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TAXATION AND CUSTOMS UNION

Security, safety, Trade Facilitation, Rules of origin & International cooperation Coordination and task force for monitoring Implementation of rules of origin GSP rules of origin —
Non-preferential origin

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INFORMATION NOTE TO EU DELEGATIONS IN, OR IN CHARGE OF, COUNTRIES

BELONGING TO:

**the Association of Southeast Asian Nations (ASEAN),
the South Asian Association for Regional Cooperation (SAARC), and
the GSP Cumulation Group II (Bolivia, Colombia, Costa Rica, Ecuador, El
Salvador, Guatemala, Honduras, Nicaragua, Panama, Peru, Venezuela)**

Subject: GSP rules of origin - Impact of the removal of some countries from

the list of beneficiary countries as of 1 January 2015

In accordance with Commission Delegated Regulation (EU) No 1421/2013 amending Regulation (EU) No 978/2012, as of 1 January 2015, **China, Thailand, Ecuador and the Maldives** will lose their status of beneficiary countries of the GSP of the Union. The Commission informed these countries on several occasions of their forthcoming exclusion from the GSP. In order to alert them again, an information letter from Director DG TRADE-D has been sent to the Ambassadors of China, Thailand and the Maldives to the EU, with a copy to the EU Delegations concerned.

In the case of Ecuador, the Commission has made a legislative proposal outside the GSP legal framework for a Regulation that would grant Ecuador the same tariff arrangements (i.e, effectively extending the preferences as given through GSP+ as well as the corresponding rules of origin, e.g. use of Form A and cumulation) as those in place on 12 December 2014, date of initialling the recently negotiated EU-Ecuador Trade Agreement. This Regulation will almost certainly be adopted before the end of 2014 by the co-legislators and apply as of 1 January 2015 (in the very unlikely event that it were adopted in 2015, refund procedures would allow for retrospective claiming of preference). This "standstill" Regulation is considered as an interim and temporary arrangement until the EU-Ecuador Trade Agreement is applied, but not beyond 31 December 2016.

As for Thailand (belonging to ASEAN, i.e. cumulation group I) and the Maldives (belonging to SAARC, i.e. cumulation group III), these two countries will no longer be entitled to participate in regional cumulation operations and the remaining GSP beneficiary countries in the respective GSP groups/regions will **no longer be entitled to use materials originating in Thailand or the Maldives under cumulation.**

In accordance with Article 86(2)(a) of Regulation (EEC) No 2454/93 (as amended by Regulations (EU) No 1063/2010 and No 530/2013), hereinafter 'the GSP rules of origin', this

change will affect (processed) products **exported as of 1 January 2015 from**

beneficiary countries belonging to the respective cumulation groups. These countries can no longer issue or make out GSP proofs of origin for products incorporating materials originating in, respectively, Thailand or the Maldives which, without the relaxation offered by regional cumulation (i.e. that such materials may only be *processed more than minimally* instead of being *sufficiently processed*), would not qualify as originating.

A consequence that needs to be highlighted relates to the status of certain countries as logistic hubs, e.g. Thailand for the ASEAN region. In accordance with Article 86(4), second and third sub-paragraph, of the GSP rules of origin, the competent authorities of the country from which the goods are exported to the EU and where no processing takes place is entitled, **as long as that country remains a beneficiary country,** to certify the origin of the goods, i.e. the origin of that country (within the same region) in which the goods actually originate. In consequence, when a country belonging to a cumulation region loses its status of GSP beneficiary country, e.g. Thailand, **it simultaneously loses its entitlement to certify the origin** of goods originating in other countries of the region.

This has the following impact on the different stakeholders:

Consequences for the competent authorities in the countries losing their status as GSP beneficiaries (e.g. in Thailand and the Maldives):

A country that ceases to be a GSP beneficiary will be considered a 'normal' country of transit or storage for goods originating in GSP beneficiary countries, including for goods from the cumulation region it previously belonged to.

