

DECISION OF THE EFTA-MEXICO JOINT COMMITTEE
No. 1 of 2010

(Adopted on 7 May 2010)

TECHNICAL ADAPTATIONS TO APPENDIX 1 TO ANNEX I TO THE
AGREEMENT

INTRODUCTORY NOTES TO THE LIST IN APPENDICES 2 AND 2 (a)

THE JOINT COMMITTEE,

Noting that the amendments to the Nomenclature appended to the International Convention on the Harmonized Commodity Description and Coding System (HS) entered into force on 1 January 2007, entailing adjustments to the HS structure of Appendix 1 to Annex I to the Agreement,

Recognising that the technical adaptations to Appendix 1 to Annex I to the Agreement do not constitute a substantial change to the Agreement

Having regard to paragraph 8 of Article 70 of the Agreement, empowering the Joint Committee to amend the Annexes and the Appendices to the Agreement,

DECIDES:

1. Appendix 1 to Annex I to the Agreement shall be replaced by Appendix 1 to Annex I, as set out in the Annex to this Decision.
2. This Decision shall enter into force on the first day of the third month after the last Party has notified the Depositary of the completion of its necessary legal procedures to bring this Decision into force.
3. The Secretary-General of the European Free Trade Association shall deposit the text of this Decision with the Depositary.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have adopted these decisions.

Signed in Mexico City on 7 May 2010 in two originals.

For the United Mexican States

For of Iceland

For the Principality of Liechtenstein

For the Kingdom of Norway

For the Swiss Confederation

APPENDIX 1 TO ANNEX I

INTRODUCTORY NOTES TO THE LIST IN APPENDICES 2 AND 2 (a)

Note 1:

The list sets out the conditions required for all products to be considered as sufficiently worked or processed within the meaning of Article 5 of Annex I.

Note 2:

2.1. The first two columns in the list describe the product obtained. The first column contains the Harmonized System heading number or chapter number and the second column contains the description of goods used in that system for that heading or chapter. For each entry in the first two columns, a rule is specified in columns 3 or 4. Where, in some cases, the entry in the first column is preceded by the letters "ex", this means that the rules in columns 3 or 4 apply only to the part of that heading as described in column 2.

2.2. Where several heading numbers are grouped together in column 1 or a chapter number is given and the description of products in column 2 is therefore given in general terms, the adjacent rules in columns 3 or 4 apply to all products which in the Harmonized System are classified under such headings of the chapter, or in any of the headings grouped together in column 1.

2.3. Where there are different rules in the list applying to different products within a heading, each indent contains the description of that part of the heading covered by the adjacent rules in columns 3 or 4.

2.4. Where, for an entry in the first two columns, a rule is specified in both columns 3 and 4, the exporter may opt, as an alternative, to apply either the rule set out in column 3 or that set out in column 4. If no origin rule is given in column 4, the rule set out in column 3 has to be applied.

Note 3:

3.1. The provisions of Article 5 of Annex I concerning products having acquired originating status which are used in the manufacture of other products apply, regardless of whether such product has been manufactured in the same factory or in another factory in Mexico or in an EFTA State.

Example:

An engine of heading 8407, for which the rule states that the value of the non-originating materials which may be incorporated may not exceed 60 per cent of the ex-works price, is made from “other alloy steel roughly shaped by forging” of heading ex 7224.

If this forging has been forged in an EFTA State from a non-originating ingot, it has already acquired originating status by virtue of the rule for heading ex 7224 in the list. The forging can then count as originating in the value calculation for the engine regardless of whether it was produced in Mexico or in an EFTA State. The value of the non-originating ingot is thus not taken into account when adding up the value of the non-originating materials used.

3.2. The rule in the list represents 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 originating status. Thus if a rule provides 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.

