



EUROPEAN COMMISSION

DIRECTORATE-GENERAL

TAXATION AND CUSTOMS UNION

Security, Safety, Trade Facilitation, Rules of Origin & International Cooperation

Taskforce 'Coordination and monitoring of the implementation of rules of origin', GSP rules of origin

Brussels, 18.10.2013

TAXUD/B/TF-1/FH

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TAXUD/3334914/13

Working document

CUSTOMS CODE COMMITTEE
ORIGIN SECTION

(Council Regulation (EEC) No 2913/92 of 12 October 1992)

15-16/07/2013, 10.00 – 18.00 hrs

Summary report of the 206th meeting of the ORIGIN SECTION of the CUSTOMS CODE COMMITTEE held in Brussels, from 15 to 16 July 2013

1. APPROVAL OF THE DRAFT AGENDA

COM welcomed the delegate from Croatia, representing her country for the first time in its full capacity.

The agenda was approved.

2. POSSIBLE COMMENTS ON THE DRAFT SUMMARY REPORT OF THE 205TH CCC-ORI MEETING

The draft summary report of the 205th meeting was made available to delegates on 8 July 2013 and again on 10 July 2013 further to comment made by two delegations. It was kept open to comments during the following 15 working days. Requests for rectification were presented and implemented. The draft summary report was thus both considered as approved and re-uploaded in its final version on CIRCA on 31 July 2013.

A. ITEMS FOR POSSIBLE VOTE

Nil

B. ITEMS FOR EXAMINATION

3. PREFERENTIAL ORIGIN

3.1. PEM

3.1.1. State of play and future steps and follow-up of the 18th meeting of the pan-Euro-Med Working Group (TAXUD/768157/13 Rev.1)

COM presented the main changes to the presentation made at the PEM Working Group in May. Serbia had ratified the Convention on 1 July 2013 and Israel was planning to do so on 18 July 2013¹. Other changes related to the accession of Croatia to the EU and the organisation of the first Joint Committee of the Convention on 29-30 October 2013. On the latter issue, COM explained that it had consulted its Legal Service after the PEM Working Group meeting of 14 and 15 May 2013 on the question whether or not PEM Parties having signed but not ratified the Convention should have the right to vote on the rules of procedure and on decisions to be taken by the Committee and that the Legal Service had confirmed that such Parties should not be given that right. Else, they would be participating in the creation of and shape rules which may never apply to it, even if this is highly unlikely.

In reply to a question from one delegation, COM confirmed that cumulation involving at the same time the EU, Montenegro and an EFTA State is not yet possible as the link to the Convention remains to be made in the EU-EFTA FTAs and the EU-Montenegro FTA.

Another delegations wondered if delaying the adoption of the rules of procedure would impact the schedule of accession of new members, gave observations on EFTA's requests in the context of market access for European PAPS into their market as well as wondered if and when discussions with Member States would take place on the revision of the Convention prior to the next meeting of the PEM Working Group. COM suggested organising such a discussion at the Committee meeting in September, on the basis of the draft minutes of the PEM Working Group meeting which would soon be published on CIRCABC.

3.1.2. Rules of Procedure for the Joint Committee pursuant to Article 3(4) of the regional Convention on Pan-Euro-Mediterranean Preferential Rules of Origin (TAXUD/1367921/12 Rev.2)

COM explained that the document is an update of the working document discussed at the PEM Working Group meeting of 14 and 15 May 2013. Changes take account of discussions at that meeting. Furthermore, the draft rules of procedure have been aligned to the standard rules of procedure, where necessary, and comments submitted by one delegation prior to the meeting of the Committee have been taken into account as well. After this meeting, it will be translated into French and sent to all PEM Parties for any further comments.

¹ The signature was finally postponed to a later date.

One delegation suggested adding a reference to the Convention in Article 1(1), first indent ('pursuant to Article x of the Convention'). It also did not like the different terminology used to designate participants to the Joint Committee (Contracting Parties; participants; members; delegates). COM will see if and how the text can be clarified and simplified.

Replying to a further question from the same delegation, COM explained that the terms 'Minutes' was to be preferred to 'Summary report' in Article 7 as it allowed for more flexibility (there may be a need for full minutes instead of only a summary report) and as it was the term used in the standard rules of procedure. Concurrently, the delegation's proposal for adding a time limit for members to send comments on the draft of the minutes was rejected.

Finally, on the question from the same delegation inquiring what the COM strategy was as regards modifications to Appendix II, COM replied that it followed the opinion of its Legal Service that the rules of procedure cannot derogate from the Convention which does not contain any specific procedure to amend Appendix II. Hence, if a specific procedure is needed, it has to be provided for in the Convention itself.

3.1.3. Oral report on the TAIEX Workshop with CEFTA on the implementation of the PEM Convention (Skopje, 5-6 June 2013) and on the annual meeting of the EFTA Committee of origin and customs matters (Longyearbyen, 19-20 June 2013)

TAIEX Workshop with CEFTA

COM representatives gave a number of presentations on the implementation of the PEM Convention (state of play; certification issues; linkage to the Convention). CEFTA endorsed the text of the linkage and agreed to stick to EUR.1 certification in cumulation involving only the EU, TR, EFTA and Western Balkan countries. CEFTA also agreed to coordinate the date of entry into application of the linkage to the Convention between EU/EFTA/CEFTA and insisted on inserting the linkage in FTAs as quickly as possible. Moldova confirmed that it would request to join the PEM Convention soon.

