify the level of transformation required for third-country inputs used in production. They therefore only apply for products that are not “wholly obtained” or that are not exclusively made using such products (sometimes referred to as “wholly produced” products). For example, for a piece of furniture that is entirely produced using wood from Myanmar, the list rules are not relevant because the product would in any case be considered originating.

The introductory notes to the list rules include a variety of explanations of the list rules themselves, as well as specific tolerance rules for the textile and clothing sector. They also define, for certain products, the specifically applicable rules of origin. For instance, Note 8 defines specific processes that are considered as origin-conferring in respect of mineral oils and fuels.

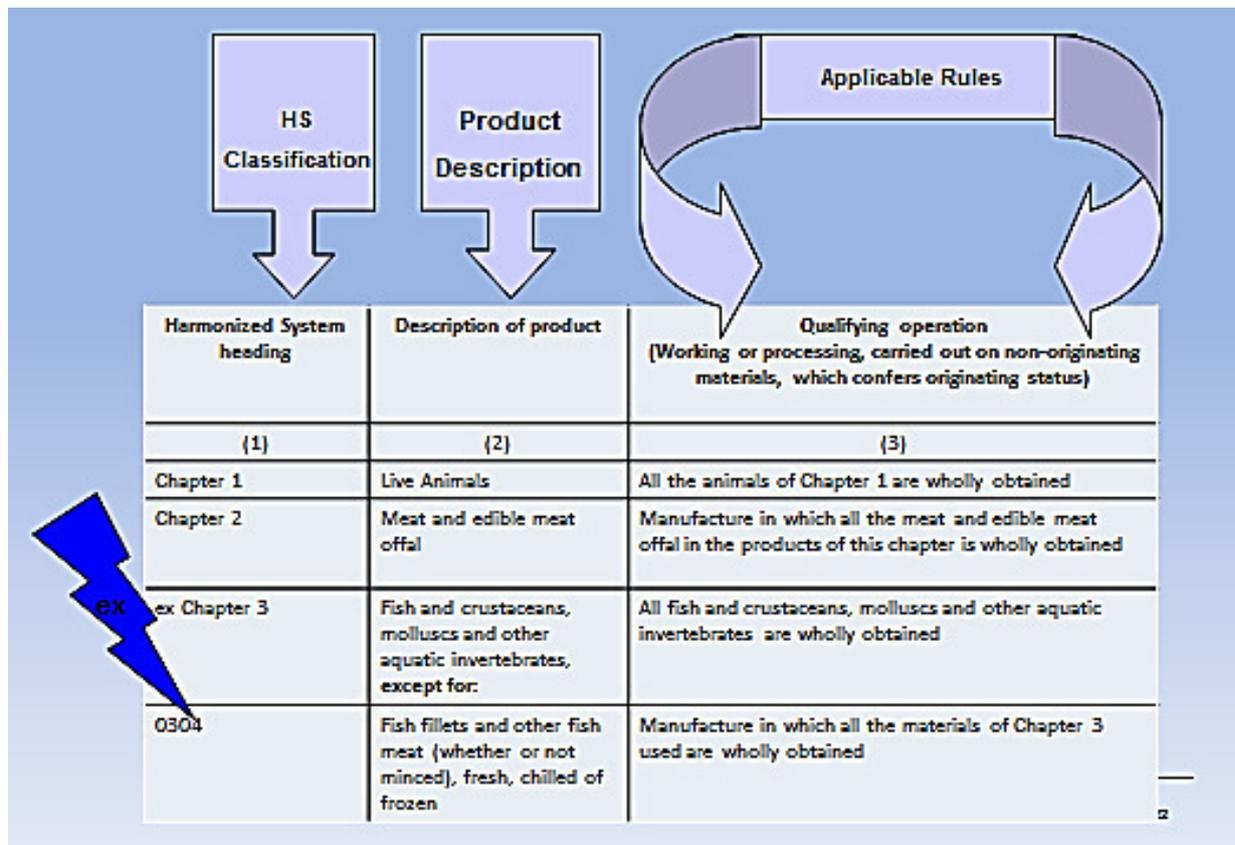
The chapter rule stipulates a rule or several rules of origin applicable to each HS chapter, followed sometimes by the words “except for”. The list rules then provide a specific rule of origin for a certain heading or sub-heading of the HS. This exception dismisses the application of the chapter rule, if there is a product-specific rule applicable to the product concerned.

The specific rules of origin are applicable solely for the products concerned; there is no horizontal rule of origin for sufficiently worked or processed products.

Note:

The Harmonized Commodity Description and Coding System generally referred to as the "Harmonized System" or simply "HS" is a multi-purpose internationally applied nomenclature related to goods in trade and developed by the World Customs Organization (WCO). In some cases, use of the HS classification is absolutely mandatory to find and apply the product specific rule of origin. The reference to "Chapter" means the first 2-digit HS numbers, and "heading" in the rules of origin refers to the 4-digit HS heading. "Subheading" refers to a 6-digit HS code.

Example of List Rule with specific exception:



Example of List Rule without specific exception:

Harmonized System heading	Description of product	Qualifying operation (working or processing, carried out on non-originating materials, which confers originating status)
Chapter 42	Articles of leather; saddlery and harness; travel goods, handbags and similar containers; articles of animal gut (other than silk worm gut)	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% of the ex-works price of the product

Example of a specific rule of origin for a LDC:

Rules of origin – Textiles sector

Chapter 61	Articles of apparel and clothing accessories, knitted or crocheted:		
	-Obtained by sewing together or otherwise assembling, two or more pieces of knitted or crocheted fabric which have been either cut to form or obtained directly to form	(a) LDCs Manufacture from fabric	(b) Other beneficiary countries Knitting and making-up (including cutting)
	-Other	Spinning of natural and/or man-made staple fibres or extrusion of man-made filament yarn, in each case accompanied by knitting (knitted to shape products) or Dyeing of yarn of natural fibres accompanied by knitting (knitted to shape products)	

3.5.2 HOW DOES A CHANGE OF TARIFF CLASSIFICATION RULE WORK

Based on the HS, the **change of tariff classification rule (CTC)** works on the assumption that if an imported material changes its tariff classification (at a certain level) in the course of its processing, it has been sufficiently transformed. For example, the reference to “Heading” in the EU GSP rules of origin refers to the 4-digit HS heading. If the main article is classified in 8403.10 and the parts in 8403.90, they are part of the same heading for the purpose of the origin rule.

