European Commission

GUIDANCE ON NON-PREFERENTIAL RULES OF ORIGIN

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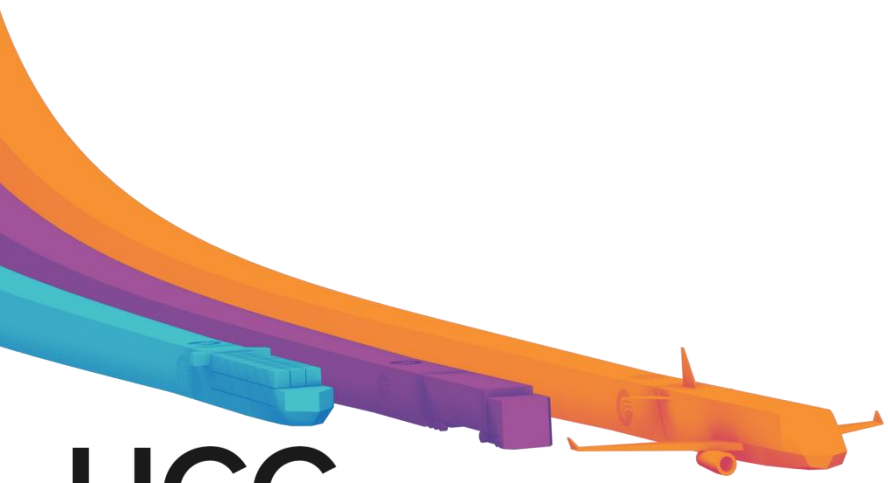

UCC
SIMPLICITY SERVICE SPEED
A MODERN FRAMEWORK FOR CUSTOMS AND TRADE

Taxation and Customs Union

Disclaimer

It must be stressed that this document does not constitute a legally binding act and is of an explanatory nature. Legal provisions of customs legislation take precedence over the contents of this document and should always be consulted. The authentic texts of the EU legal instruments are those published in the Official Journal of the European Union. There may also exist national instructions or explanatory notes in addition to this document.

Contents

Relevant legislation (and its amending and correcting acts which are not listed):

Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L269 of 10.10.2013) – hereafter referred to as UCC. Articles 59-63.

Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code (OJ L343 of 29.12.2015) – hereafter referred to as Delegated Act – UCC-DA. Articles 31-36, Annex 22-01 – Introductory notes and list of substantial processing or working operations conferring non-preferential origin.

Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L343 of 29.12.2015) – hereafter referred to as Implementing Act – UCC-IA. Articles 57-59.

Abbreviation/Acronym	Definition
UCC	**Union Customs Code**
UCC-DA	**Delegated Act**
UCC-IA	**Implementing Act**
BOI	**Binding Origin Information decision**
BTI	**Binding Tariff Information decision**
WTO	**World Trade Organisation**
WTO – ARO	**World Trade Organisation – Agreement on Rules of Origin**
HS	**Harmonised System**
CN	**Combined Nomenclature**
EU	**European Union**
ECJ	**European Court of Justice**
CC	**change to the chapter in question from any other chapter**
CTH	**change to the heading in question from any other heading**
CTSH	**change to the subheading in question from any other subheading or from any other heading**
CTHS	**change to the split heading in question from any other split of this heading or from any other heading**
CTSHS	**change to the split subheading in question from any other split of this subheading or from any other subheading or heading**

1. Introduction of the guidance on non-preferential origin

The aim of the non-binding guidance is to provide assistance for economic operators and customs authorities in understanding and applying the rules on the determination of non-preferential origin of goods in the EU.

Origin is the "economic" nationality of goods traded in commerce. The customs treatment upon release for free circulation of goods is determined by three elements: tariff classification, customs value and origin of the goods.

There are two types of origin: **preferential origin** and **non-preferential origin .**

Preferential origin is conferred on goods from particular countries when they fulfil the rules of origin provided for in the relevant preferential arrangement. In this case, the goods could benefit from a reduced customs duty or even free of duty. It should be noted that not all products necessarily have a preferential origin.

Non-preferential origin rules are used for the application of all kinds of non-preferential commercial policy measures, like, for instance, anti-dumping duties and countervailing duties, trade embargoes, safeguard measures, origin marking requirements[1], quantitative restrictions or tariff quotas, government procurement and trade statistics.