COM representatives also participated in the CEFTA subcommittee on customs and RoO at which CEFTA partners endorsed the text of the linkage (based on COM template), which should be finally adopted by their Ministers Council in November 2013.

EFTA Committee of origin and customs matters

1) PEM Convention

EFTA agreed to stick to EUR.1 certification in case of cumulation involving only the EU, TR, EFTA and Western Balkan countries and to coordinate the date of entry into application of the linkage to the Convention between EU/EFTA/CEFTA. CH made some comments on the text. As to the Joint Committee, EFTA insisted on having a first meeting this year, even if rules of procedure would not be formally adopted. As to the revision of the list rules, EFTA expressed the view that it moved in the right

direction but that simplification and relaxation does not go as far as EFTA would like. EFTA will keep on insisting on these issues at future PEM WG meetings but is open to compromise. For textiles and clothing, EFTA reiterated its view that it prefers percentage rules rather than rules defining more combinations of processes (IT systems of companies can automatically check compliance with percentage rules whereas process definitions are open to interpretation).

2) Exchange of views on FTAs

EFTA countries outlined the state of play of negotiations on FTAs with China.

The FTA between CH and China will be signed during the month of July 2013 but application is only foreseen as of 1/1/2015 at the earliest. China only grants tariff concessions to 40% of current duty. For most HS headings, operators can choose between a value added rule or change in tariff heading. China accepts the authorised exporter system (with annual overview). As regards certification, China uses its own form (delivered by AQSIQ) whilst CH uses a EUR.1.

IS concluded FTA negotiations with China beginning of 2013 and ratification by their Parliament is planned during the fall. Certification by authorised exporter is not accepted by China and the origin declaration is very complex (additional info by exporter needed). Signature was planned for July 2013 and application as of 1/1/2015 at the earliest.

CH – Problems in application of FTA with South Korea (KR)

CH faces problems with KR which started to collect duty for imports from CH dating between 3 and 5 years back, based on late verification requests. This raised a control difficulty for CH customs: the FTA requires exporters to keep records for 5 years, but economic operators must only keep accounts for 3 years, for other purposes. CH exporters should therefore keep records for a period beyond 3 years, on a voluntary basis, in order to avoid their clients in KR to have to pay customs duty a posteriori. COM suggested Member States to advise their operators exporting to KR to keep proofs of origin for a period of 5 years in order to avoid problems.

One delegation asked if MS were forced to reply to verification requests beyond 3 years. COM replied that the agreement with KR (Article 23) provided that exporters had to keep documents proving the originating status for 5 years.

Finally, COM suggested to consider in the context of the PEM revision whether a provision should be introduced stating that verification requests should be made x months before expiry of the deadline for keeping records, this in order to leave sufficient time for the authorities in the requested country to carry out verifications.

3.2. Eastern Partnerships

DCFTAs with Eastern Partnership countries (Ukraine, Moldova, Georgia, Armenia) - State of play - Information point

COM presented the state of play of the different countries of the Eastern Partnership with which a DCFTA (Deep and Comprehensive Free Trade Agreement) is negotiated:

- Ukraine

DCFTA has gone through ISC within the Commission. The initialling of the agreement during the Vilnius Summit next November is wished by the EU.

- Moldova

Discussions on rules of origin are provisionally closed. Moldova intends to submit a request to accede to the PEM Convention in the near future.

- Georgia

Discussions on rules of origin are not yet closed. The draft protocol is based on the pan-Euro-Med protocol in which a provision for diagonal cumulation with Turkish materials covered by the customs union has been included in anticipation of Georgia's accession to the PEM Convention.

One delegation asked for a consolidated version of the draft protocol.

- Armenia

Rules of origin have been discussed during the 6th round of negotiation in Brussels from 19-21 June 2013. Armenia requested a derogation for textile products (within specific quota). An EU counterproposal has been submitted to Armenia in the second week of July and is structured as follows: PEM compatible text for general provisions; GSP rules for introductory notes and list rules for a maximum period of 5 years; a commitment from Armenia through a declaration to request accession to the PEM Convention within 3 years.

**3.3. EU-Israel Association Agreement
Outcome of the 6th Customs Cooperation and Taxation Sub-Committee held in
Jerusalem on 28 May 2013 - Implementation of Protocol 4 (Rules of origin)**

The implementation of Protocol 4 (Rules of origin) does not raise any major issue. Israel promoted an IT system for the certification of origin and for exchange of stamps. As the EU is focusing on and developing self-certification, any investment in those sectors is not considered as a priority.

In this context, one delegation had come back to the question on the technical arrangement between the EU and Israel already discussed at the previous committee meeting, namely if the obligation to mention the name and the postal code of the place of production on proofs of origin issued or made out in Israel also applied in case another country of the PEM zone is specified as country of origin in the proof of origin (e.g. Jordan). Following the discussion, it was concluded that the question could be further discussed at a forthcoming committee meeting on the basis of concrete cases, should the latter arise in the meantime.

**EU-Algeria Association Agreement
Outcome of the 3rd Customs Sub-Committee held in Brussels on 8 June 2013 -
Implementation of Protocol 6 (Rules of origin)**

Concerning the implementation of the Protocol 6 of the Association agreement (Rules of origin), two problems were raised:

- Recognition of invoice declarations (and invoice declarations EUR-MED) as valid proofs of origin when goods are imported into Algeria.

- Obligation for importers to submit for statistical reasons a licence to the Trade directorate in Algeria in order to benefit from the preferences (Décret exécutif n° 10-89 du 10 mars 2010 du Journal Officiel de la République algérienne fixant les modalités de suivi des importations sous franchise des droits de douane dans le cadre des accords de libre-échange et modifié par le décret 13-85 du 6 février 2013.)