Examples:

- “Manufacture from materials of any chapter, except that of the product”;
- “Manufacture from materials of any heading, except that of the product”;
- “Manufacture from materials of any heading”;
- “Manufacture from materials of any heading, except that of the product and of heading 8522”;
- “Manufacture from materials of any sub-heading, except that of the product”.

On the positive side, CTC rules are objectively based on the HS and allow both exporters and customs administrations to easily confirm and document if the finished product originates in the country of exportation. All that is required is that the imported material undergoes the required change in classification. Additionally, the classification of the imported material is already a matter of record. All these features make the CTC rules easily ascertainable and verifiable.

One of the major disadvantages of the CTC rules is that the HS was not designed for rules of origin purposes. Therefore, the application of exceptions or additional rules is often needed, such as value added and/ or listed operations, to the CTC rule.

Another difficulty associated with the CTC rule of origin is that classification under the HS can be complicated. Accurate tariff classification depends on a sophisticated understanding of the HS and detailed product information (which can sometimes be hard to obtain).

Note:

Originating material does not have to be transformed according to CTC rules. For example, if a “change in heading” is required for a product, then this requirement only applies to non-originating inputs. Inputs that are originating in Myanmar can be used even if they fall under the same HS heading.

3.5.3 WHAT IS THE “EX-WORKS PRICE”-BASED VALUE CONTENT CRITERIA

Unlike other Regional Trade Agreements (RTAs) or Free Trade Agreements (FTAs), the EU GSP Rules of Origin (RoO) do not define the value added to the imported material, but start from the “Ex-works price” of the product obtained and refer to the value of non-originating materials used. The ex-works price is the price paid for the product ex-works to the manufacturer in whose undertaking the last working or processing is carried out. From this ex-works price, the value of the non-originating materials has to be deducted. This allows goods to originate in the beneficiary country by respecting a prescribed maximum value of non-originating material incorporated into the final product.

The EU approach, focusing on the final ex-works price of the product and the value of the materials used, avoids some of the tricky calculations necessary to assess the value of overhead and production costs. Non-originating materials used can be taken into consideration using the customs value at the time of importation. The reference price of the product (consignment) is its ex-works price.

A negative aspect of the value added criterion is the potential for changes to prices of imported materials or to the ex-works prices of the products, e.g. due to exchange rates or other factors.

When applying the value added rule, operators might have to reveal their price calculations (which are possibly viewed as trade secrets) to the customs administration in the process of verification of origin.

Examples of value content rules:

- “Manufacture in which the value of all the materials used does not exceed 50 % of the ex-works price of the product” (e.g. many industrial products from Chapters 25 to 97 with exception to textiles and garments of Chapters 50 to 63);
- “Manufacture in which the value of all the materials used does not exceed 70 % of the ex-works price of the product” (e.g. for assembly operations in the machinery sector, for LDCs only).

3.5.4 SPECIFIC OPERATIONS

This method of defining sufficient transformation usually identifies the component in a product that gives the product its essential character and specifies that the component be produced in the beneficiary country. “Prescribed operations” also refers to the use of lists that describe for each product the processing operations that must be performed on the materials. These

operations are considered to be sufficiently important to the manufacturing of a particular good and therefore able to confer originating status to the finished product. Some examples are:

- For yarn of wool: “Spinning of natural fibres or extrusion of man-made fibres accompanied by spinning.”
- Rule for woven fabrics of man-made staple fibres:
“Spinning of natural and/or man-made staple fibres or extrusion of man-made filament yarn, in each case accompanied by weaving
Or
Weaving accompanied by dyeing or by coating
Or
Yarn dyeing accompanied by weaving
Or
Printing accompanied by at least two preparatory or finishing operations (such as scouring, bleaching, mercerising, heat setting, raising, calendering, shrink resistance processing, permanent finishing, decatizing, impregnating, mending and burling), provided that the value of the unprinted fabric used does not exceed 47,5 % of the ex-works price of the product.”

The new rule of origin in the textiles sector applicable for LDC apparel production is highly beneficial for Myanmar, since it requires only a so-called “single” transformation step. As seen in the example at 3.5.1, the rule of origin for assembled (sewn together) garments is “manufacture from fabric”. This rule applies in HS Chapters 61 and 62. The rule is a perfect fit for the Myanmar garment industry, which performs “cutting, manufacturing, packaging” (CMP) operations. Myanmar producers are therefore allowed to source fabric from any competitive supplier in any third country, such as China. This rule accordingly ensures a high degree of competitiveness in the EU market for the final product.

Note:

Originating material does not have to be transformed according to specific operations. For example, if “weaving” is required for a product, then this requirement only applies to non-originating inputs. Inputs that are originating in Myanmar can be used even if the specific operation is not undertaken.

3.5.5 COMBINATIONS

List rules often provide further alterations to the rules presented, combining them in different manners. Crucially, rules can be combined such as several rules have to be fulfilled (“and”, “provided that”) or such that producers can choose between rules (“or”). Some examples (emphasis added):

- “Manufacture:
 - from materials of any heading, except that of the product, and
 - in which the value of all the materials of Chapter 4 used does not exceed 40 % of the weight of the final product.”
- “Printing accompanied by at least two preparatory or finishing operations (such as scouring, bleaching, mercerising, heat setting, raising, calendering, shrink resistance processing, permanent finishing, decatizing, impregnating, mending and burling), provided that the value of the unprinted fabric used does not exceed 47.5 % of the ex-works price of the product.”

- Manufacture from materials of any heading, except that of the product or Manufacture in which the value of all the materials used does not exceed 70 % of the ex-works price of the product

3.6 CUMULATION SYSTEM

3.6.1 RELEVANCE OF CUMULATION

Cumulation allows using inputs originating in the EU (bilateral cumulation) or inputs from other countries, whereas these inputs are treated as if they originated in Myanmar. This can help fulfilling rules of origin. For example, if rules of origin for a particular product require a minimum local value share of 30% of the ex-works price, then EU-originating inputs would also count towards that local value share. Cumulation thus adds flexibility and may confer origin to products that otherwise would not be considered originating.