Non-preferential origin is obtained where goods are "wholly obtained" in one country or, when two or more countries are involved in the manufacture of a product, origin is obtained where goods underwent their last, substantial, economically-justified processing or working, in an undertaking equipped for that purpose, resulting in the manufacture of a new product or representing an important stage of manufacture.

Every product necessarily has a non-preferential origin, which could be different from its preferential origin.

In what follows in this guidance, the word 'origin' refers to non-preferential origin.

1.1 Difference between customs status and origin

The 'customs status of goods' and 'origin of goods' are 2 different concepts, serving different purposes.

Customs status means the status of goods as Union or non-Union goods (Art 5 (22) UCC), this status is independent of the origin of goods. The customs status of goods does not affect the origin of the goods.

Consequently, for goods that are of EU origin which are released for free circulation in the EU, the applicable duties will have to be paid when the goods have the customs status of non-Union goods. The Union customs status is obtained after completion of the procedures for release for free circulation and payment of the applicable duties.

[1] Regulation (EU) n°1169/2011 of the European Parliament and of the Council of 25 october 2011 on the provision of food information to consumers « INCO ».

1.2 Scope of application of the non-preferential rules of origin

The non-preferential rules of origin apply to goods declared for release for free circulation in the EU for the purpose of applying the Common Customs Tariff, except where it concerns preferential tariff measures. They are also used for the application of other measures established by Union provisions governing specific fields relating to trade in goods, like anti-dumping measures or origin marking requirements.

Establishing harmonised non-preferential rules of origin among WTO members is the objective of the Harmonisation Work Programme laid down in the Agreement on rules of origin (by Decision 94/800/EC the Council approved the Agreement on Rules of Origin (WTO-GATT 1994), annexed to the final act signed in Marrakesh on 15 April 1994). While awaiting the finalisation of this work program, any country can apply its own non-preferential rules of origin at release for free circulation. The rules applied by WTO members should comply with the principles laid down in the Agreement on rules of origin.

Due to the fact that any third country can apply its own non-preferential rules of origin, the use of EU non-preferential rules of origin is not mandatory for export, the only exception is in case Union measures relating to the origin of goods exist, like for instance export refunds.

2. Release for free circulation of goods

2.1.Basic concepts for the determination of the non-preferential origin: article 60 UCC and articles 31-36 UCC-DA

In order to be able to determine the origin of a product it is necessary to know its tariff classification. Indeed, the origin rule to apply depends on the tariff line. If there are doubts about the tariff classification the economic operator (importer) is recommended to apply for a BTI decision.

To determine the non-preferential origin of a product, two situations may arise. These two situations, which must be distinguished, are the following:

– there is only one country which is involved in the manufacture of the product, including the input materials;

– there are two or more countries which are involved in the manufacture of the product.

2.1.1. Only one country is involved in the manufacture of the product

When only one country is involved in the manufacture of a product, article 60(1) UCC applies. This article provides that "goods wholly obtained in a single country or territory shall be regarded as having their origin in that country or territory".

The article 31 UCC-DA specifies the notion of "goods wholly obtained". This article enumerates an exhaustive list of goods which shall be considered as wholly obtained in a single country or territory:

(a) mineral products extracted within that country or territory;

(b) vegetable products harvested there;

(c) live animals born and raised there;

(d) products derived from live animals raised there;

(e) products of hunting or fishing carried on there;

(f) products of sea fishing and other products taken by vessels registered in the country or territory concerned and flying the flag of that country or territory from the sea outside any country's territorial waters;

(g) goods obtained or produced on board factory ships from the products referred to in point (f) originating in that country or territory, provided that such factory ships are registered in that country or territory and fly its flag;

(h) products taken from the seabed or subsoil beneath the seabed outside the territorial waters provided that that country or territory has exclusive rights to exploit that seabed or subsoil;

(i) waste and scrap products derived from manufacturing operations and used articles, if they were collected there and are fit only for recovery of raw materials;

(j) goods produced there exclusively from products specified in points (a) to (i).

For example, tomatoes harvested in Morocco have non-preferential origin Morocco when they are released for free circulation in the EU.