The EU insisted on the fact that only a valid proof of origin as defined by Protocol 6 may be requested for granting benefit from a preferential tariff. A licence for statistical reasons should not create an obstacle for implementing the Association agreement.

The EU reserved its right to come back on these issues.

Concerning the pan-Euro-Med Convention on rules of origin, Algeria indicated that the ratification could be delayed due to the translation in Arabic of the text.

3.4. Request from one delegation concerning the preferential origin rule for buttons (Heading 9606) - (TAXUD/829774/13 Rev.1)

Following a request by one delegation, COM submitted a proposal to change the list rule of heading 9606 within the context of the revision of the pan-Euro-Med Convention and in on-going FTA negotiations.

Three delegations agreed on the proposal, even though one of them still had to consult. A fourth delegation still had to consult the industry and will provide its position in September. Another delegation made some observations that would make them less inclined to change the rule. COM replied that the revised rule would provide better supply conditions for EU exporters and asked them to also send their position in writing.

3.5. Problems raised by economic operators concerning the acceptance of origin declaration/invoice declaration by third country authorities - Proposal of the Commission to facilitate the transmission of such problems to the Commission via their customs authorities (TAXUD/2674014/13)

Following an increase of problems raised by economic operators and customs administrations of Member States regarding the acceptance of origin declarations, COM submitted a proposal based on an information form. The aim is to provide COM with exact data (anonymous or not) in order to allow reverting to the different partners countries where traders are experiencing difficulties. Discussions will continue at the next meeting.

3.6. Turkey's proposal to extend bilateral cumulation in Free Trade Agreements of the EU and Turkey to materials originating respectively in Turkey and the EU (TAXUD/2674027/13)

Following the CCC-ORI 206 (May 2013), where Turkey made a PowerPoint presentation to the CCC-ORI participants explaining Turkey's proposal to extend bilateral cumulation in Free Trade Agreements of the EU and Turkey to materials

originating respectively in Turkey and the EU, an exchange of views took place between COM and Member states on the opportunity of such an extension.

3.7. EU-Japan FTA

Debriefing of the 2nd round of negotiations held in Tokyo from 24 to 25 June 2013 - Information point

COM provided some details on the comprehensive and sometimes very detailed discussion on general concepts on origin including the duty drawback issue, certification and customs control, general requirements, wholly obtained goods, cumulation, sufficient working or processing and minimal operations. It was noted that only after exchange of offers for product specific rule (PSR) / list rules it will become clearer what the real issues of divergence are. Moreover Japan makes a strong link between RoO and Market Access offers.

3.8. EU-Vietnam FTA

Debriefing of the 4th round of negotiations held in Brussels from 2 to 5 July 2013 - Information point

COM indicated that in this round discussions on substance took place on PSR/List rules for agricultural, processed agricultural and fisheries products (Chapters 1 to 14, 16, 18 and 19). The discussions continued also on the merged text of the Rules of origin protocol (Article 13 to 17).

The important issues to note from this round are:

Sugar: EU highlighted the sensitivity and specificity of sugar on its market and explained the limitations in its PSR/list rules for chapters 1 to 24 on the use of non-originating sugar. Vietnam was concerned that the sugar limitations (and the constraints it puts in rules of origin on other materials like milk, meat and fish) are difficult to apply in practice not only by its industry but also as far as customs control is concerned.

Absorption principle: EU repeated that any PSR/list rule proposed by the EU is based on the assumption that the absorption principle is applicable. EU also indicated that the absorption principle between two companies in the same Party is basically the same mechanism as cumulation between two companies in different Parties. The ‘Supplier’s Declaration’ used in the EU can be considered as a proof of origin within a Party. Vietnam said that internal consultations on this issue are on-going.

Vietnam indicated that it is opposed to the EU’s proposal of a prohibition of Duty Drawback and does not consider it any further.

Non-alteration rule (direct transport): Vietnam understands the importance for EU trade of splitting of consignments in third countries. Moreover, Vietnam would consider the splitting of consignments in third countries if it were reassured about the monitoring/control of the origin of goods in third countries. Vietnamese customs would like having means to verify during customs clearance that the origin of goods was not altered in the third country.

Self-certification: EU repeated that it is important that at least the European ‘approved exporters’ can self-certify when exporting to Vietnam and that it would like to have an

answer from VN on this matter sooner than later. Vietnam said internal consultations on this issue are on-going.

One delegation expressed an interest in the eventual origin cumulation of Vietnam and was concerned about administrative cooperation. Another delegation inquired whether article 24 was discussed. A third one indicated having provided written comments as regards PAPS, including sugar, and now inquired about industrial goods.

**3.9. EU-USA TTIP (Transatlantic Trade and Investment Partnership)
Debriefing of the 1st round of negotiations held in Washington on 8 July 2013 -
Information point**

COM informed that the first meeting allowed both sides to explain their respective approaches/systems for rules of origin.

Discussions revealed that both sides have many things in common but also that there are significant divergences on a number of issues such as: single origin (US) vs. separate origin (EU), product-specific constraints (US) vs. list of insufficient operations (EU), use of accounting segregation: fungible materials (EU) vs. fungible materials and products (US), import-based system with control and verification (including direct visits to the exporting Party) by customs of the importing Party extending to exporters and producers in the other Party without involvement of customs authorities of that Party (US) vs. export-based certification system combined with administrative cooperation between customs authorities for verification purposes (excluding visits abroad) (EU).

For the time being, no formal proposals will be exchanged.