That said, whenever rules of origin are already very flexible, cumulation provisions may add little additional flexibility. For the main product category for which Myanmar uses the EU GSP, namely clothing and other textile products, the rules of origin are very flexible. For example, it is usually allowed to use any third-party fabric for the production of clothing. This means that there is no advantage if EU-originating fabric is used. The product would qualify in any case, even if Chinese fabric is used. This would be different if rules of origin required the use of originating fabric, but this is not the case in the EU's GSP.

Note:

Cumulation provisions are particularly relevant whenever rules of origin are restrictive. For products with very flexible rules of origin that allow a large degree of third-party inputs, cumulation is likely less relevant.

3.6.2 BILATERAL CUMULATION

The manufacturer in the beneficiary country is allowed to **use materials originating in the EU** in local production and account for them as originating Myanmar materials in the determination of origin. This system is called bilateral cumulation and applies for all agricultural and industrial products.

Furthermore, the EU, Norway, Switzerland and Turkey agreed in an exchange of letters to apply similar GSP rules of origin and to recognise each other's products as originating if used in the production of goods in a developing country. However, this cumulation option between the four partners applies only to industrial goods falling under HS chapters 25 to 97.

The beneficiary country can integrate materials originating in the EU, Norway, Switzerland or Turkey and take them into consideration as its own originating materials in the determination of origin. This option naturally stimulates the use of materials from the EU and its GSP partners. The condition is that the European exporter issues a **certificate of origin EUR1** (or invoice declaration if applicable) for the purpose of bilateral cumulation under the GSP rules of origin. This is currently replaced by the new **REX system** under which European exporters will register and self-declare origin.

Reminder:

To apply cumulation and claim preferential GSP origin, the manufacturing or processing in the beneficiary country has to go beyond minimal operations (see also hereafter).

3.6.3 REGIONAL CUMULATION AND OTHER FORMS OF CUMULATION

“Regional cumulation” means a system whereby products which originate in a country which is a member of a certain regional group are considered as materials originating in another country of the same regional group (or a country of another regional group where cumulation between groups is possible) when further processed or incorporated in a product manufactured there. However, the working or processing has to **go beyond minimal operations** (see point 3.7.1). There are four regional groups in the GSP within which regional cumulation is allowed:

- (a) Group I: Brunei, Cambodia, Indonesia, Laos, Malaysia, **Myanmar/Burma**, Philippines, Thailand, Vietnam;
- (b) Group II: Bolivia, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Peru, Venezuela;
- (c) Group III: Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, Sri Lanka;
- (d) Group IV: Argentina, Brazil, Paraguay and Uruguay.

The new rules of regional cumulation applicable as of 1 January 2014 provide however that regional cumulation may only take place with countries that are “beneficiary” countries of the GSP. These beneficiary countries exclude high income and upper-middle income countries as well as countries with whom the EU has signed an Free Trade Agreement (after a transition period of two years). Concretely, as from 1 January 2014, both Brunei and Malaysia are no longer parts of the regional cumulation due to their higher income economy status. Since 1 January 2015, the same applies also for Thailand. This means that since January 2015, Myanmar can only cumulate with the following GSP countries of the Group I: Cambodia, Indonesia, Laos, the Philippines and Vietnam.

In order to guard against distortion of trade between countries having different levels of tariff preference, certain sensitive products are excluded from regional cumulation (i.e. meat, rice, rice flour, cocoa or coffee and their preparations).

Note:

The rules of origin to confer origin on the input material used in the regional group are based on the EU GSP RoO, not on the RoO of the regional preferential arrangement.

At the request of the authorities of a Group I or Group III beneficiary country, regional cumulation between countries of those groups **may be granted** by the Commission, provided that the Commission is satisfied that each of the conditions as set out in the Regulation on GSP RoO are met.

At the request of any beneficiary country’s authorities, extended cumulation between a beneficiary country and a country with which the European Union has a free-trade agreement in force, may be granted by the Commission, provided that each of the conditions as set out in the Regulation on GSP RoO are met (administrative cooperation,...). There is a number of countries in Asia with whom the EU has FTAs in place, or is negotiating FTAs (e.g., Singapore, Vietnam). It is important to note that materials falling within Chapters 1 to 24 of the HS are excluded from the extended cumulation.

3.7 OTHER RULES AND REGULATIONS

There are a host of additional rules and regulations related to the operation of rules of origin. These rules impose restrictions on the application of the rules of origin cited above.

3.7.1 MINIMAL OPERATIONS (INSUFFICIENT WORKING OR PROCESSING)

Even if an origin rule found in the list is fulfilled, some operations are excluded from conferring origin to the product. Those operations also prevent the change in origin in the case of cumulation of origin. Such minimal operations are:

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

For the purposes of the textile sector, some additional simple operations mentioned in Annex 22-05 to the Commission Delegated Regulation 2015/2446 are considered as not conferring origin in a regional cumulation. Those operations are:

- fitting of buttons and/ or other types of fastenings,
- making of button-holes,
- finishing off the ends of trouser legs and sleeves or the bottom hemming of skirts and dresses etc.,
- hemming of handkerchiefs, table linen etc.,
- fitting of trimmings and accessories such as pockets, labels, badges, etc.,
- ironing and other preparations of garments for sale 'ready-made',
- or any combination of such working.

3.7.2 PRINCIPLE OF TERRITORIALITY

All working or processing to obtain an originating product must be carried out inside the beneficiary country without interruption.

Where exported originating goods return, they must be considered as non-originating unless:

- the returning goods are the same as those exported; and
- they have not undergone any operation beyond that necessary to preserve them in good condition.

3.7.3 NON-MANIPULATION RULE (PREVIOUSLY 'DIRECT TRANSPORT')

This rule has been significantly simplified. The rule requires that goods presented to customs upon declaration for release for free circulation in the European Union have to be the same ones that left the beneficiary country of export and have not been altered or transformed in any way en route. Goods also have to remain under customs supervision while in transit in other countries. Compliance with this rule is considered as satisfied unless customs has doubts that the rule has been respected. In such cases, the declarant of the goods has to prove, by any available means related to transport, that the goods have not been altered.