The GSP rules of origin allow a consignment to be split in a country of transit provided that the non-alteration principle is respected in that country. This principle is set out in Article 74(1): "*These 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. Storage of products or consignments and splitting of consignments may take place where carried out under the responsibility of the exporter (...) and the products remain under customs supervision in the country(ies) of transit.*"

It is important to stress that the products in transit have to remain under customs supervision. Ensuring compliance with the non-alteration principle falls within the remit of the competent authorities in the countries of transit if they accept that responsibility. While the competent authorities of former beneficiary countries may no longer issue GSP proofs of origin (including for goods originating in other countries of the region which remain beneficiary countries), they may in future be asked to certify that such products that transited through, or were stored on their territory, remained under customs supervision.

According to Article 74 (2) of the GSP rules of origin: "*Compliance with paragraph 1 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, including contractual transport documents such as bills of lading or factual or concrete evidence based on marking or numbering of packages or any evidence related to the goods themselves.*"

In line with this Article, operators can choose the means by which, in case of doubts expressed by customs authorities, they demonstrate compliance with the non-alteration principle, e.g. presenting a so-called 'non-manipulation certificate' (if such a certificate is issued by the customs authorities of the country of transit). The format of such certificates is not specified, but it should at least certify that goods corresponding to a certain description (i.e. nature and quantities) remained under customs supervision during their transit or storage in that country.

Consequences for exporters in the country of origin of the goods

After 1 January 2015, economic operators may continue to use the countries concerned (Thailand or the Maldives) as logistic hubs (transit/storage) for their exports to the EU. A practical problem will arise where information on the composition, the consignee and/or destination of consignments eventually exported to the EU was not available at the time when the goods in those consignments were first exported from the beneficiary country of origin to the hub which no longer benefits from GSP.

The GSP rules of origin do not **currently** cater for this problem. On the one hand, the country of transit/storage having lost its beneficiary status can no longer issue Form A certificates; and on the other hand, the beneficiary country of origin is not entitled to issue a Form A certificate retrospectively (i.e. once the destination of a consignment has become known). The current Article 971(2) of the GSP rules of origin foresees only two scenarios for retrospective issuing of certificates, neither of which correspond to the present scenario.

This legal gap is in the process of being corrected. The GSP rules of origin should shortly be amended so as to entitle the competent authorities of beneficiary countries to issue Form A certificates retrospectively under a third scenario, i.e. in cases where the final destination of consignments is decided or changed during transit or storage in a third country. The Regulation which should *inter alia* amend Article 971 of the GSP rules of origin for that purpose should enter into force in January or, at the latest, in February 2015. It will explicitly specify that the amendment in question applies with retroactive effect as of 1 January 2015.

Accordingly, after 1 January 2015, economic operators who export originating goods to the EU via a country of transit/storage which has lost its status of beneficiary country will have to request the retrospective issuing of Form A certificates from the competent authorities in the country in which the goods originate and from where they were initially exported. They can either lodge their application at the time of the initial export from the country of origin, in cases when the final destination of the consignments is known from the beginning², or at the time of export from the country of transit/storage, when the final destination of the consignment is decided or changed in the country of transit/storage.

It is worth noting that, as of 1 January 2017, with the implementation of the self-certification system by registered exporters, the above procedure will be significantly simplified as the exporter himself will be entitled to make out the proof of origin, in the form of a statement on origin, at the time of export from the place of storage/transit.

Consequences **for the competent authorities of the country of origin and initial exportation of the goods**

After the entry into force of the Regulation amending the GSP rules of origin, the competent authorities of the country of origin and initial exportation of the goods will be entitled to retrospectively certify the origin of the goods at the time of export from the country of transit or storage to the EU. This will happen in cases where the final destination of the consignment is unknown at the time of export to the country of transit; storage (i.e. the third scenario described above).

No Form A certificate will have to be issued for the competent authorities of the country of transit, as is the case today under regional cumulation (so-called 'cumulation without processing'). Instead, the Form A certificate issued by the competent authorities of the country of origin and initial export will be used directly by the importer in the EU.