**3.10. EU-Mexico FTA
Information points:**

**3.10.1. Requests for verification of proofs of origin in connection with
investigations involving mutual administrative assistance
(ARES(2013)2529825)**

COM indicated that according to Mexican authorities shipments of garlic from Mexico were inspected in several MS, laboratory samples were collected and guarantees were demanded. In some cases verification requests were sent to Mexico by customs authorities (as provided for in the article 31 of the Agreement) but in four (4) MS' requests for verification appeared not to have been sent to Mexico. Mexico asked for clarifications about the status/outcome of the procedure in each MS, as well as the reasons why requests for verifications were not sent to Mexico.

One delegation asked which MS were concerned. Another delegation indicated having asked for the verification of proofs of origin but it is not among the 4 MS.

A third delegation indicated having a case; one sample was sent to laboratory; the result inquired Mexico origin; verification request was sent to Mexico; Mexico said the garlic was of Mexican origin. Investigation was still on-going in a fourth Member State. This last delegation said not being aware of such a case.

3.10.2. Mexican proposal for explanatory notes concerning Article 13 on Direct Transport of Annex III to Decision 2/2000 of the EC-Mexico Joint Council

COM said that at the request of EU exporters, it initiated the revision of the article on direct transport in some of its FTAs, introducing the non-manipulation concept, which would make possible storage and splitting of consignments (use of trade hubs).

COM's proposal was discussed during the Special Committee meeting in Mexico City in 29-30 May. This would allow the storage only on the condition that goods remain under customs supervision and only splitting of consignments takes place, not only under customs supervision but as well under the exporter's responsibility. In addition, it would have allowed for the reversal of the burden of proof, customs authorities having to assume that goods comply with the non-manipulation rules and being entitled to ask for documentary evidence only in case of doubts.

Mexico's initial reaction was rather negative. COM still supports this version; however, it is possible that a compromise solution will have to be sought, which would still allow for the use of hubs but would imply abandoning the reversal of the burden of proof.

3.10.3. Mexico to grant preferences to Croatia only from the date of the entry into force of the amendments to the Protocol.

One delegation asked for clarifications. COM indicated that Mexico requirement was the same on the occasion of previous enlargements.

Another delegation said that South Africa only in February 2009 granted preferences to it.

A third delegation suggested that COM should inform trade partners that Croatia is a new MS. COM clarified that this had been done in due time but appeared to be insufficient from the point of view of several partners who considered the amendment of the origin protocols as a prerequisite.

3.11. EU-Central America Association Agreement Information points:

3.11.1. State of play

All 6 Central American countries have ratified the AA and it seems likely that several of them will be able to provisionally apply the trade part of the agreement as of 1 August. It is already known that Guatemala, although its parliament approved the agreement, will likely only be able to join other CA countries on 1.10.2013. Some other CA countries (El Salvador and Costa Rica) might be delayed as well.

3.11.2. Spanish version of the EUR.1 movement certificate to be used in trade with Central America

Differences were found between the Spanish text of the EUR.1 in the Agreement and the actual text of the EUR.1 certificate that Spain uses. Therefore a solution had to be

found so that the movement certificate(s) that would be used is/are accepted by both the EU and CA.

CA countries chose to use a EUR.1 based on a German certificate printed in Spanish. COM agreed with this solution and CA indicated that it would accept both the Spanish EUR.1 printed in Germany and the EUR.1 used by Spain when imports in CA are accompanied by one of these certificates.

The procedure to modify the agreement shall be initiated (through a request from a CA party to the EU co-depositary); this requires 4 to 6 months.

The CA countries asked COM to provide electronic copies of all the EUR.1 certificates that each MS uses so that, in the event that one of these certificates does not comply with the text of the agreement, CA will accept it nevertheless, provided that customs officers are aware of its existence; otherwise, the CA will reject for technical reasons any non-compliant EUR.1 presented to them.

MS will be provided with the copy of the CA certificate once it is ready and received by COM and MS will have to accept this certificate instead of the one appearing in the annex to the origin protocol to the Association Agreement.

One delegation indicated that translation issues of the text in their language were as well found.

3.11.3. Proof of origin to be used for materials originating in Guatemala when imported into other CA countries for further processing under cumulation pending the entry into force of the agreement in Guatemala (i.e. between August and October 2013)

The FTA provides (Article 353) that CA countries may use materials from other CA countries that have not yet ratified the agreement (i.e. for which provisional application has not started yet).

It seems likely that Guatemala (and possibly El Salvador and Costa Rica) will not be able to apply the agreement simultaneously with the other CA countries.

The text of the agreement does not specify the rules and the proof(s) of origin that would apply to such circumstances therefore a temporary solution is necessary.

COM presented to CA two alternative solutions:

- a) either the CA country not yet provisionally applying the Agreement issues Form A origin certificates for materials exported to other CA countries (for further processing and export to the EU) in application of the GSP rules of origin; or
- b) the CA country concerned, e.g. Guatemala, applies the EU-C.A. rules and certifies origin by issuing EUR.1 movement certificates as of 1/8/13, like other C.A. countries.

Of these two, COM prefers solution (b) to avoid having to apply two different sets of RoO for one product. Moreover, if Guatemala were reasonably expected to ratify and join the other CA countries by 1 October, it should have EUR.1 forms printed sufficiently in advance (i.e. by 1 August). Of course, this option remains at the discretion of the Guatemalan (and possibly Salvadorian and Costa Rican) authorities. The CA/Guatemala did not react yet.