3.7.4 RELAXATIONS TO THE ORIGIN RULES

a) Tolerance rule for all products except the textiles sector

Non-originating materials which, according to the conditions set out in the list rules 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:

- 15 % of the weight of the product for products falling within Chapters 2 and 4 to 24 of the HS, other than processed fishery products of Chapter 16;
- 15 % of the ex-works price of the product for other products, except for products falling within Chapters 50 to 63 (textiles sector) of the HS.

Note:

The tolerance rule does not allow exceeding the percentages of non-originating materials set in the product specific list rules.

b) Special tolerance rules for the textiles sector

The introductory notes to the list rules of origin contain a detailed set of special tolerance rules applicable exclusively in the textiles sector (products falling within Chapters 50 to 63 of the HS).

c) Derogation from meeting the rules of origin

Upon the EU Commission's initiative or in response to a request from a beneficiary country, derogations from meeting the rules of origin can be granted based on Art. 64 (6) of the EU regulation No 952/2013. The precondition is either that internal or external factors temporarily deprive the beneficiary country of the ability to comply with the applicable rules of origin, or that

it requires time to prepare it to comply with the set of rules of origin. Such a request for derogation should be made in writing to the EU Commission. If such a derogation is granted for specific products, this has to be stated in Box 4 of the certificate of origin Form A issued by the competent authority in the beneficiary country (in the case of Myanmar, this is the Ministry of Commerce).

3.7.5 DUTY DRAWBACK

Usually in EU RTAs, a specific rule forbids beneficiary countries from applying duty drawback to non-originating inputs, and at the same time from claiming preferential treatment of the final product upon importation in the EU. There is no such requirement in the EU GSP RoOs, however. This notion is also important as processing in free zones (FZs) or special economic zones (SEZs) does not negatively influence the origin determination of the product.

3.7.6 ACCESSORIES, SPARE PARTS AND TOOLS

If accessories, spare parts and tools are normally included in an item of equipment (e.g. a spare wheel, safety triangle, or toolkit in a car), their origin should be assessed following the rules applied to that equipment.

3.7.7 COMPOSITION OF SETS

When a set of different articles is composed of originating and non-originating components, the value of non-originating products included in the set may not exceed 15% of the ex-works price of the set. This means that 85% of the articles in the set have to satisfy the rules of origin.

3.7.8 IF STILL IN DOUBT – BINDING ORIGIN INFORMATION

If, after all, doubts persist about the correct origin determination for a specific product, a so-called binding origin information (BOI) decision might be envisaged. The BOI can be obtained in the EU Member State's customs administration where the information will be used (country of future importation). It is valid for three years. It can also be obtained by the importer into the EU. The latter option presumes, however, that there is a certain trust between exporter and importer as sensitive production data or cost calculations might be exchanged.

BOIs may be annulled if it emerges that they were based on wrong or incomplete information provided. A change in the law might also render a BOI invalid.

A list of the EU Member States authorities responsible for issuing BOIs is published in the EU Official Journal (OJ C 329, 24.12.2008, p. 10).

4 PROOF OF ORIGIN

4.1 DOCUMENTARY EVIDENCE IN THE EU GSP UNDER THE CURRENT SYSTEM (TO BE PHASED OUT ONCE REX IS IMPLEMENTED)

Until the system of **registered exporters** (REX system) is in place, the principal proof of origin applicable for business purposes is the certificate of origin (CO) **Form A**. This form was adopted in 1970 by UNCTAD's Working Group on Rules of Origin as a common CO for the purposes of the GSP. Usually the Form A has to be issued and shipped with the consignment. Form A remains the only harmonised instrument in the several GSPs applied worldwide.

The validity of a proof of origin is 10 months from the date of issuance and cannot be extended. Exceptionally, it can be presented to the customs authorities of the EU after expiry, subject to certain conditions.

Art. 74 (3) of the Commission Implementing Regulation 2015/2447 allows under **special circumstances** to apply and issue a Certificate of Origin Form A **after the shipment has left** and even if a shipment has already entered the EU. The competent authority will apply a notion in Box 4 of the Form A saying '*Issued Retrospectively*'. The reason for this retrospective issuance is the possibility offered by the EU Customs Code to claim preferential treatment even after the goods have already entered the EU customs territory for free circulation.

A **duplicate Form A** may be issued if the original Form A has been lost, stolen or destroyed. Upon the written request of the exporter, the Ministry of Commerce will issue a new Form A. In this case Box 4 has to contain the serial number of the original Form A lost, and the wording "Duplicate".

For **smaller invoices** an origin declaration on the invoice itself is allowed (for consignments below the value of EUR 6,000). No evidence is required for small private packages (below EUR 500 in value) and for travellers' luggage (below EUR 1,200 in value).

Note:

The initiative to claim belated preferential tariff treatment relies on the EU importer or trader. Myanmar exporters should not automatically apply for a retrospective issuance of a Form A, but may obviously advise their EU customer or customs agent that such a possibility exists.

4.2 RULES OF ORIGIN ARRANGEMENTS FROM 2017/2018: REGISTERED EXPORTER (REX) - SELF CERTIFICATION IN FORM OF STATEMENTS ON ORIGIN

Since the beginning of 2017, the EU is implementing a new system of origin declaration for imports under GSP, the Registered Exporter (REX) system, which is gradually implemented in GSP beneficiary countries. Detailed information about the new scheme can be found [here](#)⁵. For

⁵ See

https://ec.europa.eu/taxation_customs/business/calculation-customs-duties/rules-origin/general-aspects-preferential-origin/arrangements-list/generalised-system-preferences/the-register-exporter-system_en

Myanmar, implementation is expected to start in 01/2018. Notably, India, Laos, Nepal and Pakistan are among countries in Asia that are implementing REX already in early 2017. The EU is also planning to implement such a system gradually in its RTAs. For example, the recently signed RTA with Canada foresees such a system.

The REX system is based on a principle of self-certification by economic operators who will make out themselves so-called statements on origin. To be entitled to make out a statement on origin, an economic operator will have to be registered in a database by his competent authorities (the Ministry of Commerce in the case of Myanmar) after submitting an application form. Guidelines and a link to the application form can be found in **Annex B** of this handbook. The economic operator will become a "registered exporter".