3.3. Without prejudice to Note 3.2 where a rule states that “materials of any heading” may be used, materials of the same heading as the product may also be used, subject, however, to any specific limitations which may also be contained in the rule. However, the expression “manufacture from materials of any heading, including other materials of heading ____...” means that only materials classified in the same heading as the product of a different description than that of the product as given in column 2 of the list may be used.

3.4. The unit of qualification for the determination of origin is the particular product as classified under the nomenclature of the Harmonized System. It follows that packaging classified with the goods, e.g. the boxes in which a product is packed for presentation for retail sale, must be included as part of the product when determining the origin of the product. Packaging designed only for the transportation of the goods to the Party of importation shall be disregarded.

Example:

Computers of heading 8471 have a rule where the value of the non-originating materials used does not exceed 40 per cent of the ex-works price. They are packed in boxes for retail sale and are exported in wooden containers with 10 computers in each container. In order to determine whether the computers comply with the percentage given for the product, the value of the wooden containers should be disregarded. However, the value of the retail packaging shall be included.

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

Example:

The rule in Appendix 2 for fabrics of headings 5208 to 5212 provides 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; it is possible to use one or the other or both.

3.6. Where a rule in the list 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 (See also Note 6.2 below in relation to textiles).

However, this does not apply to products which, although they cannot be manufactured from the particular materials specified in the list, can be produced from a material of the same nature at an earlier stage of manufacture.

Example:

The rule for prepared fish of ex Chapter 16 which specifically excludes the use of live fish, fresh, frozen, chilled, etc., or their derivatives of Chapter 3 does not prevent the use of mineral salts, chemicals and other additives which are not products from fish.

Example:

In the case of an article of apparel of ex Chapter 62 made from non-woven materials with less than 50 per cent of synthetic fibres, if the use of only non-originating yarn is allowed for this class of article, it is not possible to start from non-woven cloth- even if non-woven cloths cannot normally be made from yarn. In such cases, the starting material would normally be at the stage before yarn- that is the fibre stage.

3.7. Where, in a rule in the list, two percentages are given for the maximum value of non-originating materials that can be used, then these percentages may not be added together. In other words, the maximum value of all the non-originating materials used may never exceed the highest of the percentages given. Furthermore, the individual percentages must not be exceeded in relation to the particular materials they apply to.

Note 4:

4.1. The term “natural fibres” is used in the list to refer to fibres other than artificial or synthetic fibres. It is restricted to the stages before spinning takes place, including waste, and, unless otherwise specified, includes fibres that have been carded, combed or otherwise processed, but not spun.

4.2. The term “natural fibres” includes horsehair of heading 0511, silk of headings 5002 and 5003 as well as the wool fibres, fine or coarse animal hair of headings 5101 to 5105, the cotton fibres of headings 5201 to 5203 and the other vegetable fibres of headings 5301 to 5305.

4.3. The terms “textile pulp”, “chemical materials” and “paper-making materials” are used in the list to describe the materials not classified in Chapters 50 to 63, which can be used to manufacture artificial, synthetic or paper fibres or yarns.

4.4. The term “man-made staple fibres” is used in the list to refer to synthetic or artificial filament tow, staple fibres or waste, of headings 5501 to 5507.

Note 5:

5.1. Where for a given product in the list a reference is made to this note, the conditions set out in column 3 shall not apply to any basic textile materials used in the manufacture of this product, which, taken together, represent 8 per cent or less of the total weight of all the basic textile materials used (See also Notes 5.3 and 5.4 below).

5.2. However, the tolerance mentioned in Note 5.1 may only apply to mixed products which have been made from two or more basic textile materials.