3.12. EU-Colombia FTA

State of play - Information point

The Colombian parliament has approved the Agreement. Now it remains that the Constitutional Court gives its agreement and the president promulgates it. It looks likely that the FTA may shortly enter into force for CO.

3.13. EPA negotiations

3.13.1. SADC-EU EPA

Debriefing of the technical and senior officials meeting held in Brussels from 17 to 21 June 2013 - Information point (TAXUD/2733388/13 + TAXUD/2733388/13 Add.1)

COM informed delegates that before this round, negotiations had only focussed on the articles on cumulation, this was the first round where the articles on cumulation were inserted in the existing text of the SADC interim EPA in order to have a complete Protocol on rules of Origin.

Due to the changes in policy the EU has proposed some amendments to the text of the iEPA.

These changes include the text on direct transport which has been replaced by the ‘non alteration rule’ including the provision on splitting of consignments, to which SADC EPA agreed. Furthermore the text on origin certification where the EU will gradually move to a system of self-certification has been introduced in art 17. Within the EPAs this approach is not reciprocal, hence it would only apply to the EU. SADC EPA group has not agreed on the text and instead has argued that the transitional period of 5 years should not be stated in the text.

Other outstanding issues are in Article 4 with respect to the date of entry into force of cumulation and materials excluded from cumulation. On the former SADC EPA Group maintains the position that a date of entry into force for the purposes of cumulation with a given country should be agreed by both Parties after all the necessary systems are in place for both parties to be able to cumulate. SADC EPA group does not want to open the possibility for the EU to cumulate with country x when they themselves would not have the administrative cooperation in place with that country and therefore would not be able to cumulate. The EU is willing to provide for a period of up to 1 year after the entry into force of the EPA in order to enable the SADC EPA States to have the necessary systems in place, but after this period it should be possible for the EU to start cumulating. On the materials excluded from cumulation both for the EU and SADC EPA group, the EU has, among other materials, excluded from cumulation materials originating in South-Africa which do not have duty free access to the EU.

The SADC EPA group has also tabled 3 exclusion lists containing materials the EU cannot cumulate with because the materials do not have duty free access into SADC EPA countries.(a SACU (south African customs union) list, a SADC list and a Mozambique list), if these lists were all to be published in the EPA text it would make it very difficult to manage given the fact that the list would evolve over time.

To this end a proposal was made by the EU to provide, within the cumulation text, the principles on which the exclusion lists will be based and made public (the lists would not be annexed to the EPA agreement). The lists will contain products which do not have Duty Free Quota Free access and will be amended over time. The lists will be notified to the Special Committee on Customs and Trade Facilitation and made public.

In line with the GSP reform the EU suggested to include in the list of wholly obtained products 'products from slaughtered animals born and raised there'. The SADC EPA Group argued that the inclusion of 'born' was a more stringent requirement and thus it could not accept it.

As an alternative SADC suggested that conditions on raising the animals (for a certain period of time) could be built into the provision. The EU sees this alternative as a more complicated approach and is not willing to accept that wholly obtained meat can be considered from animals just raised in a Party.

In the same article the wording on "products of aquaculture, where the fish, crustaceans, molluscs and other aquatic invertebrates are born or raised there from eggs, larvae and fry." was agreed upon at Senior Officials level.

The next round will take place 23-27 September 2013 in the SADC region.

One delegation supported COM on wholly obtained conditions for meat and inquired about Article 41 (5) (an island SADC EPA). COM will discuss with SADC partners at the first opportunity.

After the meeting one delegation submitted questions in writing, delegates will find below the questions and answers:

Question 1: Which is the Declaration from Namibia on the origin of fishery products?

Answer 1: The Declaration is part of the SADC interim-EPA text and reads

"DECLARATION FROM NAMIBIA ON THE ORIGIN OF FISHERIES PRODUCTS

Namibia reaffirms the point of view it expressed throughout the negotiations on the rules of origin in respect of fishery products and consequently maintain that following the exercise of its sovereign rights over fishery resources in the waters within its national jurisdiction, including the exclusive economic zone, as defined in the United Nations Convention on the Law of the Sea, all catches effected in its waters and obligatorily landed in ports of Namibia for processing should enjoy originating status.

1.In so far as the European Free Trade Area (EFTA) States acknowledge Namibia's EEZ for the purposes of Rules of Origin, as embodied in Annex IV to the Free Trade Agreement between SACU and EFTA relating to Fish and Marine Products,

Namibia maintains that all catches effected in its waters as defined above and obligatorily landed in all ports of Namibia for processing, should enjoy originating status."

This declaration would mean that fish caught in Namibian EEZ and landed in Namibia is to be considered as wholly obtained regardless of which vessels caught the fish. The EU has requested Namibia to delete the footnote and the Declaration and in exchange the EU discussed a derogation in relation to chartered vessels.

Question 2: Which is the derogation for Namibia from the rules of origin on wholly obtained products in relation to chartered vessels?

Answer 2: The derogation from the vessel criteria for fish caught in the EEZ only applies to chartered vessels.

The provisions require Namibian, EU or South-African flag for chartered vessels and promote EU-Namibian cooperation because the fishing right holders can only be Namibian or Namibian – EU joint ventures.

3.13.2. PACP-EU EPA

Debriefing of the technical meeting held in Brussels 4 July 2013 - Information point

COM informed delegates that the protocol on Rules of Origin was discussed during a 3 hour session. The session was mostly dedicated to the PACP presenting a list of about 20 products (mainly AGRI-PAPS products, 3 industrial products) where they explained the need for a more lenient rule than tabled by the EU. PACP also explained that it would not be possible to meet the rule even when using the extended cumulation possibilities as due to their geographical location Pacific States mainly source materials from Australia and New-Zealand.