The REX system will progressively and completely replace the current system of origin certification based on certificates of origin issued by governmental authorities and on invoice declarations made out under certain conditions by economic operators. This means as well that the REX system is used among GSP beneficiary countries applying regional cumulation.

The global transition period from the current system of origin certification to the REX system started on 1 January 2017 and will last until 30th June 2020 at the latest.

Since 1 May 2016 and the entry into application of the Union Customs Code (UCC), the rules of the REX system are laid down in Commission Implementing Regulation (EU) No 2015/2447 (the UCC IA, for "Implementing Act").

Under the REX system, exporters are required to be registered in an electronic database and competent authorities of the beneficiary country are required to establish and keep up to date at all times an accurate repository of registered exporters located in that country. The competent authority must be able to attribute a register number to exporters applying for it. The REX number is a string of maximum 35 alphanumeric characters, including a reference to the country of issue.

This approach follows the EU expertise in the field of preferential trade agreements, where so-called "approved exporters" can issue a simple invoice declaration instead of a certificate of origin. Under the REX system, exporters can issue – once registered – simple statements on origin regardless of the value of the consignment. The format for the statement can be found in **Annex B** of this handbook.

Specifically, the record information, which has also to be submitted to the EU and which can be publicly searched, must contain the following details:

- name and full address of the place where Registered Exporter is established/ resides, including the identifier of the country or territory (ISO alpha 2 country code);
- number of Registered Exporter;
- products intended to be exported under the scheme (indicative list of Harmonized System chapters or headings as considered appropriate by the applicant);
- dates as from and until when the exporter is/ was registered;
- the reason for withdrawal (registered exporter's request/ withdrawal by competent authorities). This data shall only be available to the competent authorities.

Importing companies in the EU also need to register for REX if they export inputs used for cumulation purposes, or if imports under GSP are re-exported to Switzerland or Norway. An

example of such an entry of a German-based company can be found [here](#)⁶. Entries of Myanmar-based companies would look similar.

The EU has set the date for the implementation of this system in the beneficiary countries for 1st January 2017. The beneficiary countries should notify the EU Commission 3 months ahead of the implementation of the system (and mention the competent authorities).

From 1 July 2016 and by 1 July 2019 at the latest the Commission will examine the state of preparation of beneficiary countries for the application of the registered exporter system. The Commission will propose any necessary adjustments. Indeed, beneficiary countries that may not be able to implement the system in 2017 will have to notify the EU Commission at the latest by July 2016 and request an extension of the deadline. The EU regulation allows an extension until 1 January 2020.

On the one hand, the system will bring an additional administrative burden for the implementing authority, while on the other hand it is clearly a simplification for exporters once registered. Importantly, it will relieve the exporting country's authorities from issuing certificates of origin. However, authorities could be requested by EU authorities to cooperate and provide support in case of an investigation, e.g., if EU authorities have doubts about the accuracy of an origin statement made by a Myanmar exporter. Competent authorities shall also carry out regular controls on exporters on their own initiative in order to verify the originating status of the products.

Implemented or not, the REX will substitute from 1 January 2018 the older invoice declaration with the "statement on origin" on invoices or other commercial documents. However, if not registered yet, the statement on origin will have the same value limits as the invoice declaration had previously (i.e. EUR 6,000 for commercial consignments).

4.3 COOPERATION UNDER THE GSP ROO IN EUROPE

The EU, Switzerland, Norway and latterly Turkey have agreed to:

- Apply similar rules of origin for their respective GSPs; and
- Recognise proofs of origin established by each other's customs administrations (so called replacement certificates Form A)

As a result, Myanmar exporters can benefit from the following improvements:

- Recognition of origin in the EU is also valid in Norway, Switzerland and Turkey;
- Enhanced cumulation is possible with materials from the EU, Norway, Switzerland and Turkey, as previously indicated;
- Easier transit of GSP-benefiting products across the European continent (as long as the products stay under customs control). The splitting-up of consignments is possible to customers in Norway, Germany and in Switzerland, for instance.

These three countries will also implement the REX system. This means that exporters from Myanmar can prove origin in those markets by registering and then making origin declarations. Also, exporters of inputs in those three markets that export to Myanmar can declare origin using the REX system if such inputs are built into final products that are then exported back to Europe

⁶ See

http://ec.europa.eu/taxation_customs/dds2/eos/rex_validation.jsp?Type=REX&Number=DEREX87500002&Lang=en&Expand=true

(bilateral or diagonal cumulation). Further information on REX by Norway and Switzerland is available online.⁷

Note that Norway, Switzerland and Turkey do not necessarily apply the same tariff preferences for developing countries. However, currently all three markets apply duty-free access for LDCs for most, if not all, products.⁸

5 GSP BENEFICIARIES AND FUTURE DEVELOPMENTS

In 2014, the number of GSP “beneficiaries” was reduced from 176 to 92 and this number has further fallen in recent years, as some countries have graduated. The current GSP focuses preferences exclusively on those countries that need them most. Countries that are no longer beneficiary countries are **either** countries with other preferential regimes to access the EU market **or** *high income* or *upper middle income* countries as classified by the World Bank.

Although many countries have exited the scheme since its last reform, and hence will no longer be beneficiary countries, these countries will remain “eligible”. This means that they could come back into the “beneficiary” list if their income status deteriorates or the preferential market arrangement was terminated.

Moreover, the **new EU GSP regulation** continues to proceed with the so-called **graduation of sectors** that become too competitive. The list of product sections from given developing countries that lose GSP preference through such graduation is reviewed every three years. Product graduation does **not** apply to EBA countries like Myanmar.

Countries can also be graduated if they reach for three consecutive years the threshold of upper middle or high income country classified by the World Bank (**country exit**). This will be reviewed on an annual basis. At the same time, the GSP will no longer be applicable for countries that already have another preferential access to the EU market. However, graduation from EBA only occurs if a country graduates from LDC status. Notably, some LDCs are lower middle income countries or even upper middle income countries and still remain eligible for EBA (e.g., Angola or Tuvalu) as long as they are classified as LDCs by the UN.