2.1.2. Two or more countries are involved in the manufacture of the product

When two or more countries are involved in the manufacture of the product, article 60(2) UCC applies. This article provides that "goods the production of which involves more than one country or territory shall be deemed to originate in the country or territory where they underwent their last, substantial, economically justified processing or working, in an undertaking equipped for that purpose, resulting in the manufacture of a new product or representing an important stage of manufacture".

a) The "last substantial processing or working"

The last substantial processing or working should result in the manufacture of a new product or represent an important stage of manufacture.

In practice, it is necessary to have information about all the materials used. In particular, the non-originating materials used in the last country of production must be identified. Indeed, those non-originating materials must have been substantially processed or worked in order to confer the non-preferential origin of the last country of production on the final product.

This criterion must be checked in two different ways depending if the product concerned is included in the Annex 22-01 UCC-DA (see point 2.2.1) or not included in the Annex 22-01 UCC-DA (see point 2.2.2).

b) The economic justification

It is necessary to identify whether the working or processing carried out is economically justified.

In accordance with article 33 UCC-DA, the criterion of economic justification is not respected "if it is established, on the basis of the available facts that the purpose of that operation was to avoid the application of the measures referred to in Article 59 of the Code".

The application of this criterion can only be established on a case-by-case basis, taking into account all the elements of the last processing operations and the purpose of those processing operations in the last country of production. The question of compliance with the criterion 'economically justified' arises especially where anti-dumping measures are in force.

c) The production plant

The working or processing of goods must have been carried out in an undertaking equipped for that purpose.

d) The result of the transformation

The working or processing of goods must result in the manufacture of a new product or represent an important stage of manufacture.

e) The minimal operations

In accordance with Article 34 UCC-DA, certain operations must never be regarded as substantial processing or working, economically justified, conferring origin.

These operations are:

(a) operations to ensure the preservation of products in good condition during transport and storage (ventilation, spreading out, drying, removal of damaged parts and similar operations) or operations facilitating shipment or transport;

(b) simple operations consisting of removal of dust, sifting or screening, sorting, classifying, matching, washing, cutting up;

(c) changes of packaging and breaking up and assembly of consignments, simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations;

(d) the presentation of goods in sets or ensembles or presentation for sale;

(e) the affixing of marks, labels or other distinguishing signs on products or their packaging;

(f) simple assembly of parts of products to constitute a complete product;

(g) disassembly or change of use;

(h) a combination of two or more operations specified in subparagraphs (a) to (g).

Furthermore, certain activities like for example design of plans, inspection and testing, quality control of goods are never to be regarded as working or processing operations.

f) Treatment of accessories, spare parts or tools

1- Accessories, spare parts or tools imported with the product

Products such as machinery, equipment, vehicles or other products are often sold with accessories, spare parts, tools or illustration materials, e.g. manuals (illustration materials are generally regarded as "accessories") which are needed for their operation or maintenance.

For the purpose of non-preferential origin, accessories, spare parts and tools, that are parts of the normal equipment of goods listed in Sections XVI (Machinery and mechanical appliances; electrical equipment; parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles), XVII (Vehicles, aircraft, vessels and associated transport equipment) and XVIII (Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; clocks and watches; musical instruments; parts and accessories thereof) of the Combined Nomenclature and which are included in the price of the goods and are not separately invoiced, are considered as parts of a good.

Accessories, spare parts and tools for use with a machine, appliance, apparatus or vehicle should be deemed to have the same origin as the machine, appliance, apparatus or vehicle, provided that they are imported together and normally sold therewith and correspond, in kind and number, to the normal equipment thereof.

The accessories, spare parts and tools are not taken into consideration for the determination of the origin of the machine, appliance, apparatus or vehicle with which they are sold.

2- Essential spare parts imported for the use with a product already released for free circulation

Essential spare parts for use with any of the goods listed in Sections XVI, XVII and XVIII of the Combined Nomenclature previously released for free circulation in the Union shall be deemed to have the same origin as those goods if the incorporation of the essential spare parts at the production stage would not have changed their origin.

Essential spare parts means parts which are:

(a) components without which the proper operation of a piece of equipment, machine, apparatus or vehicle which have been put into free circulation or previously exported cannot be ensured; and

(b) characteristic of those goods; and

(c) intended for their normal maintenance and to replace parts of the same kind which are damaged or have become unserviceable.

g) Neutral elements and packing

1- Neutral elements:

Factors as the industrial plant or means of production such as energy, fuel, tools, machinery and equipment that are used in the process of manufacture of a product, which are not incorporated into the final product, are called neutral elements.

