Commission Implementing Regulation (EU) 2015/428 of 10 March 2015 amending Regulation (EEC) No 2454/93 and Regulation (EU) No 1063/2010 as regards the rules of origin relating to the scheme of generalised tariff preferences and preferential tariff measures for certain countries or territories

COMMISSION IMPLEMENTING REGULATION (EU) 2015/428

of 10 March 2015

amending Regulation (EEC) No 2454/93 and Regulation (EU) No 1063/2010 as regards the rules of origin relating to the scheme of generalised tariff preferences and preferential tariff measures for certain countries or territories

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the Union,

Having regard to Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code[(1)], and in particular Article 247 thereof,

Whereas:

(1) Commission Regulation (EEC) No 2454/93[(2)], as amended by Regulation (EU) No 1063/2010[(3)] and Implementing Regulation (EU) No 530/2013[(4)], provided for a reform of the way in which the origin of goods is certified for the purposes of the Union's scheme of generalised tariff preferences (‘GSP’). The reform introduced a system of self-certification of origin of goods by exporters registered for that purpose by the beneficiary countries or by the Member States, the implementation of which was deferred until 1 January 2017. The underlying principle behind the reform is that, since exporters are in the best position to know the origin of their products, it is appropriate to require that they directly provide their customers with statements on origin. In order to allow beneficiary countries and Member States to register exporters, the Commission is to establish an electronic system of registered exporters (‘the REX system’).

(2) Further requirements of the REX system have been clarified. Those requirements make it necessary to modify a number of provisions relating to GSP rules of origin.

(3) Norway and Switzerland also grant unilateral tariff preferences to imports from beneficiary countries. In the course of the discussions held by the Commission with Norway and Switzerland in accordance with the authorisation the Commission received from the Council to re-negotiate with those two countries the existing agreements[(5)] regarding the mutual acceptance of replacement proofs of origin and the extension of bilateral cumulation to materials originating in Norway and Switzerland, it has been agreed that Norway and Switzerland are also to apply the registered exporter system and to use the REX system. The same possibility should be offered to Turkey once that country fulfils certain conditions laid down in Regulation (EEC) No 2454/93. The necessary adjustments should therefore be introduced in order to ensure the proper functioning of the cooperation between the Union, Norway, Switzerland and Turkey.

Changes to legislation: *Commission Implementing Regulation (EU) 2015/428 is up to date with all changes known to be in force on or before 24 December 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(4) An importer using a statement on origin should be able to verify the validity of the registered exporter number of the registered exporter who made it out. Therefore, the data of the REX system should be published on a public website.

(5) The existing rules concerning the registered exporters system are to become applicable on 1 January 2017. In order to avoid that those rules are affected at the stage of their implementation, the modifications introduced by this Regulation should become applicable before that date.

(6) Under the existing rules, only exporters in beneficiary countries and in the Union are eligible for registration. As Norway and Switzerland as well as Turkey, once that country fulfils certain conditions, are to apply the registered exporters system, their exporters should also have the possibility to be registered in order to be entitled to make out statements on origin in the context of bilateral cumulation or to make out replacement statements on origin in the context of the re-consignment of goods.

(7) The current rules concerning the time limits for the setting-up of the REX system do not sufficiently take into account the capacity of beneficiary countries to manage the registration procedure and to implement the system as of 2017. Therefore, transitional measures and a phasing-in approach until 31 December 2019 with a possible extension period of six months should be provided for. From 30 June 2020, to be entitled to the GSP preferential tariff treatment, all consignments containing originating products the total value of which exceeds EUR 6 000 will have to be accompanied by a statement on origin made out by a registered exporter.

(8) The Commission, the competent authorities of beneficiary countries and the customs authorities of the Member States as well as of Norway, Switzerland and Turkey, once that country fulfils certain conditions, need to have access to the data registered in the system. In order to ensure proper protection of personal data, detailed rules concerning in particular the scope of access to and the purpose of processing of those data, as well as the right of exporters to obtain modification, erasure or blocking of those data, should be set out.

(9) This Regulation should in no way affect the level of protection of individuals with regard to the processing of data under the provisions of Directive 95/46/EC of the European Parliament and of the Council[(6)] and national law implementing that Directive and, in particular, does not alter either the obligations of Member States relating to their processing of data under Directive 95/46/EC or the obligations of the Union institutions and bodies relating to their processing of data under Regulation (EC) No 45/2001 of the European Parliament and of the Council[(7)] when fulfilling their responsibilities.

(10) The data retention period for data relating to a registered exporter whose registration is revoked should be determined, taking account of the actual need for retaining such data and the retention period already set out in the laws of the Member States.

(11) The rules concerning the splitting of consignments should be adjusted so as to clarify that the splitting of consignments may only take place where carried out by exporters or under their responsibility.

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(12) The conditions for the retrospective issuing of certificates of origin Form A should provide for the additional case where the final destination of the products is determined during the transportation or storage of the products and after possible splitting.

(13) As the status of some countries under the GSP Scheme changed on 1 January 2015 from that of beneficiary country to that of eligible country, the competent authorities of those countries will no longer be able to issue Form A certificates for goods originating in another country of the same regional group which is still a beneficiary country, as they used to in accordance with second and third subparagraphs of Article 86(4). In order to allow exporters of goods from beneficiary countries to continue to transport their goods via their regular trade routes through the countries having changed their status without interruption during the period from 1 January 2015 until the entry into force of this Regulation, the amendments to the rules concerning retrospective issuing of certificates Form A should apply with retroactive effect from 1 January 2015.