Both product and country graduation means that fewer competitors to Myanmar will have access to GSP. For instance, Thailand is no longer beneficiary of GSP since 1 January 2015. This means that for products such as garments, preparations of meat and fish, as well as prepared foodstuffs, Thai producers now face full Most Favoured Nation (MFN) tariffs upon importation of their products into the EU.

Myanmar may graduate from LDC status in coming years. Myanmar already fulfils two out of three criteria to graduate⁹, and according to media reports, graduation is seen as possible for

⁷ See

<https://www.ezv.admin.ch/ezv/en/home/information-companies/exemptions--reliefs--preferential-tariffs-and-export-contributio/exportation-from-switzerland/free-trade--preferential-origin/REX.html> for Switzerland and <http://www.toll.no/en/corporate/import/free-trade/gsp---generalized-system-of-preference/the-registered-exporter-system-the-rex-system-/> for Norway.

⁸ See the WTO’s database on GSP schemes at <http://ptadb.wto.org/ptaTradeInfo.aspx>

⁹ See

<https://www.un.org/development/desa/dpad/least-developed-country-category-myanmar.html>.

the 2020ies. After graduation, Myanmar would still enjoy EBA benefits for a transitional period of three years. Afterwards, Myanmar would only have access to standard GSP preferences, which is significantly less generous than the EBA scheme for LDCs, including for garments and textiles. However, Myanmar could apply to enter the GSP+ scheme, which would provide for duty-free access for many export products, notably including garments, although rules of origin are currently stricter under GSP and GSP+, as compared to EBA. Graduation from EBA would almost certainly only become effective after the expiry of the current GSP at the end of 2023, which means that alternative regimes, such as GSP+, may be different from today's regime. Another option for Myanmar would be to sign an RTA with the EU.

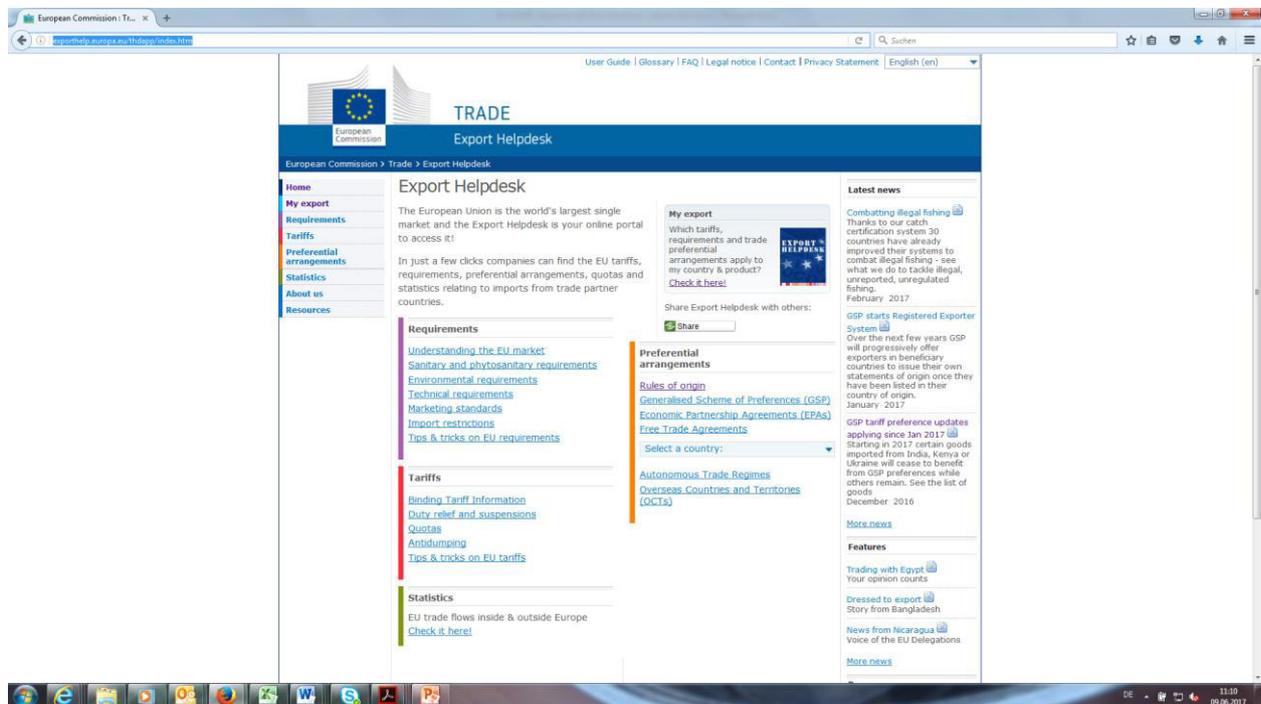
The EU may apply further changes to the GSP regime after the expiration of the current scheme, which is valid until the end of 2023. However, it can be assumed that the EBA regime will remain largely unchanged. Possible changes could affect product coverage of GSP and GSP+, rules of origin, conditions to enter or remain in GSP+, etc. However, as of mid-2017, there are no indications whether any such changes will be envisaged.

