

Distribution: EFTA/CL

Ref. 12263/Correction*
Annex
31 January 2006

DECISION OF THE JOINT EFTA-CHILE COMMITTEE

No. 2 of 2006

(Adopted on 31 January 2006)

ENDORSEMENT OF EXPLANATORY NOTES REGARDING THE
INTERPRETATION, APPLICATION AND ADMINISTRATION OF ANNEX I

THE JOINT COMMITTEE,

Noting that the Sub-Committee on Customs and Origin Matters has agreed on “Explanatory Notes” regarding the interpretation, application and administration of Annex I,

DECIDES:

The Explanatory Notes to Annex I of the Agreement are endorsed as set out in the Annex to this Decision.

Signed in Geneva on 31 January 2006 in two originals.

For the Republic of Chile

For the Republic of Iceland

For the Principality of Liechtenstein

For the Kingdom of Norway

For the Swiss Confederation

* Editorial corrections to Articles 21 and 31, adopted 8 April 2008

EXPLANATORY NOTES TO ANNEX I OF THE AGREEMENT

Article 1 (e) – ‘Ex-works price’

The ex-works of a product shall include:

- the value of all supplied materials used in manufacture,
- all costs (material costs as well as other costs) effectively incurred by the manufacturer. For example, the ex-works price of recorded video cassettes, records, discs, media-carrying computer software and other such products comprising an element of intellectual property rights shall as far as possible include all costs with regard to the use of intellectual property rights for the manufacture of the goods, paid for by the manufacturer, whether or not the holder of such rights has his seat or residence in the country of production.

No account shall be taken of commercial price reductions (e.g. for early payment, or large quantity deliveries).

Article 9 - Origin rule for sets

The origin rule for sets applies only to sets within the meaning of General Rule 3 for the interpretation of the Harmonised System.

According to this provision each product of which the set is composed, with the exception of products the value of which does not exceed 15 per cent of the total value of the set, must fulfil the origin criteria for the heading under which the product would have been classified if it were a separate product and not included in a set regardless of the heading under which the whole set is classified in accordance with the text of the General Rule referred to above.

These provisions remain applicable even if the 15 per cent tolerance is used for that product which under the text of the General Rule referred to above determines the classification of the whole set.

Article 14 - Drawback in cases of errors

Drawback or remission of duty can only be given in the case that a proof of origin has been wrongly issued or made out if the following three conditions have been met:

- (a) the wrongly issued or made out proof of origin is returned to the authorities in the country of export, or, as an alternative, a written statement is made by the authorities in the importing country that no preference has been or will be granted;

- (b) the products used in the manufacture would have been entitled to drawback or remission of duties under the provisions in force if a proof of origin had not been used to claim preference;
- (c) the period allowed for repayment has not been exceeded and the conditions laid down in the national law of the country concerned governing repayment are met.

Article 15 - Documentary evidence for used goods

Evidences of origin may be issued also for used or any other goods where, because of a considerable time lapse between the date of production on the one hand and the date of exportation on the other hand, the usual supporting documents are no longer available, provided that:

- (a) the date of production or importation of the goods lies beyond that period of time during which, according to the respective legislation in the country of exportation, records must be kept by traders;
- (b) the goods can be deemed to be originating on the grounds of other evidences, like declarations of the producer or any other trader, an expert's opinion, by marks on the goods or descriptions of them, etc.;
- (c) there is no indication that the goods do not comply with the requirements of the origin rules.

Article 15 (and 23) - Submission of proof of origin in case of electronic transmission of the import declaration

In cases where import declarations are transmitted electronically to the customs authorities of the importing State, it rests with these authorities to decide, within the framework and according to the provisions of the customs legislation applicable in the importing State, when and to what extent the documents constituting evidence of originating status shall actually be submitted.

Article 16 - Description of goods on movement certificate EUR.1

Cases of large consignments or generic description of goods

When the box, on the movement certificate EUR.1, provided for the description of the goods is insufficient to permit specification of the necessary particulars for identifying the goods, particularly in the case of large consignments, the exporter may specify the goods to which the certificate relates on attached invoices of the goods and, if necessary, additional commercial documents on condition that:

- (a) the invoices numbers are shown in Box 10 of the movement certificate EUR.1,
- (b) the invoices and, where relevant, additional commercial documents are firmly attached to the certificate prior to presentation to customs or competent governmental authorities of the exporting country, and

- (c) the customs or competent governmental authorities have stamped the invoice and additional commercial documents, officially attaching them to the certificates.