For the purpose of determining the origin of goods, no account shall be taken of the origin of the following elements:

(a) energy and fuel;

(b) plant and equipment;

(c) machines and tools;

(d) materials which neither enter into the final composition of the goods nor are intended to do so.

2- Packing:

Where, under general rule 5[2] for the interpretation of the combined nomenclature set out in Annex I to Council Regulation (EEC) No 2658/87, packing materials and packing containers are considered as part of the product for classification purposes, they shall be disregarded for the purpose of determining origin, except where the rule in Annex 22-01 UCC-DA for the goods concerned is based on an added value percentage.

2.2. The determination of origin where two or more countries are involved in the production

2.2.1. Determination of origin for products which are included in the Annex 22-01 UCC-DA

The article 32 UCC-DA specifies the notion of "last substantial processing or working". This article provides that "goods listed in Annex 22-01 UCC-DA shall be considered to have undergone their last substantial processing or working, resulting in the manufacture of a new product or representing an important stage of manufacture, in the country or territory in which the rules set out in that Annex are fulfilled or which is identified by those rules".

Annex 22-01 UCC-DA only applies to goods specifically listed in it. As an example, for Chapter 85, the rules in Annex 22-01 UCC-DA apply to ex8501, 8527, 8528, 8535, … and to all the other headings specifically listed in that chapter. For the other products classified in Chapter 85 and not specifically listed, like 8502, 8503, 8504, … the rules in Annex 22-01 UCC-DA do not apply and determination of the origin is explained in point 2.2.2.

There are two kinds of rules in Annex 22-01 UCC-DA: the primary rules and the residual rules.

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[2] Note:

General rule 5 for the interpretation of the combined nomenclature

In addition to the foregoing provisions, the following rules shall apply in respect of the goods referred to therein:

(a) camera cases, musical instrument cases, gun cases, drawing-instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character;

(b) subject to the provisions of rule 5(a), packing materials and packing containers (The terms 'packing materials' and 'packing containers' mean any external or internal containers, holders, wrappings or supports other than transport devices (for example, transport containers), tarpaulins, tackle or ancillary transport equipment. The term 'packing containers' does not cover the containers referred to in general rule 5(a)) presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision is not binding when such packing materials or packing containers are clearly suitable for repetitive use.

As a first step, the primary rules apply. When a primary rule is not fulfilled, a residual rule applies in order to determine the origin of the product concerned. Indeed, every product necessarily has a non-preferential origin.

The introductory notes of the Annex 22-01 UCC-DA define the terms commonly used in the Annex and give indications on how to apply the rules.

a) The primary rules for products which are included in the Annex 22-01 UCC-DA

The first two columns in the list in Annex 22-01 UCC-DA describe the product obtained. The first column gives the heading number, or the chapter number, used in the HS and the second column gives the description of goods used in the HS for that heading or chapter. For each entry in the first two columns, a primary rule is specified in column 3. Where the entry in the first column is preceded by an 'ex', this signifies that the primary rule in column 3 only applies to the part of that heading or chapter as described in column 2.

Where several heading numbers are grouped together in column 1 or a chapter number is given and the description of goods in column 2 is therefore given in general terms, the adjacent primary rule in column 3 applies to all goods which, under the HS, are classified in headings of the chapter or in any of the headings grouped together in column 1.

Where the list includes different rules applying to different goods within one heading, each indent contains the description of that part of the heading covered by the adjacent primary rule in column 3.

The primary rules may be located either at the beginning of the chapter concerned ("Chapter primary rules") or in the table listing the rules for each product ("primary rules") and these rules may apply alternatively, at the choice of the economic operator.

There are two categories of primary rules:

1) primary rules that identify the country, meaning those that directly indicate the country of origin;

2) primary rules that confer the origin of the last country of production, provided that the criterion set out in the primary rule has been fulfilled in that country. Among the primary rules conferring origin in the last country of production, three kinds of rules coexist:

– the change of tariff heading, subheading or split subheading;

A change of tariff heading occurs where the tariff classification of the final product is different from the tariff classification of the non-originating materials that were used in the production. A change from some specific other heading may be excluded (for example for HS 7227 the rule reads "CTH, except from heading 7228"), or the change may be conditional on some additional operation (for example for HS 7223 the rule reads "CTH, except from 7221 to 7222; or change from 7221 to 7222, provided the material has been cold-formed.")