The week prior to the technical meeting a general discussion has taken place on sustainable fisheries and in particular on conservation and management measures, the development of the fisheries sector in the Pacific ACP States, and EU access to fisheries resources in the Pacific (led by DG MARE). From the discussions it came forward that the views of both Parties are very different, this is also the case for global sourcing. For this reason Parties have not tabled a text on the issue of global sourcing.

3.13.3. New approach on administrative cooperation between countries involved in cumulation for Economic Partnership Agreements (EPA)

COM informed delegates that EPA countries wishing to take advantage of the provision on origin cumulation, have reported to experience difficulties to fulfil the legally required prerequisite of concluding an agreement on administrative cooperation with the other countries or territories involved in the cumulation.

The requirement that the country importing materials from another country involved in the cumulation has the obligation to ensure itself of the assistance of that country will be maintained, but will be provided for through a 'simplified' system.

The new approach consists of directly obliging the third country exporting materials to give administrative assistance to the country which imports these materials. This

obligation will be foreseen in the EPA itself.

This provision will be proposed in the on-going EPA negotiations with respect to cumulation with other EPA countries and OCTs.

The cumulation with GSP and FTA countries will continue to be based on an agreement on administrative cooperation between those countries.

3.14. GSP

3.14.1 Publication of a notice to importers concerning imports of tuna products from Thailand under the European Union (EU) Generalised System of Preferences (GSP) - (TAXUD/2687572/13)

COM informed delegates that the publication of a notice to importers should shortly be recommended to the College. This is because of the following grounds:

First, following an OLAF's investigation it is suspected that processed tuna products of HS sub-heading 1604 14 imported into the EU from Thailand as being of Thai preferential origin were not eligible for such a favourable treatment. More specifically, the imported products did not comply with the rules of origin for the following reasons:

- non-fulfilment of the crew requirements specified in the former Article 68 (2) of Commission Regulation (EEC) No 2454/93, with regard to imports until 31 December 2010;
- non-compliance with the new requirements set out in Articles 75 paragraphs (2) and (3), 84 and 86 of Regulation (EEC) No 2454/93 (as amended by Regulation (EU) No 1063/2010). This included non-compliance with the vessels conditions and criteria for cumulation of origin applicable to fisheries products imported after 31 December 2010.

Secondly, the publication of the notice is recommended because of the reluctance of the Thai authorities to fully cooperate with OLAF in the course of the actions undertaken. More specifically, the Thai authorities postponed the meetings scheduled by OLAF several times, did not carry out the checks requested by OLAF and did not provide OLAF with the requested documents in due time.

Thirdly, as a result of administrative cooperation missions to the Seychelles in October 2008 and in February 2011, it was established that – for the period from 2007 until 2011 – 35 000 tons of non-originating raw tuna in total had been transhipped from the Seychelles to Thailand. According to the information collected by OLAF, in the years 2008-2010, 34 433 tons of processed tuna had been imported into the EU from Thailand under the GSP scheme. It is estimated that customs duties of up to € 3.15 million might have been circumvented.

One delegation wished to know what kind of procedure should apply with regard to risk analysis once the publication of the notice has taken place. COM noted that MS should use both information provided by OLAF and already in their possession in order to determine whether the proof of origin should be sent for post-clearance

verification. COM also referred to the revised Communication from the Commission setting out the conditions – in the context of preferential tariff arrangements – for informing economic operators and Member State administrations of cases of reasonable doubt as to the origin of goods. COM emphasised that the main purpose of the revision of the Communication was to ensure that MS would not have to send all proofs of origin for post-clearance verification.

3.14.2. Request from Guatemala for the extension of the derogation granted from the European Union's (EU) Generalised System of Preferences (GSP) rules of origin in accordance with Commission Implementing Regulation (EU) No 1044/2012 - (TAXUD/2724032/13)

COM informed delegates that the authorities of Guatemala requested the extension of the derogation from the EU GSP rules of origin granted by Commission Implementing Regulation (EU) No 1044/2012 of 8 November 2012. The authorities of Guatemala requested the extension until 31 December 2013. With regard to the year 2013, COM noted that Guatemala was entitled to benefit from a derogation for 987.5 tons of cooked, frozen and vacuum-packed tuna fillets known as '*loins*' falling within CN code No 1604 14 16 valid until 30.06.2013.

In the request, the authorities of Guatemala stated that they were unable to secure adequate flows of originating tuna to the country within the time covered by the Regulation. This was due to the fact that the appropriate legal acts related to the Fisheries Act and the relaxation of the fishing licences has yet not been approved by the Congress of the Republic of Guatemala. Consequently, additional time is necessary in order to allow Guatemala to finalise the measures undertaken. With regard to the balance of the quota granted until 30.06.2013, it should be noted that 86% of the quota amount remained unused on 30 June 2013.

3.14.3. Request from El Salvador for the extension of the derogation granted from the European Union's (EU) Generalised System of Preferences (GSP) rules of origin in accordance with Commission Implementing Regulation (EU) No 1045/2012 - (TAXUD/2724084/13)

COM informed delegates that the authorities of El Salvador requested the extension of derogation from the EU GSP rules of origin granted by Commission Implementing Regulation (EU) No 1045/2012 of 8 November 2012. The authorities of El Salvador requested the extension until 31 December 2013. COM also noted that with regard to the year 2013, El Salvador was entitled to benefit from a derogation for 987.5 tons of cooked, frozen and vacuum-packed tuna fillets known as '*loins*' falling within CN code No 1604 14 16 until 30.06.2013.

