

*This document contains an EU proposal for a legal text on Rules of Origin (section B) in the Trade Part of a possible modernised EU-Mexico Association Agreement. It has been tabled for discussion with Mexico. The actual text in the final agreement will be a result of negotiations between the EU and Mexico. The EU reserves the right to make subsequent modifications to this proposal.*

## **EU-Mexico Free Trade Agreement**

### **EU TEXTUAL PROPOSAL**

#### **Chapter on Rules of Origin – Section B**

##### **TITLE**

##### **PREFERENTIAL TARIFF TREATMENT**

###### *Article 16*

###### **Claim for preferential tariff treatment**

1. The importing Party shall on importation grant preferential tariff treatment to an originating product within the meaning of this Protocol on the basis of a claim by the importer for preferential tariff treatment. The importer accepts responsibility for the correctness of the claim for preferential tariff treatment and compliance with the requirements provided for in the Protocol.
2. The claim for preferential tariff treatment shall be based on a statement on origin that the product is originating, made out by the exporter.
3. The claim for preferential tariff treatment and its basis as referred to in paragraph 2 shall be included in the customs import declaration in accordance with the laws and regulations of the importing Party.
4. The importer making a claim based on a statement on origin referred to in paragraph 2 shall possess this statement and, when required provide a copy of the statement to the customs authority of the importing Party.
5. Paragraphs 2, 3 and 4 do not apply in the cases specified in Article 20.

###### *Article 17*

###### **Statement on origin**

1. A statement on origin may be made out by an exporter of the product on the basis of information demonstrating that the product is originating, including information on the originating status of materials used in the production of the product. The exporter is responsible for the correctness of the statement on origin made out and the information provided.
2. The statement on origin shall be made out using one of the linguistic versions included in Annex XX on an invoice or on any other commercial document of the exporter that describes the originating product in sufficient detail to enable its identification. The importing Party shall not require the importer to submit a translation of the statement on origin.
3. The customs authorities of the importing Party shall not reject a claim for preferential tariff treatment due to minor errors or discrepancies in the statement on origin.
4. A statement on origin shall be valid for one year from the date it was made out.
5. A statement on origin may apply to:
  - a) a single shipment of a good into {the territory of} a Party; or
  - b) multiple shipments of identical goods within any period specified in the statement on origin not exceeding 12 months.
6. Where, at the request of the importer and on the requirements laid down by the customs authorities of the importing Party, dismantled or non-assembled products within the meaning of General Rule 2(a) of the Harmonized System falling within Sections XV to XXI of the Harmonized System are imported by instalments, a single statement on origin for such products may be used.

*Article 18*

[Importer's knowledge]

*Article 19*

**Record keeping requirements**

1. An importer claiming preferential tariff treatment for a product imported into the territory of that Party shall have in his possession and maintain, for a minimum of 3 years from the date of importation of the product, the statement on origin made out by the exporter.

2. An exporter who made out a statement on origin shall for a minimum of 4 years following the making out of that statement on origin have in his possession and maintain copies of statement on origins and all other records demonstrating that the product satisfies the requirements to obtain originating status.

3. The records to be kept in accordance with this Article may be held in electronic form.

This Article does not apply in the cases specified in Article 20.

#### Article 20

##### **Small consignments and waivers**

1. Products sent as small packages from private persons to private persons or forming part of travellers' personal luggage shall be admitted as originating products provided that such products are not imported by way of trade<sup>1</sup>, have been declared as meeting the requirements of this Protocol and where there is no doubt as to the veracity of such a declaration.

2. Provided that the importation does not form part of importations that may reasonably be considered to have been made separately for the purpose of avoiding the requirement for a statement on origin, the total value of these products referred to in paragraph 1;

a) in the case of the EU, shall not exceed EUR 500 in the case of small packages or EUR 1 200 in the case of products forming part of travellers' personal luggage. The amounts to be used in any given national currency shall be the equivalent in that currency of the amounts expressed in euro as at the first working day of October. The amounts shall be those published for that day by the European Central Bank, unless a different amount is communicated to the European Commission by 15 October, and shall apply from 1 January the following year. The European Commission shall notify XXX of the relevant amounts.

b) in the case of XXX, shall not exceed XXX, or such amount as XXX may establish.

4. Each Party may provide that the basis for the claim as referred to in Article 16(2) shall not be required for an importation of a good for which the importing Party has waived the requirement.

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<sup>1</sup> The imports which are occasional and consist solely of products for the personal use of the recipients or travellers or their families shall not be considered as imports by way of trade if it is evident from the nature and quantity of the products that no commercial purpose is in view.

*Article 21*

**Verification**

1. For the purposes of verifying whether a product imported into its territory from the territory of the other Party is originating or whether the other requirements of this Protocol are fulfilled, the customs authority of importing Party may initiate a verification based on risk assessment methods, which may include random selection, by means of a request for information from the importer who made the claim referred to in Article 16. The customs authority of the importing Party may initiate a verification either at the time of import declaration, before the release of goods, or after the clearance of the goods.

2. The request for information in paragraph 1 shall concern the statement on origin, whose importer shall provide a copy.

3. The request for information in paragraph 1 may also concern additional information but no more than the following data elements:

- The HS-code of the final product and origin criteria used;
- A brief description of the production process;
- Where the origin criterion was based on a specific production process, a specific description of that process;
- Where applicable a description of the originating and non-originating materials used in the production process;
- Where the origin criterion was 'wholly obtained', the applicable category (such as harvesting, mining, fishing and place of production);
- Where the origin criterion was based on a value method, the value of the final product as well as the value of all the non-originating or as appropriate originating materials used in the production;
- Where the origin criterion was based on weight, the weight of the final product as well as the weight of the relevant non-originating materials or as appropriate originating materials used in the final product;
- Where the origin criterion was based on changes in tariff classification, a list of all the non-originating materials including their tariff classification (in 2, 4 or 6 digit format depending on the origin criteria);
- Where applicable, the indication of the use of the sets rule, tolerances (de minimis), absorption, accounting segregation for fungible materials, cumulation, non-alteration, [DDBs].