Article 16 - Goods exported by a customs clearance agent

A customs clearance agent may be allowed to act as the authorised representative of the person who is the owner of the goods or has a similar right of disposal over them, even in cases where the person is not situated in the exporting country, as long as the agent is in a position to prove the originating status of the goods.

Article 16 - Documents accompanying a movement certificate EUR.1

An invoice relating to goods exported under preference from the territory of one of the parties and accompanying a movement certificate EUR.1 can be made out in a third country.

Article 16 - Terms and abbreviations used for countries in a movement certificate EUR. 1

Goods originating in the EFTA may be indicated in box 4 of the certificate¹ as originating in the relevant EFTA-State: Iceland, Norway, Switzerland. Accordingly, Chile may be indicated as the country of origin.

The EFTA-States and Chile may also use its official abbreviations, IS, NO, CH and CL, (Iso-Alpha-2) and ISL, NOR, CHE and CHL (Iso-Alpha-3).¹

Article 17 - Technical reasons

A movement certificate EUR.1 may be rejected for 'technical reasons` because it was not made out in the prescribed manner. These are the cases which may give rise to subsequent presentation of a retrospectively-endorsed certificate and they include, by way of example, the following:

- the movement certificate EUR.1 has been made out on a form other than the prescribed one (e.g. no guilloche background, differs significantly from the model in size or colour, no serial number, not printed in one of the officially-prescribed languages),
- one of the mandatory boxes (e.g. Box 4 on the EUR.1) has not been filled in, except for box 8.
- Tariff classification of the goods at least at a heading (4 digits code) level² is not included in Box 8,
- the movement certificate EUR.1 has not been stamped and signed (i.e. in Box 11),

¹ Identical terms and abbreviations may be legitimately used in box 2 of the movement certificate EUR. 1.

² Accordingly, the proof of origin may legitimately contain a more specific tariff classification of the goods.

- the movement certificate EUR.1 is endorsed by a non-authorised authority,
- the stamp used is a new one which has not yet been notified,
- the movement certificate EUR.1 presented is a copy or photocopy rather than the original,
- the entry in Box 5 refers to a country that does not belong to the Agreement (e.g. Israel or Cuba).

Action to be taken:

The document should be marked 'Document not accepted', stating the reason(s), and then returned to the importer in order to enable him to get a new document issued retrospectively. The customs authorities, however, may keep a photocopy of the rejected document for the purposes of post-clearance verification or if they have grounds for suspecting fraud.

Article 20 - Practical application of the provisions concerning invoice declaration

The following guidelines shall apply:

- (a) the indication of non-originating products and therefore products which are not covered by the invoice declaration should not be made on the declaration itself. However, this indication should appear on the invoice in a precise way so as to avoid any misunderstandings;
- (b) declarations made on photocopied invoices are acceptable provided such declarations bear the signature of the exporter under the same conditions as the original. Approved exporters who are authorised not to sign invoice declarations are not required to sign invoice declarations made on photocopied invoices;
- (c) an invoice declaration on the reverse of the invoice is acceptable;
- (d) the invoice declaration may be made on a separate sheet of the invoice provided that the sheet shall be considered as part of the invoice. A complementary form may not be used;

an invoice declaration made out on a label which is subsequently attached to the invoice is acceptable provided there is no doubt that the label has been affixed by the exporter. For example, the exporter's stamp or signature should cover both the label and the invoice.

Article 20 - Value basis for the issue and acceptance of invoice declarations made out by any exporter

The ex-works price may be used as the value basis for deciding when an invoice declaration can be used instead of a movement certificate EUR.1 in reference to the value limit laid down in Article 20(1)(b). If the ex-works price is used as the value basis, the importing country shall accept invoice declarations made out by reference to that.

In cases where there is no ex-works price owing to the fact that the consignment is supplied free of charge, the customs value established by the authorities of the country of importation shall be considered as the basis for the value limit.

Article 21 - Approved exporter

The term 'exporter' may refer to persons or undertakings, regardless of whether they are producers or traders, as long as they comply with all the other provisions of this Annex. Customs clearance agents may not be granted approved exporter status within the meaning of this Annex.

