

RULES OF ORIGIN

IN THE ASSOCIATION AGREEMENT AND THE PEM CONVENTION



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SUMMARY

Introduction Association Agreement PEM regional Convention

- a) General presentation
- b) Concept and benefits
- c) State of play of ratification process
- d) New accessions
- e) On-going work



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Let's recall that:

Rules of Origin are needed to define **where** a product has been made, produced, obtained meaning it “originates”

ROO are an essential part of trade rules when “discrimination” is present or specific “tariff” treatment applies

ROO needed to distinguish between national and foreign goods (National treatment and also other domestic disciplines -marketing, consumer)

to distinguish between foreign goods (MFN or preference)

Preferential Originating Status

Production and exports from a partner country

Imports from the other partners

Applicable Tariff preferences under a specific bilateral, plurilateral regional agreement

Preferential agreements usually target the reduction or elimination of the WTO MFN customs duties

No influence on internal taxation (i.e. VAT, Alcohol taxes)

The Association Agreement (AA)

Over 2100 pages long
Rules of origin are contained in a
“Protocol” at the end (Pages
1994 ff)
Standard EU set of rules of
origin



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Main points

General Rules of origin, important i.e.:

- Direct transport rule

- Prohibition of drawback (restitution of customs duties)

- Only bilateral cumulation (despite some other FTAs of the EU contain much larger possibilities)

- Tolerance rule (standard 10%)

- Accounting segregation possible

“List rules”

- EU list rules are in general restrictive
- Many ingredients of agricultural products have to be already originating or are allowed only upon a certain percentage of total output
- “Two-steps” processing required in textiles & garments
- Machinery: assembly should meet “CTH” rule or a value-added test for assembly operations (including sometimes a value limit between originating and non-originating materials used)
- Chapter 87 - vehicles: only value-added test possible (8701 – 8708)



A map of Europe and surrounding regions, color-coded by political affiliation. The map shows various countries in different colors: red, blue, yellow, green, pink, and white. The map is titled "Map of Europe" in the top left corner.

Legal form of an international agreement

- Regional Convention on pan-Euro-Mediterranean preferential rules of origin (PEM convention)
- With 2 appendixes:
 - General rules for the definition of the concept of originating products
 - Special provisions

Historical background

- The EU (still at 12 then 15 Members) in the early '90s greatly enlarged the network of bilateral agreements, above all with the Eastern European countries (i.e. Poland, Hungary, Romania)
- The EFTA member states had each FTAs with the EU, and the EFTA also negotiated similar agreements.
- Biggest problem: The Rules of Origin were too restrictive in each Agreement and there was no connection!!
- Traders and Producers couldn't take advantage of the single FTAs

Historical background

- The EU also initiated the Barcelona process in the '90s
- The idea was born to link all rules of origin protocols
- «Customs Union» like connection through the «trick» of accumulation of origin, however the EU only evolved until the «diagonal cumulation» stage (with some exceptions)
- Switzerland's economy, politically isolated in the '90s because the vote of the population against the Economic European Area (EEA), was saved by the diagonal cumulation provisions
- Introduced in 1996

General Overview

- The EU and the EFTA also expanded their network towards the Mediterranean countries
- The EU enlargement drastically eliminated FTAs in Eastern Europe thus the focus could shift to the Mediterranean area.
- Again, the EU and the EFTA were confronted with a vast and growing network of bilateral free trade agreements between the EU, EFTA States, Faroe Islands, Turkey and Mediterranean countries participating in the Barcelona process (42 parties in total)
- Again the solution: A system of pan-Euro-Mediterranean cumulation operates on the basis of identical rules of origin (PEM protocol on rules of origin) annexed to each bilateral free trade agreement
- Cumulation concept: "what is yours is mine and what is mine is yours"
- Tool of regional integration/enhanced sourcing possibilities



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PEM cumulation:

EU, TR, Faroe Islands, EFTA
States, Mediterranean Countries
(MA, TN, EG, LB, IL, PLO, JO,
DZ)

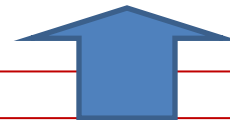


SAP cumulation (EU's Stabilisation and Association Process) – 7 partners:

EU, TR, 5 Western Balkan
partners



- Theoretically, about 60 Free Trade Agreements (FTA) between these partners possible
- Each containing a Protocol setting identical rules of origin
- Modifying rules of origin requires changing all the Protocols
- PEM and SAP do not overlap