In the request, the authorities of El Salvador stated that they were unable to secure adequate flows of originating tuna to the country within the time covered by Regulation (EU) No 1045/2013. With regard to the balance of the quota granted until 30.06.2013, COM noted that 77% of the quota amount remained unused on 30 June 2013.

One delegation noted that both countries are expected to provisionally apply the EU Central America Association Agreement in the near future. The same delegation also

noted that the use of tariff quota by El Salvador had been remarkably low in 2012. Consequently, they wished to take these elements into account when considering the requests of the countries concerned.

Another delegation informed COM that the preliminary observations presented by a number of the economic operators had not been in favour granting the extension of the derogations.

3.15. Monitoring of the management and administration of rules of origin for preferential arrangements - Post clearance verification controls on proofs of origin - Statistics 2011-2012 (TAXUD/2517060/13)

COM introduced the document presenting the statistics about the requests for verification of proofs of origin sent to and received from partner/beneficiary countries in 2011 and 2012.

COM received the contributions from 26 MS. The missing MS is supposed to provide the data after the summer break.

By analysing the data, COM noticed that the global number of no replies and of replies received after the expiry of the 10 month period, has increased compared to last year.

Similar result could be noticed by checking the data referring to some of the countries with which monitoring actions have been already put in place, such as Malaysia, India, Indonesia or Bangladesh.

COM pointed out that the implementation of new and more efficient verification procedures give visible results, such as lower number of problematic cases, only after few years. Nevertheless, COM will try to identify new instruments to have a more efficient impact on the monitored beneficiary countries.

Following a comment received from one delegation about some beneficiary countries from which that administration did not receive any response, COM clarified that monitoring actions are justified in case considerable number of problematic cases are faced by several MS with the same partner/beneficiary country. With other beneficiary countries listed by the delegation, closer cooperation has been already established.

4. NON-PREFERENTIAL ORIGIN

4.1. Non-preferential origin - Amendment of Regulation (EEC) No 2454/93 (TAXUD/2668757/13)

COM presented the proposal and stressed that the decision whether or not the existing provisional anti-dumping measures on solar panels and their major components are justified and should be converted into definitive ones was not of the responsibility of

this Committee. The sole purpose of the proposal was to ensure correct implementation of all trade policy measures decided through the relevant procedures.

Three delegations needed more time to determine their position. Other delegations supported the proposal or were silent.

COM announced that internal procedures allowing for the expression of an opinion in this Committee in September would be launched.

5. A.O.B.

5.1. The issue of imports from Western Sahara within the framework of the DCFTA negotiation with Morocco (Request from one delegation)

The delegation having raised the issue explained that it requires more clarity about the origin of products from Western Sahara. The question has been discussed previously at the committee this year. COM then explained that Western Sahara is a ‘non self-governing territory’, without however indicating how a distinction should be made between products coming from Western Sahara and from Morocco. As the issue has become political in the MS concerned, the delegation asked to discuss the matter as a real agenda item at the next meeting. In particular, they wondered how the condition that proceeds of activities carried out in Western Sahara should benefit the local population can be controlled.

COM recalled the position expressed by the High Representative, Ms Ashton, in its joint reply to parliamentary questions E-1004/11, P-1023/11 and E 2315/11. The relevant part of the reply reads as follows:

‘To the extent that exports of products from Western Sahara are de facto benefiting from the trade preferences, international law regards activities related to natural resources undertaken by an administering power in a non-self-governing territory as lawful as long as they are not undertaken in disregard of the needs, interests and benefits of the people of that territory. The de facto administration of Morocco in Western Sahara is under a legal obligation to comply with these principles of international law.’

COM is of the view that the problem raised is not linked to the origin protocol. It should also be noted that in the context of negotiations of a DCFTA (deep and comprehensive free trade agreement) between Morocco and the EU, the territorial scope of the agreement is left outside the scope of the discussions and that international law de facto accepts the application of preferences for products from Western Sahara as long as there is no proof to the contrary that products are exported by Morocco acting in respect of the interest of the population of Western Sahara. This is the line established by EEAS, based on international law. Whether or not this condition is respected is not an origin matter and should rather be raised in the competent Council Working Group. However, COM will keep the origin committee informed of any further discussions on this matter that have a bearing on the determination of the origin of goods from Western Sahara.

One delegation asked what country code should be used if preference is claimed for products coming from Western Sahara: EH (Western Sahara) or MA (Morocco). COM replied that the code MA should be used in that case and that the code EH was only to be used to designate non preferential origin. Eurostat is reconsidering the need to keep the code EH and COM will keep the Committee informed once a decision is taken in this respect.

5.2. Procedure applicable to the verification of proofs of origin issued by the authorities of Member States (e.g. movement certificates EUR.1) where the proof of origin is issued by an exporting Member State (MS) which is not the MS of establishment of the exporter - (Request from one delegation) (TAXUD/573175/13 + TAXUD/573175/13 Add.1)

The delegation having raised the issue noted that the case presented to COM resulted from two requests for post-clearance verification of three movement certificates submitted to them by the Swiss Customs. The three movement certificates were issued following an application submitted by a customs agent of the exporter situated in another MS. The delegation noted that – following Article 17 of Protocol No 3 to the Free Trade Agreement between the EU and Switzerland – the application for a movement certificate must be undertaken by the exporter or – under the exporter’s responsibility – by his or her authorised representative.