– ***the criterion of the specific processing.***

Specific processing includes, for example, the following rules:

* manufacture from fibres;

* manufacture from yarn;

* complete making-up (i.e. all the operations following cutting of the fabric or knitting or crocheting of the fabric directly to shape have to be performed);

* printing or dyeing

* specific rule for goods and parts produced from blanks.

The term ‘fibres’ used in the list in Annex 22-01 UCC-DA covers ‘natural fibres’ and ‘man-made staple fibres’ falling within CN codes 5501 to 5507, and fibres of a kind used for the manufacture of paper.

The term ‘natural fibres’ is used in the list in Annex 22-01 UCC-DA to refer to fibres other than artificial or synthetic fibres and is restricted to the stages before spinning takes place, including waste, and unless otherwise specified, the term ‘natural fibres’ includes fibres that have been carded, combed or otherwise processed but not spun.

The term ‘natural fibres’ includes horsehair falling within CN code 0503, silk falling within CN codes 5002 and 5003 as well as the wool fibres, fine or coarse animal hair falling within CN codes 5101 to 5105, cotton fibres falling within CN codes 5201 to 5203 and other vegetable fibres falling within CN codes 5301 to 5305.

Introductory note 1.4 of Annex 22-01 UCC-DA states that the term ‘complete making-up’ used in the list means that all the operations following cutting of the fabric or knitting or crocheting of the fabric directly to shape have to be performed. However, making-up shall not necessarily be considered as incomplete where one or more finishing operations have not been carried out.

There is a special case concerning finishing operations, linked to the complete making-up of a product. It is possible that in particular manufacturing operations, the accomplishment of finishing operations, especially in the case of a combination of operations, is of such importance that these operations must be considered as going beyond simple finishing. In these particular cases, the non-accomplishing of finishing operations will deprive the making-up of its complete nature.

- the value added criterion

'X% value added rule’ means manufacture where the increase in value acquired as a result of working and processing, and if applicable, the incorporation of parts originating in the country of manufacture represents at least X% of the ex-works price of the product. ‘X’ represents the percentage indicated for each heading.

In general, account should be taken of the introductory notes of Annex 22-01 UCC-DA.

Point 2.3 of the introductory notes of Annex 22-01 UCC-DA states that "the materials which have acquired originating status in a country are considered to be originating materials of that country for the purpose of determining the origin of a good incorporating such materials, or of a good made from such materials by further working or processing in that country".

Point 2.5 of the introductory notes of Annex 22-01 UCC-DA also states that where the primary rule is based on a change of tariff heading, non-originating materials which do not comply with the primary rule, unless otherwise specified in a certain chapter, are not taken into account, provided that the total value of such materials does not exceed 10 % of the ex-works price of the product. This provides for a tolerance of the incorporation of non-originating materials.

In addition, the primary rules represent the minimum amount of working or processing required and the carrying out of more working or processing also confers originating status; conversely, the carrying out of less working or processing cannot confer origin. Thus, if a primary rule indicates that non-originating material at a certain level of manufacture may be used, the use of such material at an earlier stage of manufacture is allowed and the use of such material at a later stage is not.

When a primary rule specifies that a product may be manufactured from more than one material, this means that any one or more of the materials may be used. It does not require that all be used.

Example:

the primary rule for yarns says that natural fibres may be used and that chemical materials, among other materials, may also be used. This does not mean that both have to be used, one can use one or the other or both.

When a primary rule specifies that a product must be manufactured from a particular material, the condition obviously does not prevent the use of other materials which, because of their inherent nature, cannot satisfy the rule.

b) The economic justification

In accordance with Article 33 paragraph 2 UCC-DA, where the criterion of economic justification is not respected, the Chapter residual rules apply.

c) The minimal operations

If the operation which led to the fulfilment of the rule is included in article 34 UCC-DA (minimal operations), the goods shall not be regarded as originating in the country in which the last operation took place as this operation cannot be considered as substantial, even if a

primary rule is fulfilled. In this case, the Chapter residual rules apply.