ANNEX A

Sources of further information about the EU GSP/ RoO

DG TRADE's Export Helpdesk

<http://exporthelp.europa.eu/thdapp/index.htm>



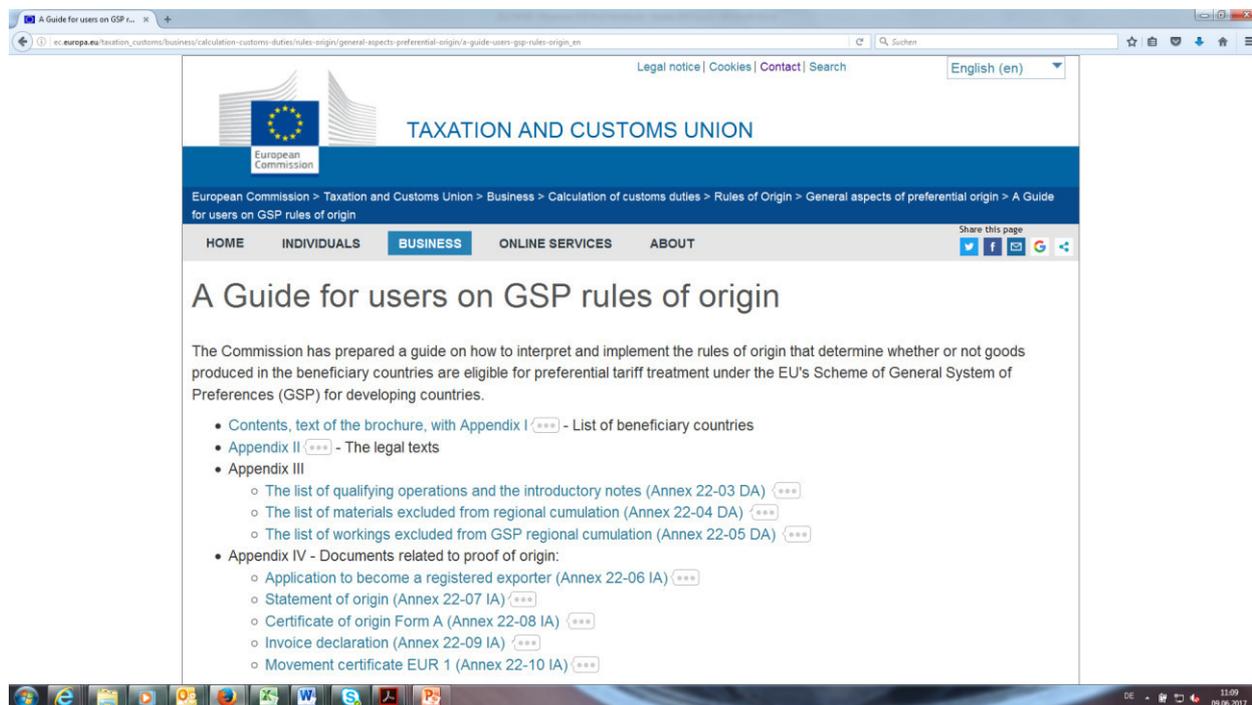
The website contains all information about the EU GSP scheme, EU Rules of Origin, Proof of Origin, and GSP customs duty rates. In addition to the information on GSP, the website also provides information on EU import requirements, tariffs, statistical data, and market information.

To help better explain the EU rules of origin, DG TRADE has also published factsheets per product/trade agreement. An example of the factsheets explaining EU RoO for fishery products can be retrieved from the link below:

http://trade.ec.europa.eu/doclib/docs/2013/may/tradoc_151173.pdf

Information given at the homepage of the Directorate General for Taxation and Customs Union (DG TAXUD, European Commission) (on RoO):

http://ec.europa.eu/taxation_customs/business/calculation-customs-duties/rules-origin/general-aspects-preferential-origin/a-guide-users-gsp-rules-origin_en



The screenshot shows a web browser window displaying the European Commission website. The page title is "A Guide for users on GSP rules of origin". The breadcrumb trail is: European Commission > Taxation and Customs Union > Business > Calculation of customs duties > Rules of Origin > General aspects of preferential origin > A Guide for users on GSP rules of origin. The page content includes a navigation menu with "HOME", "INDIVIDUALS", "BUSINESS", "ONLINE SERVICES", and "ABOUT". The main heading is "A Guide for users on GSP rules of origin". Below the heading, a paragraph states: "The Commission has prepared a guide on how to interpret and implement the rules of origin that determine whether or not goods produced in the beneficiary countries are eligible for preferential tariff treatment under the EU's Scheme of General System of Preferences (GSP) for developing countries." A bulleted list of links is provided:

- [Contents, text of the brochure, with Appendix I](#) - List of beneficiary countries
- [Appendix II](#) - The legal texts
- [Appendix III](#)
 - [The list of qualifying operations and the introductory notes \(Annex 22-03 DA\)](#)
 - [The list of materials excluded from regional cumulation \(Annex 22-04 DA\)](#)
 - [The list of workings excluded from GSP regional cumulation \(Annex 22-05 DA\)](#)
- [Appendix IV - Documents related to proof of origin:](#)
 - [Application to become a registered exporter \(Annex 22-06 IA\)](#)
 - [Statement of origin \(Annex 22-07 IA\)](#)
 - [Certificate of origin Form A \(Annex 22-08 IA\)](#)
 - [Invoice declaration \(Annex 22-09 IA\)](#)
 - [Movement certificate EUR 1 \(Annex 22-10 IA\)](#)

Information given at the homepage of the Directorate General for Trade, European Commission (on the EU GSP Scheme):

http://ec.europa.eu/trade/policy/countries-and-regions/development/generalised-scheme-of-preferences/index_en.htm

Generalised Scheme of Preferences (GSP)

The EU's "Generalised Scheme of Preferences" (GSP) allows developing countries to pay less or no duties on their exports to the EU. This gives them vital access to EU markets and contributes to their economic growth.

As from 1 January 2014, the EU's reformed GSP set out by Regulation 978/2012 applies. The reformed Scheme focuses support on developing countries most in need.

On 28 January 2016, the Commission published its first bi-annual [report](#) to the European Parliament and the Council on the effects of the reformed GSP, in particular the [GSP+ arrangement](#) supporting sustainable development and good governance.

Interim evaluation of the EU Regulation No 978/2012 on a scheme of generalised tariff preferences (GSP Regulation)

- [Evaluation Roadmap](#)
- [Consultation Strategy](#)
- [Ongoing GSP mid-term evaluation](#)

Generalised Scheme of Preferences in a nutshell

Information about applied MFN and preferential tariffs and other entry conditions applicable to goods may be obtained at the following address:

Online TARIC consultation:

http://ec.europa.eu/taxation_customs/dds2/taric/taric_consultation.jsp?Lang=en

TARIC Consultation

Search for measures

Goods code [\[Browse\]](#) Country of origin/destination: Myanmar - MM

[\[Advanced search\]](#)

[Retrieve Measures](#)

The current reference date for the query is 09-06-2017 [\[change\]](#)

ANNEX B

Application to Become a Registered Exporter

The application form can be filled out online on the **pre-application webpage** for exporters in GSP beneficiary countries:

<https://customs.ec.europa.eu/rex-pa-ui/>

The document can subsequently be saved, printed and submitted to the Ministry of Commerce.