The following are the basic textile materials:

- silk,
- wool,
- coarse animal hair,
- fine animal hair,
- horsehair,
- cotton,
- paper-making materials and paper,
- flax,
- true hemp,
- jute and other textile bast fibres,
- sisal and other textile fibres of the genus Agave,
- coconut, abaca, ramie and other vegetable textile fibres,
- synthetic man-made filaments,
- artificial man-made filaments,
- current conducting filaments,
- synthetic man-made staple fibres of polypropylene,
- synthetic man-made staple fibres of polyester,
- synthetic man-made staple fibres of polyamide,
- synthetic man-made staple fibres of polyacrylonitrile,
- synthetic man-made staple fibres of polyimide,
- synthetic man-made staple fibres of polytetrafluoroethylene,
- synthetic man-made staple fibres of polyphenylene sulphide,
- synthetic man-made staple fibres of polyvinyl chloride,
- other synthetic man-made staple fibres,
- artificial man-made staple fibres of viscose,
- other artificial man-made staple fibres,
- yarn made of polyurethane segmented with flexible segments of polyether whether or not gimped,
- yarn made of polyurethane segmented with flexible segments of polyester whether or not gimped,
- products of heading 5605 (metallized yarn) incorporating strip consisting of a core of aluminium foil or of a core of plastic film whether or not coated with

- aluminium powder, of a width not exceeding 5 mm, sandwiched by means of a transparent or coloured adhesive between two layers of plastic film,
- other products of heading 5605.

Example:

A yarn of heading 5205 made from cotton fibres of heading 5203 and synthetic staple fibres of heading 5506 is a mixed yarn. Therefore, non-originating synthetic staple fibres that do not satisfy the origin rules (which require manufacture from chemical materials or textile pulp) may be used up to a weight of 8 per cent of the yarn.

Example:

A woollen fabric of heading 5112 made from woollen yarn of heading 5107 and synthetic yarn of staple fibres of heading 5509 is a mixed fabric. Therefore synthetic yarn which does not satisfy the origin rules (which require manufacture from chemical materials or textile pulp) or woollen yarn that does not satisfy the origin rules (which require manufacture from natural fibres, not carded or combed or otherwise prepared for spinning) or a combination of the two may be used provided their total weight does not exceed 8 per cent of the weight of the fabric.

Example:

Tufted textile fabric of heading 5802 made from cotton yarn of heading 5205 and cotton fabric of heading 5210 is only a mixed product if the cotton fabric is itself a mixed fabric being made from yarns classified in two separate headings or if the cotton yarns used are themselves mixtures.

Example:

If the tufted textile fabric concerned had been made from cotton yarn of heading 5205 and synthetic fabric of heading 5407, then, obviously, the yarns used are two separate basic textile materials and the tufted textile fabric is accordingly a mixed product.

5.3. In the case of products incorporating “yarn made of polyurethane segmented with flexible segments of polyether whether or not gimped” this tolerance is 8 per cent in respect of this yarn.

5.4. In the case of products incorporating “strip consisting of a core of aluminium foil or of a core of plastic film whether or not coated with aluminium powder, of a width not exceeding 5 mm, sandwiched by means of an adhesive between two layers of plastic film”, this tolerance is 30 per cent in respect of this strip.

Note 6:

6.1. In the case of those textile products which are marked in the list by a footnote referring to this note, textile materials, with the exception of linings and interlinings, which do not satisfy the rule set out in the list in column 3 for the made-up product

concerned may be used provided that they are classified in a heading other than that of the product and that their value does not exceed 8 per cent of the ex-works price of the product.

6.2. Without prejudice to Note 6.3, materials which are not classified in Chapters 50 to 63 may be used freely in the manufacture of textile products, whether or not they contain textiles.

Example:

If a rule in the list provides that for a particular textile item, such as trousers, yarn must be used, this does not prevent the use of metal items, such as buttons, because buttons are not classified in Chapters 50 to 63. For the same reason, it does not prevent the use of slide-fasteners even though slide-fasteners normally contain textiles.

6.3. Where a percentage rule applies, the value of materials which are not classified in Chapters 50 to 63 shall be taken into account when calculating the value of the non-originating materials incorporated.