Example:

For heading 8206 with the description ' Tools of two or more of the headings 8202 to 8205, put up in sets for retail sale' the primary rule reads CTH.

Where the only operation in country A would consist of bringing together two or more tools of headings 8202 to 8205 originating in country B in a set for retail sale, than this is to be considered a minimal operation which cannot confer the origin, regardless of the fact that the primary rule was fulfilled. In this case the chapter residual rules applies, which stipulates that "Where the country of origin cannot be determined by application of the primary rules, the country of origin of the goods shall be the country in which the major portion of the materials originated, as determined on the basis of the value of the materials".

In this example the country of origin of the set will be country B.

d) The residual rules for products which are included in the Annex 22-01 UCC-DA

Where a primary rule has not allowed to determine the non-preferential origin of the goods, or where the processing done is not economically justified (article 33 of UCC-DA), or where the operation performed does not go beyond minimal operations of article 34 UCC-DA, the residual rules shall apply.

The Chapter residual rule defined at the top of each chapter states that the country in which the major portion of the materials originate is the country of origin. As the case may be, the major portion rule is based on value or weight of the materials used.

However, for some agricultural products (Chapters 2, 4, 9, 14, 17, 20 and 22), specific chapter residual rules apply to mixtures of fungible materials which takes precedence over the major portion rule.

This rule applies when the final product is part of the Annex 22-01 UCC-DA, the materials used do not necessarily have to be part of Annex 22-01 UCC-DA.

For the purpose of this residual rule, ‘mixing’ means the deliberate and proportionally controlled operation consisting in bringing together two or more fungible materials.

Fungible materials are interchangeable materials, they are of such nature or kind as to be freely exchangeable or replaceable, in whole or in part, for another of like nature or kind. Moveable perishable goods of a sort that may be estimated by number or weight, such as grain, wine, etc.

Where the percentage required by the rule is not met, the origin of the mixture is the country in which the mixing was carried out.

Where the "mixing" does not fulfil the conditions of the definition, the "normal" major portion rule applies.

2.2.2. Determination of origin for products which are not included in the Annex 22-01 UCC-DA

For goods not listed in Annex 22-01 UCC-DA the origin is determined on a case-by-case basis by evaluating any process or operation in relation to the concept of the last substantial processing or working as defined in Article 60 of the UCC.

No legally binding rules exist for products not listed in Annex 22-01 UCC-DA.

For goods not listed in Annex 22-01 UCC-DA a minimal operation indicated in Art34 UCC-DA is not to be considered as origin conferring.

In accordance with Article 33 paragraph 3 UCC-DA, where the processing or working operations are not economically justified, the country of origin of the final product is the country or territory where the major portion of the materials originated, as determined on the basis of the value of all the materials used.

However, in an effort to increase the harmonised interpretation of the basic principle of 'last substantial transformation' for goods not listed in Annex 22-01 UCC-DA and to assist customs authorities and economic operators, the Commission has published specific guidance on the Europa website.

The Court has held that the rules published on the Europa website contribute to the determination of the non-preferential origin of goods and facilitate a harmonised interpretation within the EU, and that the customs authorities and the Courts in the Member States may have recourse to the Chapter Notes and to the list rules.

The Court has however repeatedly held that those rules have no legally binding effect and that they may in any case not contradict the principle established in Article 60(2) UCC. Consequently, the result of the application of those rules must not alter Article 60 of the UCC. (Case C-260/08 *HEKO Industrieerzeugnisse, paragraphs 20-21,23;* Case *C-373/08 Hoesch Metals and Alloys, paragraphs 39,41)*

To this effect, certain elements developed by the ECJ should serve as guidance.