The importer shall inform the customs authority of the importing Party when the requested additional information may be provided in full or in relation to one or more data elements by the exporter directly.

4. If the customs authorities of the importing Party decide to suspend the granting of preferential treatment to the products concerned while awaiting the results of the verification, release of the products shall be offered to the importer subject to appropriate precautionary measures including guarantees. Any suspension of preferential treatment shall be reinstated as soon as possible after the originating status of the products concerned or the fulfilment of the other requirements of this Protocol has been ascertained by the customs authorities of the importing Party.

*Article 22*

**Administrative Cooperation**

1. In order to ensure the proper application of this Protocol, the Parties shall cooperate with each other, through the customs authority in verifying whether products are originating and compliance with the other requirements provided for in the Protocol.

2. After having first requested information in accordance with Article 21 paragraph 1, the customs authority of the importing Party initiating the verification may send a request for information within a period of two years after the importation of the goods, to the customs or other competent governmental authority of the exporting Party. The request for information should include the following information:

- (i) the statement on origin;
- (ii) the identity of the customs authority issuing the request;
- (iii) the name of the exporter;
- (iv) the subject and scope of the verification;
- (v) where applicable any relevant documentation.

The customs authority of the importing Party may request the customs authority or other competent governmental of the exporting Party for specific documentation and information, where appropriate.

3. The customs authority of the exporting Party may in accordance with its laws and regulations, request documentation or examination by calling for any evidence or by visiting the premises of the exporter to review records and observe the facilities used in the production of the product.

4. Without prejudice to paragraph 5, the customs authority of the exporting Party following the request referred to in paragraph 2 shall provide the following information:

- (i) the requested documentation where available;
- (ii) an opinion on the originating status of the product;
- (iii) the description of the product subject to examination and the tariff classification relevant to the application of the rule of origin;

- (iv) a description and explanation of the production process sufficient to support the originating status of the product;
  - (v) information on the manner in which the examination was conducted; and
  - (vi) supporting documentation, where appropriate.
5. The customs authority of the exporting Party shall not transmit the information to the customs authority of the importing Party referred to in paragraph 4 when such information is deemed confidential by the exporter.

*Article 23*

**Denial of Preferential Tariff Treatment**

1. Without prejudice to paragraph 3, the customs authority of the importing Party may deny preferential tariff treatment where:
- a) within a period of 3 months following the request for information pursuant to Article 21, paragraph 1, no reply is provided by the importer.
  - b) within a period of 10 months following the request for information pursuant to Article 22, paragraph 2:
    - (i) no reply is provided, or
    - (ii) the information provided is inadequate to confirm that the product is originating;
  - c) following a request in the provisions on mutual administrative assistance laid down in Annex X of this Agreement and within the mutually agreed period, in respect of products having been subject of a claim as referred to in Article 16(1):
    - (i) the customs authority of the exporting Party fails to provide the assistance, or
    - (ii) the result of this assistance is inadequate to confirm that the product is originating.
2. The customs authority of the importing Party may deny preferential tariff treatment to a product for which an importer claims preferential tariff treatment where the importer fails to comply with requirements of this Protocol other than those relating to the originating status of the products.
3. Where the customs authority of the importing Party has sufficient justification to deny preferential tariff treatment under paragraph 1 in cases where the customs authority of the exporting Party provided an opinion pursuant to paragraph 4(ii) of Article 22, confirming the originating status of the products, the customs authority of the importing Party shall notify the customs authority of the exporting Party, within 2 months of receiving the opinion its intention to deny the preference.

In such case and at the request of either Party, consultations shall be held within a period of 3 months from the date of the notification referred to in the first subparagraph. The period for consultation may be extended on a case by case basis by mutual agreement between the Parties. The consultation may take place within the procedure set by the [Customs Committee] established under this Agreement.

At the expiry of the period for consultation, the customs authority of the importing Party may deny the preferential tariff treatment only on the basis of sufficient justification and after having granted the importer the right to be heard.

*Article 24*

**Confidentiality**

1. Each Party shall maintain, in accordance with its laws and regulations, the confidentiality of information provided to it by the other Party pursuant to this Protocol, and shall protect that information from disclosure.
2. Information obtained by the authorities of the importing Party may only be used by such authority for the purposes of this Protocol.
3. Confidential business information obtained from the exporter by the authority of the exporting Party or importing Party through the application of Articles 21 and 22 shall not be disclosed unless otherwise provided for in this Protocol.
4. Information obtained by the customs authority of the importing Party pursuant to this Protocol shall not be used by the importing Party in any criminal proceedings carried out by a court or a judge, unless permission to use such information is requested by and provided to the importing Party through the diplomatic channels or other channels established in accordance with the applicable laws and regulations of the exporting Party.

*Article 25*

**Sanctions and administrative measures**

The Parties shall impose [administrative measures, and sanctions where appropriate], in accordance with their respective laws and regulations, on any person who draws up, or causes a document to be drawn up, which contains incorrect information provided for the purpose of obtaining a preferential treatment for products, or who does not comply with the requirements set out in Article 19, or who does not provide the evidence or refuses the visit referred to in Article 22(3).