The status of approved exporter may be granted only after an exporter has submitted a written application. When examining this, the customs or competent governmental authorities should give particular consideration to the following points:

- whether the exporter exports regularly: here, rather than focusing on a given number of consignments or a particular sum, the customs or competent governmental authorities should look into how regularly the operator carries out such operations,
- whether the exporter is at all times in a position to supply evidence of origin for the goods to be exported. In this connection it is necessary to consider whether the exporter knows the current rules of origin and is in possession of all the documents proving origin. In the case of producers, the authorities must make sure that the undertaking's stock accounts allow identification of the origin of goods and, in the case of new undertakings, that the system they have installed will permit such identification. For operators who are traders only, examination should focus more specifically on their usual trade flows,
- whether, in the light of his past exporting record, the exporter offers sufficient guarantees concerning the originating status of the goods and the ability to meet all resulting obligations.

Once an authorisation has been issued, exporters must:

- undertake to issue invoice declarations only for goods for which they hold all the necessary proof or accounting elements at the time of issue,
- assume full responsibility for the way the authorisation is used, particularly for incorrect origin statements or other misuse of the authorisation,
- assume responsibility for ensuring the person in the undertaking responsible for completing invoice declarations knows and understands the rules of origin,
- undertake to keep all documentary proofs of origin for a period of at least three years from the date that the declaration was made,
- undertake to produce proof of origin to the customs authorities at any time, and allow inspections by those authorities at any time.

The customs or competent governmental authorities must carry out regular controls on authorised exporters. These controls must ensure the continued compliance of the use

of the authorisation and may be carried out at intervals determined, if possible, on the basis of risk analysis criteria.

The customs or competent governmental authorities must notify the EFTA Secretariat of the national numbering system used for designating authorised exporters. The EFTA Secretariat will then pass on the information to the customs authorities of the other countries.

Article 24 - Importation by instalments

An importer wishing to take advantage of the provisions of this article must inform the exporter before the first instalment is exported that a single proof of origin for the complete product is required.

In the event of each instalment being made up only of originating products and such instalments being accompanied by proofs of origin, those separate proofs of origin shall be accepted by the customs authorities of the importing country for the instalments concerned, instead of a single proof of origin issued for the complete product.

Article 31 - Refusal of preferential treatment without verification

This covers cases in which the proof of origin is considered inapplicable, inter alia, for the following reasons:

- the goods to which the movement certificate EUR. 1 refers are not eligible for preferential treatment,
- the goods description box (Box 8 on EUR.1) is not filled in or refers to goods other than those presented,
- the proof of origin has been issued by a country which does not belong to the Free Trade Agreement even if the goods originate in the EFTA States or in Chile (e.g. EUR.1 issued in Israel for products originating in Chile),
- one of the mandatory boxes on the movement certificate EUR.1 bears traces of non-authenticated erasures or alterations (e.g. the boxes describing the goods or stating the number of packages, the country of destination or the country of origin),
- the time-limit on the movement certificate EUR.1 has expired for reasons other than those covered by the regulations (e.g. exceptional circumstances), except where the goods were presented before expiry of the time-limit,
- the proof of origin is produced subsequently for goods that were initially imported fraudulently,
- Box 4 on the movement certificate EUR.1 names a country not party to the agreement under which preferential treatment is being sought.

Action to be taken:

The proof of origin should be marked 'Inapplicable' and retained by the customs authorities to which it was presented in order to prevent any further attempt to use it. Without prejudice to legal actions initiated according to internal legislation, the Customs authorities of the importing country shall inform, where it is appropriate to do so, the Customs or competent governmental authorities of the country of exportation about the refusal without delay.

Article 31 - Time-limits for the verification of evidences of origin

No country shall be obliged to answer a request for subsequent verification, as provided for in Article 31, received more than three years after the date of issue of a movement certificate EUR.1 or the date of making out an invoice declaration.

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The special rule for textile materials excludes linings and interlinings. The 'pocketing fabric' is a special woven fabric that is exclusively used for the production of pockets and can therefore not be considered as normal lining or interlining. The special rule applies therefore to 'pocketing fabric' (for trousers). The rule applies to woven fabrics in the piece as well as to finished pockets originating in third countries.

Explanatory note for Articles 17 and 31

DE	DOKUMENT NICHT ANGENOMMEN	NICHT ANWENDBAR
EN	DOCUMENT NOT ACCEPTED	INAPPLICABLE
ES	DOCUMENTO RECHAZADO	INAPLICABLE
FR	DOCUMENT REFUSÉ	INAPPLICABLE
IT	DOCUMENTO RESPINTO	INAPPLICABILE
IS	SKJALI HAFNAÐ	ÓNOTHÆFT
NO	DOKUMENT IKKE AKSEPTERT	UGYLDIG