Guidelines for filling out the application form:

<p>1. Exporter's name, full address and country, EORI or TIN (2).</p> <p>Name, Street and Number, Postcode, City, Country and Trader Identification Number (TIN)</p>
<p>2. Contact details including telephone and fax number as well as e-mail address where available.</p> <p>Telephone number, Fax number and Email address (<u>optional</u>)</p>
<p>3. Specify whether the main activity is producing or trading.</p> <p>It can be one of the two or both</p>
<p>4. Indicative description of goods which qualify for preferential treatment, including indicative list of Harmonised System headings (or chapters where goods traded fall within more than twenty Harmonised System headings).</p> <p>The list is indicative. If a statement on origin is made out for a product which is not mentioned in this list, it is not a reason for refusing the statement on origin. However, customs authorities might consider it a reason for launching verification procedures.</p>
<p>5. Undertakings to be given by an exporter</p> <p>The undersigned hereby:</p> <ul style="list-style-type: none">— declares that the above details are correct,— certifies that no previous registration has been revoked; conversely , certifies that the situation which led to any such revocation has been remedied,— undertakes to make out statements on origin only for goods which qualify for preferential treatment and comply with the origin rules specified for those goods in the Generalised System of Preferences,— undertakes to maintain appropriate commercial accounting records for production/supply of goods qualifying for preferential treatment and to keep them for at least 3 years from the end of the calendar year in which the statement on origin was made out,— undertakes to immediately notify the competent authority of changes as they arise to his registration data since acquiring the number of registered exporter,— undertakes to cooperate with the competent authority,

- undertakes to accept any checks on the accuracy of his statements on origin, including verification of accounting records and visits to his premises by the European Commission or Member States' authorities, as well as the authorities of Norway, Switzerland and Turkey (applicable only to exporters in beneficiary countries),
 - undertakes to request his removal from the system, should he no longer meet the conditions for exporting any goods under the scheme,
 - undertakes to request his removal from the system, should he no longer intend to export such goods under the scheme.
- With his signature, the exporter consents to the points mentioned above (mandatory)

Place, date, signature of authorised signatory, name and job title

6. Prior specific and informed consent of exporter to the publication of his data on the public website

The undersigned is hereby informed that the information supplied in this declaration may be disclosed to the public via the public website. The undersigned accepts the publication of this information via the public website. The undersigned may withdraw his consent to the publication of this information via the public website by sending a request to the competent authorities responsible for the registration.

With his signature, the exporter consents to the publication of his registration data on a public website (optional). Without a signature, an anonymous subset of the data will be published.*

Place, date, signature of authorised signatory, name and job title

7. Box for official use by competent authority

Box 7. is for official use only!

The applicant is registered under the following number:

Registration Number: _____

Date of registration _____

Date from which the registration is valid _____

Signature and stamp _____

*Registered Exporter's data are made available on a public website:

http://ec.europa.eu/taxation_customs/dds2/eos/rex_validation.jsp?Lang=en

This allows economic operators to verify the validity of the exporter from which they received the statement on origin.

If the exporter has not consented to the publication of his registration data (Box 6. of the application form), only the following information will be visible on the public website: the REX number; the date from which the registration is valid; the date of revocation (if applicable); information on whether the registration applies also to exports to Norway, Switzerland or Turkey; the date of the last synchronisation between the REX system and the public website.

Statement on Origin to be used under the REX system

The statement on origin for registered exporters and for low value consignments for all exporters from 1 January 2018 (or a later date if implementation of REX is delayed):

To be made out on any commercial documents showing the name and full address of the exporter and consignee as well as a description of the products and the date of issue (1).

English version

The exporter ... (Number of Registered Exporter (2), (3), (4)) of the products covered by this document declares that, except where otherwise clearly indicated, these products are of ... preferential origin (5) according to rules of origin of the Generalised System of Preferences of the European Union and that the origin criterion met is ... (6).

Footnotes:

(1) Where the statement on origin replaces another statement in accordance with Article 101(2) and (3) of Implementing Regulation (EU) 2015/2447 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 (See page 558 of this Official Journal.), the replacement statement on origin shall bear the mention 'Replacement statement'. The replacement shall also indicate the date of issue of the initial statement and all other necessary data according to Article 82(6) of Implementing Regulation (EU) 2015/2447.

(2) Where the statement on origin replaces another statement in accordance with sub-paragraph 1 of Article 101(2) and paragraph (3) of Article 101, both of Implementing Regulation (EU) 2015/2447, the re-consignor of the goods making out such a statement shall indicate his name and full address followed by his number of registered exporter.

(3) Where the statement on origin replaces another statement in accordance with sub-paragraph 2 of Article 101(2) of Implementing Regulation (EU) 2015/2447, the re-consignor of the goods making out such a statement shall indicate his name and full address followed by the mention 'acting on the basis of the statement on origin made out by [name and complete address of the exporter in the beneficiary country], registered under the following number [Number of Registered Exporter of the exporter in the beneficiary country]'.

(4) Where the statement on origin replaces another statement in accordance with Article 101(2) of Implementing Regulation (EU) 2015/2447, the re-consignor of the goods shall indicate the number of registered exporter only if the value of originating products in the initial consignment exceeds EUR 6 000.

(5) Country of origin of products to be indicated. When the statement on origin relates, in whole or in part, to products originating in Ceuta and Melilla within the meaning of Article 112 of Implementing Regulation (EU) 2015/2447, the exporter must clearly indicate them in the document on which the statement is made out by means of the symbol 'XC/XL'.

(6) Products wholly obtained: enter the letter 'P'; Products sufficiently worked or processed: enter the letter 'W' followed by a heading of the Harmonised System (example 'W' 9618). Where appropriate, the above mention shall be replaced with one of the following indications: (a) In the case of bilateral cumulation: 'EU cumulation'. (b) In the case of cumulation with Norway, Switzerland or Turkey: 'Norway cumulation', 'Switzerland cumulation', 'Turkey cumulation'. (c) In the case of regional cumulation: 'regional cumulation'. (d) In the case of extended cumulation: 'extended cumulation with country x'.