(14) The current rules, procedures and methods of administrative cooperation applicable until the registered exporter system is applied stipulate that exporting beneficiary countries shall, on their own initiative or at the request of the customs authorities of Member States, carry out appropriate inquiries if the verification procedure or any other available information appears to indicate that the rules of origin are being contravened. The same obligation should continue to be applicable after the registered exporter system is applied.

(15) In order to ensure legal certainty, the transitional rules concerning the application of the system of self-certification of origin by registered exporters currently set out in the amending Regulation (EU) No 1063/2010 should be incorporated directly into Regulation (EEC) No 2454/93.

(16) A new heading of the Harmonised Commodity Description and Coding System with its rules should be introduced into Part II of Annex 13a so as to take account of apparels not knitted or crocheted (heading 62) but having knitted or crocheted parts.

(17) Following the addition of Spanish to the languages in which a statement on origin may be made out, Annex 13d referred to in Article 95(3) of Regulation (EEC) No 2454/93 should be amended by adding a Spanish version of the statement on origin.

(18) Annex 17 should be amended in order to introduce a tolerance in width up to which certificates of origin Form A may not comply with measurement requirements. At the same time, the list of countries which accept certificates of origin Form A for the purpose of the Union's scheme of generalised tariff preferences should be amended by adding Croatia.

(19) Article 109 should be supplemented by a provision concerning the endorsement of Box 7 of movement certificate EUR.1 and invoice declarations, which should contain additional indications clarifying the legal framework under which such proofs are issued or made out.

(20) Regulation (EEC) No 2454/93 should therefore be amended accordingly.

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(21) The measures provided for in this Regulation are in accordance with the opinion of the Customs Code Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 2454/93 is amended as follows:

(1) Article 66a is added as follows:

Article 66a

1 Articles 68 to 71, 90 to 97j shall apply from the date of application of the system of self-certification of origin by registered exporters ("the registered exporter system") by beneficiary countries and Member States.

2 Articles 97k to 97w shall apply as long as beneficiary countries and Member States issue certificates of origin Form A and movement certificates EUR.1, respectively, or their exporters make out invoice declarations, in accordance with Articles 91 and 91a.

(2) Article 67 is amended as follows:

(a) In paragraph 1, points (m) and (n) are replaced by the following:

(m) "value of materials" in the list in Annex 13a means the customs value at the time of importation of the non-originating materials used, or, if this is not known and cannot be ascertained, the first ascertainable price paid for the materials in the country of production; where the value of the originating materials used needs to be established, this point shall be applied *mutatis mutandis*;

(n) "ex-works price" means the price paid for the product ex-works to the manufacturer in whose undertaking the last working or processing is carried out, provided that the price includes the value of all the materials used and all other costs related to its production, minus any internal taxes which are, or may be, repaid when the product obtained is exported.

Where the actual price paid does not reflect all costs related to the manufacturing of the product which are actually incurred in the country of production, the ex-works price means the sum of all those costs, minus any internal taxes which are, or may be, repaid when the product obtained is exported;.

(b) In paragraph 1, points (u) and (v) are replaced by the following:

(u) "registered exporter" means:

(i) an exporter who is established in a beneficiary country and is registered with the competent authorities of that beneficiary country for the purpose of exporting products under the scheme, be it to the Union or another beneficiary country with which regional cumulation is possible; or

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(ii) an exporter who is established in a Member State and is registered with the customs authorities of that Member State for the purpose of exporting products originating in the Union to be used as materials in a beneficiary country under bilateral cumulation; or

(iii) a re-consignor of goods who is established in a Member State and is registered with the customs authorities of that Member State for the purpose of making out replacement statements on origin in order to re-consign originating products elsewhere within the customs territory of the Union or, where applicable, to Norway, Switzerland or Turkey ("a registered re-consignor");

(v) "statement on origin" means a statement made out by the exporter or the re-consignor of the goods indicating that the products covered by it comply with the rules of origin of the scheme.

(c) The following paragraph 3 is added:

3. For the purpose of point (u) of paragraph 1, where the exporter is represented for the purpose of carrying out export formalities and the representative of the exporter is also a registered exporter, this representative shall not use his own registered exporter number.

(3) In Article 68, paragraph 3 is replaced by the following:

3. The beneficiary countries shall submit the undertaking referred to in paragraph 1 to the Commission at least three months before the date on which they intend to start the registration of exporters.

(4) Article 69 is replaced by the following:

Article 69

1 Beneficiary countries shall notify the Commission of the authorities situated in their territory which are:

a part of the governmental authorities of the country concerned, or act under the authority of the government thereof, and competent to register exporters in the REX system, modify and update registration data and revoke registration;

b part of the governmental authorities of the country concerned and responsible for ensuring the administrative cooperation with the Commission and the customs authorities of the Member States as provided for in this Section.

They shall notify the Commission of the names and addresses and contact details of those authorities. The notification shall be sent to the Commission at the latest three months before the date on which the beneficiary countries intend to start the registration of exporters.

Beneficiary countries shall inform the Commission immediately of any changes to the information notified under the first subparagraph.

2 Member States shall notify the Commission of the names, addresses and contact details of their customs authorities which are:

a competent to register exporters and re-consignors of goods in the REX system, modify and update registration data and revoke registration;