PEM cumulation - Extension:
Ukraine, Georgia, Moldova

The PEM Convention: Concept and benefits

- Base diagonal cumulation of origin on a single legal instrument. No more separate protocols on RoO.
- Allows for easier revision and update of RoO, once all countries implemented it
- Shall include entire Western Balkan region into in the pan-Euro-Mediterranean zone of diagonal cumulation.
- Allows accession of neighbouring countries in the pan-Euro-Mediterranean cumulation zone.
- It can create extended opportunities for cumulation

State of play of ratification process

- Contracting Parties for which the Convention has entered into force.
- NB: Convention still needs to be referred to in the respective origin protocols so as to become applicable



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Matrix of PEM cumulation

http://ec.europa.eu/taxation_customs/business/calculation-customs-duties/rules-origin/general-aspects-preferential-origin/arrangements-list_en#paneuro

http://ec.europa.eu/taxation_customs/business/calculation-customs-duties/rules-origin/general-aspects-preferential-origin/arrangements-list/paneuromediterranean-cumulation-pem-convention_en

Accession of the countries of the Eastern Partnership

Much of the evolution in the Paneuromed-Partnership is driven by the European Union (Commission)

The EU Neighbourhood Policy:
the Eastern Partnership
the Union for the Mediterranean

- Accession to PEM Convention offered in DCFTA:
 - Ukraine
 - Georgia
 - Moldova



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Preferential arrangement	Rules of origin/cumulation
Georgia (1.9.2014) <i>Eastern Partnership countries</i> <i>Eastern Partnership countries (other than the Republic of Moldova)</i> 30.8.2014, p. 4	
Ukraine (1.1.2016) Association Agreement , OJ L 161, 29.5.2014, p. 3	Protocol I (p. 1994) <i>Bilateral cumulation</i>

Preferential arrangement	Rules of origin/cumulation
the Republic of Moldova (1.9.2014) Association Agreement , OJ L 260, 30.8.2014, p. 4	Protocol II (p. 621) <i>Bilateral cumulation</i>

The PEM Convention – on-going work

- Two exercises conducted in parallel:
 - phasing-in of Convention after it entered into force 2013 and
 - discussions on revision (both on articles and 'list rules')
- Objective was to have both exercises completed and 'joined' in mid-2015
- Some countries however oppose revision of rules of origin in certain sectors

The revision of 'PEM' rules of origin

- The revision work is being carried out in the Pan-Euro-Med Working Group (PEM WG)
- Contracting Parties (as much as possible grouped geographically) were invited to express their positions regarding list rules:
 - EU + Turkey
 - EFTA States
 - MED countries
 - Western Balkans
- Aim of the revision:
 - **simpler** rules,
 - more **liberal** rules, and
 - rules **responding to traders' needs**.



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The revision of 'PEM' rules of origin

SIMPLER

more RELAXED

**responding to ECONOMIC
REALITIES**

The revision of 'PEM' rules of origin

- Article by article examination
(already well advanced but all partners rightly consider that provisions such as cumulation cannot be assessed without full knowledge of future list rules)
- On list rules: Seek convergences



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III. b. **EU proposal for the PEM Convention in line with the GSP reform**

New approach in line with the reform of EU GSP RoO

- General provisions:
 - Definitions
 - Crew requirement
 - Tolerance rule
 - Non-alteration rule
- List rules:
 - Sector-by-sector approach
 - Simpler approach (alternative rule, chapter rule...)



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EU proposal for the PEM Convention in line with the GSP reform

Example of textile

The current standard PEM rule

- defines the origin of the final product by taking into account the manufacturing process in relation to the non-originating materials used at the start of the processing.

New approach with the reform of EU GSP RoO

- Identification of key manufacturing processes carried out in relation to the final product
- The origin of the materials used in these manufacturing processes should not be taken into account.

Current PEM rule for yarn:

Manufacture from:

- raw silk or silk waste, carded or combed or otherwise prepared for spinning,
- other natural fibres, not carded or combed or otherwise prepared for spinning,
- chemical materials or textile pulp, or
- paper-making materials

GSP rule for yarn:

Spinning of natural fibres
or
extrusion of man-made fibres
accompanied by spinning or
twisting

EU proposal for PEM rule for
yarns:

Spinning of natural fibres
or
Extrusion of man-made fibres
combined with spinning
or
Twisting combined with
gimping

EU proposal for the PEM Convention in line with the GSP reform

The printing rule

- recognised as origin conferring when combined with specific additional processes and fulfils a value added criterion.