For assembly operations: "Concerning the issue whether the operation of assembling various parts amounts to a substantial working or processing operation, the Court has already held that such an operation may be regarded as conferring origin where it represents, from a technical point of view and having regard to the definition of the goods in question, the decisive production stage during which the use to which the component parts are to be put becomes definite and the goods in question are given their specific qualities". (Case 114/78 *Yoshida;* Case C-26/88 *Brother International, paragraph 19;* Cases C-447/05 and C-448/05 *Thomson and Vestel France, paragraph 26)*

For other operations: "It follows from the Court's case-law that the determination of the origin of goods must be based on a real and objective distinction between the basic product and the processed product, depending fundamentally on the specific material qualities of each of those

products. It is also important to note that the last processing or working is 'substantial', for the purposes of Article 24 of the Customs Code [provision which is now Article 60 of the UCC], only if the product resulting there from has its own specific properties and composition, which it did not possess before that process or operation. Activities altering the presentation of a product for the purposes of its use, but which do not bring about a significant qualitative change in its properties, are not of such a nature as to determine the origin of that product".
(Case 49/76 Gesellschaft für Uberseehandel,paragraph 6*;* Case 93/83 *Zentrag* , paragraph 13; Case C-260/08 *HEKO Industrieerzeugnisse*, paragraph 28 and Case *C-373/08 Hoesch Metals and Alloys, paragraph 46*)

2.3. Checking the declared origin and proof of origin

The non-preferential origin of the goods is a mandatory element of the declaration for release for free circulation.

The declarant is responsible for the correct origin determination and should hold the information on the processing that has taken place in the last country of production of the goods declared for release for free circulation in the EU. This information should enable the origin to be determined and could include details, as the case may be, on the wholly obtained product, on the exact production process and on the tariff classification, value and origin of the input materials.

Proof of origin is all evidence submitted to support the declared origin. Except for the certificate of origin for products subject to special non-preferential import arrangements, this evidence is not subject to any specific conditions, in other words the principle of free evidence applies. The evidence is not to be presented automatically at the time of lodging the declaration for release for free circulation, but is to be put at the disposal of the customs authorities at their first request. The operator therefore has an interest in making sure he has all the necessary information in his possession at the time of lodging the declaration for release for free circulation.

2.3.1. Checking of the non-preferential origin for products not subject to special non-preferential import arrangements

Whenever the customs authorities wish to verify the declared non-preferential origin, based on Article 61(1) of UCC, the customs authorities may require the declarant to prove the origin of the goods.

In case the declarant is the holder of a BOI decision, he has to indicate it in the declaration for release for free circulation and he has to prove that the imported goods are the same as the goods for which the BOI was issued.

The following information and documents may be required (non exhaustive list):

- Name and address of the producer
- Country and place of production
- Customs documents of the exporting country
- Commercial sales contracts

- Any other information or documents which prove the origin of the goods based on Article 60.

Information relating to the origin of the goods:

- Description of the product

- Tariff classification (minimum 6 digits):

- Ex-works price:

- Origin:

Explanation on how the assessment of the declared origin of the product was done (which of the provisions in the Union Customs Code Regulation (EU) 952/2013, and Commission Delegated Regulation (EU) 2015/2446 have been applied?)

Information relating to the origin determination:

- Detailed description of the production process:

- Has this product been manufactured entirely from materials that were wholly obtained in the country of production?

If not the following elements are to be provided:

a. Where the origin determination is based on a change in tariff classification, for each of the materials or components:
   i. the sub-heading in which they are classified (6 digits)
   ii. the origin

b. Where the origin determination is based on a value-added rule, the value of the most important components not originating in the country of manufacture, allowing for the verification that the rule has been fulfilled.

c. Where origin is determined by any other method (such as a specific processing operation or a residual rule), detailed information (as appropriate: weight, value of materials, etc.) allowing for the verification that the rule has been fulfilled.

A form is attached to this guidance which takes into account these elements and which could be filled out by the declarant upon request by the customs authority. This Annex is purely meant as an example and has no binding force. Where the information contained in it should be kept confidential it may be sent directly to the customs office indicated in the document.

Certificate of origin issued in third countries:

Customs authorities should never request a certificate of origin issued in a third country as a proof of the origin, except for a certificate of origin for products subject to special non-preferential import arrangement laid down in Annex 22-14 UCC-IA, which is treated below under 2.3.2.

Where a certificate of origin which was issued in third countries is presented with the declaration for release for free circulation in other cases than those referred to in Articles 57 – 59 UCC-IA, it does not prove the origin based on Article 60 UCC. Such a proof of origin gives no information about the accuracy of the non-preferential origin declared, insofar as third countries could have different rules. Therefore, this kind of certificate merely gives an indication about the place of production or provenance of the goods. In addition, no administrative cooperation is foreseen for this kind of certificate of origin.