Note 7:

7.1. For the purposes of headings ex 2707, 2713 to 2715, ex 2901, ex 2902 and ex 3403, the “specific processes” are the following:

- (a) vacuum distillation;
- (b) redistillation by a very thorough fractionation process¹;
- (c) cracking;
- (d) reforming;
- (e) extraction by means of selective solvents;
- (f) the process comprising all the following operations: processing with concentrated sulphuric acid, oleum or sulphuric anhydride; neutralization with alkaline agents; decolorization and purification with naturally active earth, activated earth, activated charcoal or bauxite;
- (g) polymerization;
- (h) alkylation;
- (i) isomerization.

7.2. For the purposes of headings 2710, 2711 and 2712, the “specific processes” are the following:

- (a) vacuum distillation;
- (b) redistillation by a very thorough fractionation process¹;
- (c) cracking;
- (d) reforming;

¹ See Introductory note 7.4.

- (e) extraction by means of selective solvents;
- (f) the process comprising all the following operations: processing with concentrated sulphuric acid, oleum or sulphuric anhydride; neutralization with alkaline agents; decolorization and purification with naturally active earth, activated earth, activated charcoal or bauxite;
- (g) polymerization;
- (h) alkylation;
- (ij) isomerization;
- (k) in respect of heavy oils falling of heading ex 2710 only, desulphurization with hydrogen resulting in a reduction of at least 85 per cent of the sulphur content of the products processed (ASTM D 1266-59 T method);
- (l) in respect of products falling of heading 2710 only, deparaffining by a process other than filtering;
- (m) in respect of heavy oils falling of heading ex 2710 only, treatment with hydrogen at a pressure of more than 20 bar and a temperature of more than 250° C with the use of a catalyst, other than to effect desulphurization, when the hydrogen constitutes an active element in a chemical reaction. The further treatment with hydrogen of lubricating oils of heading ex 2710 (e.g. hydrofinishing or decolorization) in order, more especially, to improve colour or stability shall not, however, be deemed to be a specific process;
- (n) in respect of fuel oils falling of heading ex 2710 only, atmospheric distillation, on condition that less than 30 per cent of these products distil, by volume, including losses, at 300° C by the ASTM D 86 method;
- (o) in respect of heavy oils other than gas oils and fuel oils falling of heading ex 2710 only, treatment by means of a high-frequency electrical brush-discharge.

7.3 For the purposes of headings ex 2707, 2713 to 2715, ex 2901, ex 2902 and ex 3403, simple operations such as cleaning, decanting, desalting, water separation, filtering, colouring, marking, obtaining a sulphur content as a result of mixing products with different sulphur content, any combination of these operations or like operations do not confer origin.

7.4 Redistillation by a very thorough fractionation process means distillation (other than topping) by a continuous or batch process employed in industrial installations using distillates of subheadings 2710 11 to 2710 99, 2711 11, 2711 12 to 2711 19, 2711 21 and 2711 29 (other than propane of a purity of 99 per cent or more) to obtain:

1. Isolated high-purity hydrocarbons (90 per cent or more in the case of olefins and 95 per cent or more in the case of other hydrocarbons), mixtures of isomers having the same organic composition being regarded as isolated hydrocarbons.

Only those process by means of which at least three different products are obtained are admissible, but this restriction does not apply in any instance where the process consists in the separation of isomers. In so far this concerns xylenes, ethylbenzene is included with xylene isomers;

2. Products of subheadings 2707 10 to 2707 30, 2707 50 and 2710 11 to 2710 99:

- (a) with no overlapping of the final boiling point of one fraction and the initial boiling point of the succeeding fraction and a difference of not more than 60° C between the temperatures at which 5 and 90 per cent by the volume (including losses) distil by the ASTM D 86-67 method (re-approved 1972);
 - (b) with an overlapping of the final boiling point of one fraction and the initial boiling point of the succeeding fraction and a difference of not more than 30° C between the temperatures at which 5 and 90 per cent by volume (including losses) distil by the ASTM D 86-67 method (re-approved 1972).
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