Two steps:

- 1: the creation of a simple printing rule (definition)
- 2: the creation of a standalone printing rule

Position of PEM partners

		Current PEM	Position 1 Status quo	Position 2 Double transformation with options	Position 3 Single transformation (with options or not)
ex Chapter 6 2	Articles of apparel and clothing accessories, not knitted or crocheted; except for:	Manufacture from yarn	PEM Rule to be kept	<p>Weaving combined with making-up or Making-up preceded by Printing (as standalone operation)</p> <p>or</p> <p>Making-up preceded by Printing (as standalone operation) or by dyeing (as standalone operation)</p>	<p>Manufacture from fabric (+ dyeing) Or 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</p>

EU proposal for the PEM Convention in line with the GSP reform

A balanced approach

- double transformation – Single transformation in textiles
- strike the balance between the needs of more traditional and more innovative textile industries.
- allows more flexibility; allows more qualifying processes and processes at a higher transformation level; provides simplification; increases legal certainty.



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PEM REVISION - REFLECTION

- Is there a way out of the impasse?
- Knowing industry needs
- Split Chapter 61 and 62, focussing on composition of materials
 - Materials (fabric) is available inside the zone in sufficient quantity: Manufacture from yarn
 - Material (fabric) is NOT available in the zone:
 - Manufacture from fabric
 - In other words, allow CMP (Cutting Manufacturing Packaging)
- Short supply list for liberal rules of origin



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Conclusion

The revision of 'PEM' rules of origin

- Compromise will have to be sought... at PEM working group level... and EU level ('common position' to be adopted by qualified majority)
- Given the divergent views which have been presented during consultations, no Party can escape making concessions.



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More Changes for Business operators

- General System of Preferences (GSP) phase out end of 2017
- Rules of origin getting again slightly more restrictive because of the loss of the GSP
- Disadvantages (drawback rule) and advantages (full tariff liberalisation for textiles sector) for instance
- Switch of competent authority from UCCI to Customs Authorities – smooth transition of pending files and competences necessary

Presentation of the GSP reform

Commission Regulation (EU) n°1063/2010 of 18 November 2010 (ROO revision)

A - The background

B - Overview of the main changes between the old GSP rules and the new GSP rules

C – Modernisation of the rules of origin

(The Rules got revised in 2015 again, through EU Regulations 2446 and 2447, with slight changes to the core substance)

GSP Reform - Background

- 1) Commission's Green Paper (2003) and Communication (2005) on the simplification of the rules of origin
- 2) Impact assessment
- 3) Commission's draft regulation (October 2007)
Commission's revised proposal (November 2008)
Agreement of the Member States (September 2010)

GSP Reform - Background

- 1) Commission's Green Paper (2003) and Communication (2005) on the simplification of the rules of origin
 - The old origin rules did not fit current economic reality.
 - The current origin rules were seen as too complex, restrictive and they lacked transparency.
 - There was a clear call for rationalisation and simplification of the origin rules.
 - The system needed to be changed in order to provide an adequate level of assurance that the products for which preferential treatment was claimed did actually satisfy the origin rules.
 - The system of paper-based certificates needed to be replaced by an electronic document.
 - There was a need for increased European Union monitoring and greater coordination and cooperation to ensure compliance with the rules of origin.

GSP Reform - Background

2) Impact assessment

- Simplification and appropriate relaxation of the rules for determining origin
- Supported by adequate management and control procedures, all parties need to know exactly what is required of them and it is necessary for there to be confidence in administrations.
- Conversely, efficient management and control is facilitated by rules which are easy to understand and apply.



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GSP Reform - Background

Legal framework of the GSP rules of origin (with the most striking new rules of origin and simplified procedures)

- Commission Regulation (EU) No 1063/2010 of 18.11.2010 amending Regulation (EEC) No 2454/93 (implementing measures of the customs code)
- Official Journal No L 307 of 23.11.2010, p. 1
- Entered into force on 01.01.2011
- Revision again in 2015 (mostly because implementation of REX) Regulations No. 2446 and 247/2015)

GSP Reform - Main changes

- The rules of origin are defined as far as possible on a sector-by-sector rather than a product-by-product basis.
- The rules applicable to products also take into account the specific situation of least developed countries (in general allowing a maximum content of non-originating materials of up to 70% or providing for an equivalent level of relaxation for products originating in the least developed countries)



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GSP Reform - Main changes

The EU wanted to achieve:

- Simpler origin determination criteria
- Applicability of cumulation of origin
- Other features in general provisions

GSP Reform - Main changes

First main change

Simpler origin determination criteria

- A maximum permitted content of non-originating materials;
- Change of tariff heading or sub-heading;
- A specific working and processing operation;
- The use of wholly obtained materials.

GSP Reform - Main changes

Second main change

Applicability of cumulation of origin

- Bilateral cumulation EU-beneficiary country;
- Simplified regional cumulation with 4 regional groups;
- Extended cumulation between a beneficiary country and a country with which the European Union has a free-trade agreement in force;
- Cumulation of origin with industrial goods originating in Norway and Switzerland, extended to Turkey.

GSP Reform - Main changes

Third main change

Other features in general provisions

- Replacement of the direct transport rule with a more flexible non manipulation principle (Article 74);
- Removal of the crew requirement in the definition of "its vessels" for fishery products captured outside territorial waters to be considered as wholly obtained (Article 75(2));
- Relaxation (from 10 to 15%) and the adaptation to sectoral specificities of the general tolerance rule, from now on expressed as a percentage of weight for agricultural products (Article 79).

GSP Reform – Modernisation of RoO

1) Appropriate rules for determining the acquisition of origin

Simpler origin determination criteria

a maximum permitted content of non-originating materials


ex Chapter 44

Wood and articles of wood; wood charcoal; except for:

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



**Introduction of an added value rule
for chapter 44 with a threshold of
70 % of non originating materials**

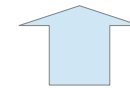
GSP Reform – Modernisation of RoO

1) Appropriate rules for determining the acquisition of origin

Simpler origin determination criteria

change of tariff heading or sub-heading

Chapter 79	Zinc and articles thereof	Manufacture from materials of any heading, except that of the product
Chapter 80	Tin and articles thereof	Manufacture from materials of any heading, except that of the product
Chapter 81	Other base metals; cermets; articles thereof	Manufacture from materials of any heading



**Suppression of additionnal
mandatory rules**

GSP Reform – Modernisation of RoO

Simpler origin determination criteria

The use of wholly obtained materials

The definition of the product wholly obtained is more precise.

- | | | |
|---|---|-----------------------|
| (b) plants and vegetable products grown or harvested there; | → | New wording « grown » |
| (e) products from slaughtered animals born and raised there; | → | New definition |
| (g) products of aquaculture where the fish, crustaceans and molluscs are born and raised there; | → | New definition |
| (k) waste and scrap resulting from manufacturing operations conducted there; | → | New wording « scrap » |

GSP Reform – Modernisation of RoO

Appropriate rules for determining the acquisition of origin

Applicability of cumulation of origin

- Cumulation of origin with industrial goods originating in Norway and Switzerland, extended to Turkey
- A new type of cumulation: extended cumulation with industrial goods
- A new group for regional cumulation : MERCOSUR (Argentina, Uruguay, Paraguay, Brasil)
- A new possibility of « cross » cumulation between the groups I and III

GSP Reform – Modernisation of RoO

Appropriate rules for determining the acquisition of origin

Improvements in general provisions

- Replacement of the direct transport rule with a more flexible non manipulation principle (Article 74);
- Removal of the crew requirement in the definition of "its vessels" for fishery products captured outside territorial waters to be considered as wholly obtained (Article 75-2);
- Relaxation (from 10 to 15%) and the adaptation to sectoral specificities of the general tolerance rule, from now on expressed as a percentage of weight for agricultural products (Article 79);
- Derogation.

GSP Reform – Modernisation of RoO

Appropriate rules for determining the acquisition of origin

Improvements in general provisions

Non manipulation principle (Article 74 – CCIP)

Direct transport rule replaced by a “non-manipulation” clause

- Conditions for transportation have been relaxed and simplified in order to correspond with the practice of the supply chain

GSP Reform – Modernisation of RoO

Appropriate rules for determining the acquisition of origin

Improvements in general provisions

Non manipulation principle (Article 74 – CCIP)

The products declared for release for free circulation in the European Union shall be the same products as exported from the beneficiary country in which they are considered to originate. They shall not have been altered, transformed in any way or subjected to operations other than operations to preserve them in good condition, prior to being declared for release for free circulation. Compliance with this provision **shall be considered as satisfied unless** the customs authorities have reason to believe the contrary; in such cases, the customs authorities may request the declarant to provide evidence of compliance, which may be given **by any means**.

GSP Reform – Modernisation of RoO

Appropriate rules for determining the acquisition of origin

Improvements in general provisions

Removal of the crew requirement in the definition of "its vessels" for fishery products captured outside territorial waters to be considered as wholly obtained (Article 75-2 - CCIP)

Reflect the reality of the economic sector.



Vessels conditions which allow fishery products to be considered as originating or not, are simplified.

GSP Reform – Modernisation of RoO

Appropriate rules for determining the acquisition of origin

Improvements in general provisions

Relaxation (from 10% to 15%) and the adaptation to sectorial specificities of the general tolerance rule, from now on expressed as a percentage of weight for agricultural products (Article 79 – CCIP)



**Tolerance rule is relaxed from 10% to 15%.
Tolerance is expressed either in weight or
in ex-works price**

Discussion

- What you think about the PEM ROO and its Revision
- What you think about the revision of the EU GSP

Questions and Answers

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