The same delegation noted that the following situations should be distinguished in relation to the case presented by them. Firstly, situations where there is no delivery of goods from one company to another company (from MS country A to MS country B) – but the movement certificate is issued in country B (a MS where the exporter is not established). Under such circumstances – the question arises as to how best to undertake the post-clearance verification of movement certificates when no INF4 is available given that no supplier's declaration was presented. Secondly, cases where goods are delivered from MS country A to MS country B in order to be subsequently exported from country B. In such cases, a proof of origin is issued in the country of exportation of the goods. With regard to these cases, the delegation believed that an exporter situated in a MS other than the country of exportation should entitle a customs agent in the country of the exportation to apply for a movement certificate on behalf of this exporter. The exporter should also provide the customs agent with the supporting documents in order to present these documents to the customs authorities. They also believed that a supplier’s declaration can only be used in cases of delivery of goods from one company to another company within the European Union.

In addition the same delegation noted that in the particular case evoked by them, there had been no delivery of goods because the goods were to be exported from the country of the exporter’s establishment. They also informed the Committee that the necessary supporting evidence had been presented to them. However, the delegation also believed that the exporter is invariably obliged to retain supporting documents as evidence.

Another delegation supported them and noted that if the exporter is established in a country other than the country of the exportation of goods, the verification should take place in the country of the exporter's establishment. This is because the exporter is alone in possession of the documentation or other evidence that will prove the origin.

A third delegation noted that in terms of origin there are several participants in the trade. There is a manufacturer of goods, a dealer and a transport agent who is entitled to apply for an EUR.1. If x is the country of the exporter's establishment and the goods are exported from country y there must be someone who delivers the goods from country x to country y. This entity should provide the authorities of country y with a supplier's declaration.

The same delegation believed that – in such situations – movement certificates EUR.1 should only be issued for the transport agent and on the basis of the supplier's declaration. Consequently, the issuing authority may ask for an INF 4 document. They also noted that movement certificates EUR.1 are not issued for the exporter from another MS in their country. This is because their authorities would not be able to perform the necessary checks.

A fourth delegation noted that the country issuing a certificate must also be responsible for post-clearance verification of this certificate. The responsibility concerning the post-clearance verification cannot be delegated to another country – i.e. the country of the exporter's establishment. They believed that the verification process is an essential part of the issuing process.

A fifth delegation noted that a number of provisions concerning export procedures should be referred to.

A sixth delegation noted that the agent is the representative of the exporter and has to submit all exporting documents to the customs authorities of the country of exportation. This includes the submission of evidence concerning the origin of goods and this evidence may either be a supplier's declaration or – in cases where the exporter is the producer – documents such as calculations and any other necessary proof.

A seventh delegation noted that it is the exporter who takes full legal responsibility by signing a request for an EUR.1.

An eighth delegation noted that the certificate should not be issued unless the corresponding documents are presented to customs.

A ninth delegation supported the position of the second delegation that commented and believed that the EU is one entity. In their case, they issue movement certificates EUR.1 if the exporter is not established there. This applies provided that all supporting documents are presented to their authorities.

COM asked delegates for their observations in writing by the end of August 2013.

5.3. Determination of non-preferential origin for aluminium road wheels (Request from one delegation)

The delegation having raised the issue presented the case which might be raised by the third country concerned at the diplomatic/political level, including with the COM. The authorities concerned have certified that aluminium road wheels have obtained both preferential and non-preferential origin by the addition of “centering rings” to rims imported from China.

The EU customs authorities have asked confirmation by the third country concerned that the preferential rule included in the relevant Agreement was fulfilled. The reply was positive and the preferential origin of the goods is not further contested.

As to the non-preferential origin, however, the delegation considers first of all that the “certification” by the authorities concerned is irrelevant. Furthermore, it decided that the criterion of last substantial transformation of Article 24 of the Code was not fulfilled, although the third country concerned has confirmed that at least 45% value was added to the goods by the operation carried out there. On the basis of the jurisprudence of the ECJ, the delegation is of the view that Article 24 takes precedence over the guidelines on the COM web-site, on which the third country concerned had based their assessment.

The delegation wished to know the position of the COM and the other MS. COM asked for all the relevant information to be forwarded and will prepare a working document for the next meeting.

5.4. Scope of Decision No. 1/2009 of the Joint Committee established under the agreement between ECSC and Turkey - Update of the list of ECSC products to align to changes in the HS 2012

The examination of this point had to be postponed to the forthcoming committee meeting

5.5. The opportunity was taken by COM to give a brief update on different files relating to origin labeling.

- A consumer survey has shown that there is not sufficient interest in the inclusion of origin in the future labeling requirements for textiles and leather products. This idea is therefore not further pursued at this stage.
- COM services have started work on the implementing provisions for Regulation (EU) No 1169/2011, which will be applicable from 13-12-2014. A proposal will be tabled soon to include the obligation to indicate the country of rearing and slaughter of the animals used for the production of meat of swine, sheep, goats and poultry (to be adopted by 13-12-2013). DG TAXUD is in favour of following the same line as for beef meat: avoid the concept of origin, but ask for details on the important stages in the life of an animal and the processing of meat products.

- EEAS has received requests from some Member States to issue guidelines on the verification of the correct labeling of products imported from the territories beyond the Israeli borders of 1967 and that have since been brought under Israeli control.
- The proposal currently under discussion for a regulation on the safety of consumer products contains an article (Article 7) relating to the mandatory labeling of origin on imported goods and goods manufactured in the EU. If this Article 7 in the proposal is maintained, the role of customs authorities in this context may be considerably increased.