Furthermore, a proof of origin issued for preferential purposes, even in the context of a preferential trade arrangement between the EU and a third country, is in principle not acceptable as a proof of the non-preferential origin of the goods concerned, since the rules of origin applicable in each case are different. A proof of preferential origin may nevertheless be taken into consideration in the verification of a declared non-preferential origin if the declarant can establish that the goods concerned acquired their preferential originating status in accordance with rules identical to those applicable to determine their country of origin in accordance with Article 60 UCC.

2.3.2. Checking of the non-preferential origin for products which are subject to special non-preferential import arrangements (Article 61(1) and (2) of UCC)

Products subject to special non-preferential import arrangements are products for which tariff quotas are opened in accordance with Union legislation which specifically provide for the obligation to present a proof of origin in the form of a certificate of origin as laid down in Article 57 UCC-IA in order to benefit from the reduced tariff rate when the goods in question are released for free circulation.

The form of the certificate of origin is provided for in Annex 22-14 UCC-IA.

In case of reasonable doubts or random checks, verifications of these certificates of origin shall be carried out in accordance with Article 59 UCC-IA.

For the purpose of subsequent verification of these certificates, an administrative cooperation procedure is to be set up, as foreseen in Article 58 UCC-IA. In this regard, third countries shall provide the European Commission with:

- the names and addresses of the issuing authorities,

- the specimens of the stamps used for endorsing the certificates, the name and addresses of the governmental authorities in charge with the subsequent verification. Where this information is not provided, the competent authorities in the EU shall refuse use of the special non-preferential import arrangement.

If there is no answer to the verification request within six months, the customs authorities shall refuse use of the special non-preferential import arrangement for the products in question.

2.3.3. Incorrect declaration of non-preferential origin in the declaration for release for free circulation

Where the declared non-preferential origin is found to be incorrect, Article 243(4) UCC-IA states that the origin to be taken into account for the calculation of the amount of import duties shall be established on the basis of the evidence presented by the declarant or, where this is not sufficient or satisfactory, on the basis of any available information.

3. Export of goods

The EU non-preferential rules of origin apply only in very specific and limited cases to export of goods. They only apply to exported goods where Union measures relating to the origin of goods exist, like for instance export refunds. Export refunds may only be introduced in exceptional circumstances. For other exported goods, which will be the vast majority of cases, it is not mandatory to use the EU non-preferential rules of origin. In addition it is not mandatory to indicate the origin in the export declaration.

Besides the situation where Union measures apply, the only legislative provision on non-preferential origin for export relates to the issuance of a document proving the origin. It states that where the exigencies of trade so require, a document proving the origin may be issued in the Union based on the rules of origin in force in the country of destination or by applying any other method identifying the country where the goods were wholly obtained or underwent their last substantial transformation (art 61(3) UCC).

A helpful tool for economic operators to find out whether a third country applies non-preferential rules of origin may be the Notifications of WTO members on the application of non-preferential rules of origin (*Notifications*). It is to be noted that this list is subject to modifications.

ANNEX

Reference to the customs declaration for free circulation:

Identification of the declarant:

Information relating to the origin of the goods:

1. Description of the product:

2. Tariff classification (minimum 6 digits):

3. Ex-works price:

4. Origin:

   How did you make the assessment of the declared origin of the product?

   Which of the provisions in the Union Customs Code Regulation (EU) 952/2013, and Commission Delegated Regulation (EU) 2015/2446 have been applied?

Please provide the following information relating to the origin determination:

1. Detailed description of the production process:

2. Has this product been manufactured entirely from materials that were wholly obtained in the country of production?

3. If not, please provide the following elements:

   a. Where the origin determination is based on a change in tariff classification, for each of the materials or components:

      - the sub-heading in which they are classified (6 digits)

      - the origin

   b. Where the origin determination is based on a value-added rule, the value of the most important components not originating in the country of manufacture, allowing for the verification that the rule has been fulfilled.

   c. Where origin is determined by any other method (such as a specific processing operation or a residual rule), detailed information (as appropriate: weight, value of materials, etc.) allowing for the verification that the rule has been fulfilled.

Please note that evidence relating to these elements may be required at a later stage, including copies of import declarations, invoices etc.

Where the information above should be kept confidential, this document may be sent back directly to the customs office responsible for the verification of the declared origin at the following address: