

### The European Union's Programme for Myanmar

### GUIDANCE ON THE EU GENERALISED SCHEME OF PREFERENCES AND ITS RULES OF ORIGIN

# FOR GOVERNMENT AUTHORITIES AND PRIVATE SECTOR STAKEHOLDERS IN MYANMAR





### **Trade-related Guidance**

### Produced by the International Management Group, Myanmar



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#### Important notice for readers:

This Guidance is designed to help readers to understand the EU GSP, its Rules of Origin, and the related rules and regulations, but it is not a legal text. The sole legal provisions are those contained in the EU regulations cited in this document and duly adopted as well as published in the Official Journal of the European Union.

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#### Foreword by H.E. Roland Kobia

#### Ambassador of the European Union to Myanmar

The European Union wishes to be a key political and economic partner of Myanmar to accompany the country in its journey to democracy through political, economic and social reforms. To achieve this, the foundations of the new Myanmar also have to lie in an environment of peace, security and stability, which can be achieved through the efforts to achieve peace inside the country, notably with a number of ethnic groups. At the launch of the EU-Myanmar Task Force in November 2013, Myanmar and the EU confirmed that "We will work together for a democratic and prosperous Myanmar in which diversity and respect for human rights contribute to a dynamic and plural society, in which democracy brings inclusion of all political and ethnic groups on an equal footing, and in which an open and stable political community makes Myanmar a magnet for foreign investment and job creation".

The reinstatement in July 2013 of the EU Generalised Scheme of Preferences (GSP), the most generous unilateral trade preferential system the EU can offer to its partners, was decided notably on the basis of progress in the labour rights situation and constituted a milestone in the EU-Myanmar relationships, and yet another very tangible proof of the EU's support. Under the so-called "Everything But Arms" treatment, Myanmar companies now enjoy duty-free and quota-free access to a European market of over 500 million consumers for all Myanmar products except for arms and ammunitions. The job does not finish here though. The EU wants to accompany Myanmar authorities and companies in taking full advantage of this commercial opportunity. It is for this reason that we have approved a large package of measures to support Trade and Private Sector projects.

This handbook is a small but very significant contribution to this process as it supports the authorities in setting up the system to use the GSP preferences, and the private sector to take full advantage of them. We hand over this tool to its final users with the hope to see economic relationships between the EU and Myanmar grow stronger and stronger in the years to come.

#### Foreword by U Win Aung

### President of the Union of Myanmar Federation of Chambers of Commerce & Industry

Ties between the EU and Myanmar have been growing from strength to strength since the opening of the EU Office in Yangon on 28 April 2012. In 2013, significant milestones indicative of the burgeoning relationship were marked with the reinstatement of GSP in July 2013 and the visit of EU High Representative Catherine Ashton during the first EU-Myanmar Task Force from 13-15 November.

The EU's commitment to advance Myanmar's sustainable economic development has been implemented through the large number of European companies exploring trade and investment opportunities in Myanmar, and bringing with them the promotion of transparency; innovation and technology transfer; and international environmental, health and work and safety practices, elevating not only Myanmar's economic growth, but its preparedness for integration into a larger more competitive global community.

The reinstatement of GSP translates into greater access to European markets for Myanmar and potential greater investment from European firms, with Myanmar's strength in its human and natural resources previously limited to Asian export markets. Since the reinstatement of GSP, Myanmar has shown the highest increase in trade exports to European countries in the fisheries and apparel industries. Duty and quota-free access to European markets for its goods makes Myanmar an attractive place to invest, which in turn can accelerate the various levels of economic and social transformation already taking place, thereby promoting long-term sustainable inclusive growth.

We look forward to working with the European Union to improving our trade and furthering our relations as long-term partners in mutual growth.

**U Win Aung** 

### TABLE OF CONTENTS

Lis	st of Ac	ronyms	3
1	Back	ground	5
	1.1	Launch of the GSP initiative in the United Nations Conference on Trade and Development	
	(UNCT	AD)	
	1.2	Most favoured nation treatment (MFN) and market access to the EU	5
	1.3	Least developed countries and their special treatment ("Everything but Arms")	6
2	The	GSP of the European Union (EU)	
	2.1	Main content	7
	2.2	Myanmar and the EU GSP	8
	2.3	Conditions attached to the EU GSP	
3	The	Rules of Origin of the EU GSP	10
	3.1	What are rules of origin and why are they necessary?	10
	3.2	Voluntary trade deflection in favour of LDCs	10
	3.3	Preconditions and legal basis	11
	3.4	"wholly obtained" goods	11
	3.5	Sufficient Transformation of third country inputs – "sufficiently worked or processed products"	13
	3.6	The List Rules	13
	3.6.1	Introduction	13
	3.6.2	How does a Change of Tariff Heading Rule Work	15
	3.6.3	What is the "Ex-works price"-based value content criteria	16
	3.6.4	Specific Operations	16
	3.6.5	Combinations	17
	3.7	cumulation system	17
	3.7.1	Bilateral cumulation	17
	3.7.2	Regional cumulation	18
	3.7.3	Cross- (inter-) regional cumulation between Group I ("ASEAN") and Group III ("SAARC")	19
	3.7.4	Extended cumulation	19
	3.8	Other Rules and Regulations	19
	3.8.1	Minimal operations (insufficient working or processing)	19
	3.8.2	Principle of territoriality	20
	3.8.3	Non-Manipulation rule (previously 'direct transport')	20
	3.8.4	Relaxations to the Origin Rules	21
	3.8.5	Duty Drawback	21
	3.8.6	Accessories, spare parts and tools	22
	3.8.7	Composition of sets	22
	3.8.8	If still in doubt – Binding Origin Information	22
4	Proo	f of origin	23

	4.1	Documentary evidence in the EU GSP	3
	4.1.1	Certificate of origin (CO) Form A	3
	4.1.2	Invoice declaration	3
	4.2	GSP reinstatement and issuance of CO Form A retrospectively	3
	4.3	Duplicate Form A	4
	4.4	cooperation under the GSP RoO in Europe - Replacement Form A 2	4
5	Futur	re Developments in the EU GSP	5
	5.1	GSP developments from 2014	5
	5.2 Statem	Rules of Origin Arrangements from 2017: Registered exporter (REX) - Self certification in form ents of Origin	
6	Resp	onsibilities of Competent Authorities and of Exporters	8
	6.1	Responsibilities of the Ministry of Commerce	8
	6.2	Preferential Market Access and Responsibilities for the business community 2	8
	6.3	Responsibilities of the EU importer	9
	6.4	How to apply for a Certificate of Origin (CO) Form A	0
	6.5	How to verify the origin determination by the exporter	0
	6.6	Deadlines for verification	1
L	IST OF	ANNEXES	2
Α	nnex A .	3	3
Α	nnex B .	3	7
Α	nnex C	4	0
Α	nnex D	4	1
A	nnex E .	4	2
Δ	nney F	4	3

### LIST OF ACRONYMS

ASEAN Association of South East Asian Nations

BOI Binding Origin Information
CMP Cutting, Making & Packing

CO Certificate of Origin

DC Developing Country

EBA Everything But Arms

EC European Commission

EEC European Economic Community

EEZ Exclusive Economic Zone

EU European Union

EUR 1 Movement Certificate

FDI Foreign Direct Investment
FTA Free Trade Agreement

FZ Free Zone, consisting of a closed area with or without buildings or

warehouses that stays under customs control

GATT General Agreement on Tariffs and Trade of 1948, afterwards

integrated in the Marrakesh Agreement in 1994

GSP Generalised Scheme of Preferences

HS Harmonised Commodity Description and Coding System

ILO International Labour Organisation
IMG International Management Group
ISO International Standards Organisation

LDC Least Developed Country

MDGs Millennium Development Goals

MoC Ministry of Commerce
MFN Most Favoured Nation

OJ Official Journal of the European Union

REX Registered Exporter Scheme (applicable from 2017)

RKC Revised Kyoto Convention (International Convention on the

Simplification and Harmonization of Customs procedures)

RoO Rules of Origin

RTA Regional Trade Agreement
SEZ Special Economic Zone

TARIC Online Customs Tariff Database of the EU

UN United Nations

UNCLOS UN International Convention of the Law of the Seas (1982 Montego

Bay Convention)

UNCTAD United Nations Conference on Trade and Development

WCO World Customs Organization
WTO World Trade Organization

### 1 BACKGROUND

# 1.1 LAUNCH OF THE GSP INITIATIVE IN THE UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT (UNCTAD)

In 1964, the first Secretary General of UNCTAD launched the idea that developed industrialised countries should unilaterally grant preferences on imports of products from developing countries to help their economic development. The relevant decision was taken in Resolution 21 (ii) at the UNCTAD II Conference in New Delhi in 1968. The generalised, non-reciprocal, non-discriminatory scheme of preferences in favour of developing countries, with special treatment for least developing countries, was born.

# 1.2 Most favoured nation treatment (MFN) and market access to the EU

However, the principle of the General Agreement on Tariffs and Trade (GATT)/ World Trade Organisation (WTO) "most-favoured nation" (MFN) treatment was still a stumbling block, as it generally forbids unilateral trade preferences for only a select category of GATT/ WTO members. At the time the GATT Agreement was conceived, only Regional Trade Agreements (which include free trade agreements and customs unions – GATT Art. XXIV) were exempted from the general MFN principle. Thus, the General Council of the GATT/ WTO had to grant a so-called waiver in 1970, recognising that the Generalised Scheme of Preferences (GSP) constitutes another exception from the GATT/ WTO principles on MFN treatment. This waiver enabled industrialised countries on an autonomous basis to grant preferential tariff treatment to products from developing countries and least developed countries (DCs and LDCs). It is the privilege and at the discretion of each individual country ("donor country") to choose which developing country ("beneficiary country") is covered by its own scheme, which products are to be included in the scheme, and how to determine the applicable customs duties. The European Union (EU), Australia, Canada, New Zealand, Japan, Norway, the USA, Turkey and Switzerland, among others, all have a GSP in place, although these differ in terms of scope and coverage.

Having said this, with regard to the EU, there are three basic scenarios applicable to products that access the EU market:

- · WTO MFN tariff treatment;
- Preferential access based on a bilateral agreement (e.g. Free Trade Agreement; Association Agreement; Economic Partnership Agreement); and
- Preferential access for developing countries, unilaterally granted in the form of the Generalised Scheme of Preferences – based on the set of rules unilaterally prescribed by the EU.

# 1.3 LEAST DEVELOPED COUNTRIES AND THEIR SPECIAL TREATMENT ("EVERYTHING BUT ARMS")

Overall, the GSP proved to be successful, but not for all countries. Indeed, some developing countries increased their economic development ahead of others. Their products took an increasingly dominant position in major markets like the European Union and the United States. Another phenomenon also favoured more advanced developing countries with a strong economic basis: after the idea of the GSP was launched, two major rounds of WTO negotiations, combined with sector-specific initiatives, drastically cut customs tariffs "erga omnes" on all imports, and above all on industrial goods. This phenomenon is often called "tariff erosion", meaning that the initially high tariff preferences for developing countries progressively melt down through the multilateral efforts to reduce tariffs on imports globally.

This led to the initiative that LDCs should receive more trade preferences than those in place already. The initiative aimed at the complete elimination of tariffs by donor countries on imports of products from LDCs, thus enabling them to develop their economies more quickly, enhance their industrial base, and attract more foreign direct investment (FDI). In this way, LDCs would be able to integrate more readily into the world economy, and reach the Millennium Development Goals (MDGs) faster.

The industrialised countries agreed in the year 2000 to introduce a better, special, and exclusive tariff treatment for LDCs. The initiative was called "Everything But Arms" (EBA), referring to the fact that all products from LDCs would have duty free treatment, except for arms and ammunition.

Beneficiaries of the special arrangements for LDCs require formal recognition by the United Nations. Today, 50 developing countries belong to the category of LDCs.

In February 2001, the EU adopted Regulation (EC) 416/2001, the so-called "EBA Regulation", granting duty-free access to imports of all products from LDCs, except arms and ammunition, without any quantitative restrictions (with the exception of bananas, sugar and rice for a limited period). The initial resistance from the agricultural sector was overcome with the introduction of the possibility of taking safeguard measures to protect EU producers.

The EU considers its LDC regulation as the most beneficial for LDCs worldwide. In 2012, EBA beneficiaries accounted for exports to the EU worth € 12.4 billion — almost 14% of all the preferences under the EU's Generalised Scheme of Preferences (GSP), which provides tariff reductions for developing countries.

### 2 THE GSP OF THE EUROPEAN UNION (EU)

#### 2.1 MAIN CONTENT

The EU has applied the GSP since 1971.

The EU GSP provides non-reciprocal preferential access to the EU market to 176 developing countries and territories. The primary objective of the GSP is to contribute to the reduction of poverty and the promotion of sustainable development and good governance.

The currently applied scheme dates back to 2008 (Council Regulation 732/2008) and has been reviewed on the basis of a proposal made by the European Commission in May 2011, and extended by a so-called "GSP roll-over regulation" (Regulation 512/2011) until the end of 2013.

The EU adopted a reformed GSP law on 31 October 2012. In order to allow ample time for economic operators to adapt to the new scheme, the new preferences apply as of 1 January 2014.

The main thrust of this reformed GSP law is:

- (1) to concentrate GSP preferences on countries most in need. A number of countries, which do not require GSP preferences to be competitive, will no longer benefit from the scheme as from 1 January 2014;
- (2) to reinforce the incentives for the respect of core human and labour rights, environmental and good governance standards through the GSP+ arrangement;
- (3) to strengthen the effectiveness of the trade concessions for LDCs through the "Everything but Arms" scheme. Indeed by reducing GSP to fewer beneficiaries will reduce competitive pressure and make the preferences for LDCs more meaningful; and
- (4) to increase predictability, transparency and stability (See Section 5).

#### See:

REGULATION (EU) No 978/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2012 applying a scheme of generalised tariff preferences

There are three main variants (arrangements) of the scheme:

- the standard GSP scheme, which offers generous tariff reductions to developing countries. Practically, this means partial or entire removal of tariffs on two thirds of all product categories.
- the "GSP+" scheme, in which enhanced preferences allow full removal of tariffs on essentially the same product categories as those covered by the general arrangement. These are granted to countries which ratify and implement international conventions relating to human and labour rights, environment and good governance;
- the Everything but Arms" (EBA) scheme for least developed countries (LDCs), which
  grants duty-free quota-free access to all products, except for arms and ammunition.

Under the general GSP and the GSP+ scheme, tariff preferences take the form either of duty-free access or reductions in the otherwise applicable standard tariffs – covering roughly 6,300 tariff lines (at 8-digit level of the European Union Customs Code ("the Code" - Council Regulation (EEC) No 2913/92)).

Under the Everything but Arms scheme LDCs enjoy duty-free quota-free access to EU markets (except for arms and ammunitions). This means 99.8% of all tariff lines are covered. Unlike other GSP arrangements, the EBA is open-ended and has no time limit.

#### 2.2 MYANMAR AND THE EU GSP

Myanmar is part of the UN list of LDCs and therefore qualifies in principle to benefit from the EU Everything But Arms initiative. In the ASEAN region, only Laos and Cambodia have the same LDC status and, amongst other neighbouring countries, only Bangladesh benefits from EBA.

The EU is the largest single market worldwide with approximately half a billion inhabitants. 28 EU Member countries are connected together in a Customs Union, meaning that the EU is a single customs territory with a common external customs tariff. This means also that the EU GSP is applied in all EU Member States in the same way. The EU market represents a great opportunity for Myanmar, while Myanmar has a strong attraction for FDI from the EU thanks to its status as a LDC, its reasonable labour costs, the improving political context, and a predicted economic surge.

Myanmar was withdrawn by the EU from the list of GSP countries in 1997 (Council Regulation 552/97), based on article 9 of Regulation (EC) No 3218/94, and article 9 of Regulation (EC) No 1256/96, which provided that preferences could be withdrawn in circumstances including the serious and systematic practice of any form of forced labour, as defined by International Labour Organisation (ILO) Conventions No. 29 and 105.

Since the political changes in 2011, Myanmar has made well-recognised efforts to address this negative situation. In June 2012, the ILO Conference concluded that significant progress had been achieved, and Myanmar has now committed itself to eliminate forced labour by 2015.

Based on the positive assessment by the ILO on progress in Myanmar towards eradicating forced labour, the European Commission proposed, on 12 September 2012, to reinstate trade preferences to Myanmar and submitted the relevant Regulation for approval by the Council of Ministers and the European Parliament. The European Parliament approved the proposal on 23 May 2013 and the Council on 12 June 2013. The Regulation was published in the Official Journal of the EU on 29 June 2013, and entered into force on 19 July 2013. The trade preferences, however, apply retroactively as from 13 June 2012, which is the day when the ILO Conference adopted its positive decision on Myanmar. The technicalities of this retroactive application are explained in the next Chapter.

#### See

REGULATION (EU) No 607/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 12 June 2013 repealing Council Regulation (EC) No 552/97 temporarily withdrawing access to generalised tariff preferences from Myanmar/ Burma

#### 2.3 CONDITIONS ATTACHED TO THE EU GSP

The EU GSP requires beneficiary countries to correctly apply two EU Regulations, on the one hand the EU GSP regulation itself, and on the other hand the EU GSP rules of origin regulation.

The new GSP regulation mentions the following circumstances that could lead to the suspension or withdrawal of preferences:

- Serious and systematic violations of core principles laid down in core human and labour rights ILO/ UN conventions;
- Unfair trading practices (supply of raw materials) (but only after the competent WTO body determines such a failure);
- Missing administrative cooperation, for instance serious shortcomings in customs controls;
- Upgrade from LDC to DC, or upgrade from GSP+ to ordinary GSP;
- Graduation of competitive sectors (14.5 % for textile and clothing and 17.5% for other sections; not applicable to LDCs);
- Full graduation (upper middle and high income countries as classified by the World Bank for three consecutive years);
- Replacement of the GSP with another preferential arrangement (e.g. free trade or association agreement (with a transitional period));
- Safeguard measures to protect EU producers, where the exports from the beneficiary country pose a serious threat to local EU producers;
- Special safeguards in the textile, agriculture and fisheries sectors apply without any further investigation if certain thresholds in increased imports are fulfilled. However, this provision does not apply to LDCs.

The following could also lead to the temporary withdrawal of the GSP:

- Serious shortcomings in customs controls on the export or transit of drugs (illicit substances or precursors), or failure to comply with international conventions on antiterrorism and money laundering;
- In the field of fisheries, serious and systematic infringement of the objectives adopted by regional fishery organisations concerning the conservation and management of fishery resources.

It should be noted that, under the new GSP law, new GSP safeguards and other amendments to the EU GSP can be made by the EU Commission via delegated acts, and no longer require the usual legislative procedure. In this way, the European Commission no longer needs to submit such decisions to the EU Council and the European Parliament.

The main conditions that goods or products of Myanmar have to meet, in order to benefit from the EU GSP, are covered in the next Chapter, which deals with the EU GSP rules of origin.

### 3 THE RULES OF ORIGIN OF THE EU GSP

#### 3.1 WHAT ARE RULES OF ORIGIN AND WHY ARE THEY NECESSARY?

All goods that are traded internationally are either wholly produced with inputs from a single country, or produced with inputs from two or more countries. Depending on the origin of a product, the tariff treatment could be different; that is why rules of origin have to sieve and sort out the products depending on where they have been obtained.

In the context of the GSP, the donor country, meaning the European Union, wants to make sure that tariff preferences are given only to products from a beneficiary country. In other words, the purpose of rules of origin is to define which goods qualify for preferential treatment and, conversely, which products are excluded from preferential treatment. This is true above all for products from LDCs which benefit from the most generous preferences possible: zero tariffs and quota free access to the EU market. The EU GSP rules of origin make sure that products from Myanmar are either wholly obtained in Myanmar or have undergone a sufficient degree of transformation to be considered as originating in Myanmar. At the same time, the rules of origin and their thresholds are designed to ensure a specific level of domestic production (as well as promoting FDI, transfer of know-how, etc.), contributing to economic development in line with the goals of the EU GSP.

Rules of origin also effectively prevent circumvention of the EU GSP preferences, avoiding for instance simple transhipments through Myanmar, or repackaging operations. Again, the preferences are meant for Myanmar products, but not for those from developing or industrialised countries.

#### Note:

Preferential GSP treatment applies to physical goods only, not to services or non-material products (e.g. intellectual property).

#### 3.2 VOLUNTARY TRADE DEFLECTION IN FAVOUR OF LDCs

It has been well understood and established that rules of origin can lead to trade deflection as opposed to trade creation within a free trade area. For example, in order to satisfy a rule of origin, a manufacturer within a free trade area might abandon a more cost effective supplier of inputs, who operates outside of a regional agreement, in favour of a less efficient domestic supplier. The same may happen with the special preferences and the special rules of origin granted for LDCs by the EU GSP or other GSP systems. It can be expected that some production steps will be transferred from DCs to LDCs to benefit from easier market access into the EU. In the case of the EU GSP, this deflection is in fact deliberate and one of the main goals of the EBA initiative.

#### 3.3 PRECONDITIONS AND LEGAL BASIS

To benefit from the EU GSP, four preconditions have to be met:

- The goods must above all originate in Myanmar in accordance with the EU GSP rules of origin.
- A valid proof of origin must be submitted (certificate of origin Form A or an invoice declaration).
- Essentially the goods should not be altered or transformed when transported from Myanmar to the EU.
- d) The beneficiary country has to comply with a series of administrative obligations (i.e. the notification of the competent authorities issuing the certificate of origin Form A, and granting administrative cooperation in respect of the verification of proofs of origin).

On 18 November 2010, the European Union (EU) officially adopted a new regulation which revised the Rules of Origin (RoO) for products that are imported under the GSP. The new regulation took effect on 1 January 2011 and implements three main principles:

- It relaxes and simplifies rules of origin and the related procedures;
- It grants more generous rules of origin to the poorest countries (LDCs) (e.g. use of nonoriginating primary materials);
- It introduces the process of self-certification in the form of the Registered Exporter (REX) scheme from 2017.

#### See:

EU Commission Regulation (EU) No 1063/2010 of 18 November 2010 on the EU Rules of Origin

#### 3.4 "WHOLLY OBTAINED" GOODS

There are basically two types of rules of origin.

The first type relates to those goods that are "wholly produced" in one single country. In most cases, this rule applies to basic materials and natural products and not to manufactured goods,.

Wholly obtained rules of origin are based on the model contained in the International Convention on the Simplification and Harmonization of Customs procedures (established in 1973 and revised in 1999, and known as the Revised Kyoto Convention (RKC)).

The EU GSP defines the following as being considered as "wholly obtained" in a beneficiary country:

- (a) mineral products extracted from its soil or from its seabed;
- (b) plants and vegetable products grown or harvested there;
- (c) live animals born and raised there;
- (d) products from live animals raised there;
- (e) products from slaughtered animals born and raised there;
- (f) products obtained by hunting or fishing conducted there;

- (g) products of aquaculture where the fish, crustaceans and molluscs are born and raised there;
- (h) products of sea fishing and other products taken from the sea outside any territorial waters by its vessels;
- (i) products made on board its factory ships exclusively from the products referred to in point (h);
- (j) used articles collected there fit only for the recovery of raw materials;
- (k) waste and scrap resulting from manufacturing operations conducted there;
- (I) products extracted from the seabed or below the seabed which is situated outside any territorial sea but where it has exclusive exploitation rights;
- (m) goods produced there exclusively from products specified in points (a) to (l)."

For defining the territory, the territorial waters and the exclusive economic zone (EEZ) of a country, the following applies:

- a) "Territory" means the internationally recognised borders of the country;
- b) The territorial waters is limited to 12 nautical miles from the shore line (as laid down in the United Nations Convention on the Law of the Sea UNCLOS); and
- c) The Exclusive Economic Zone (EEZ) extends until 200 nautical miles from the shore line (UNCLOS).

For products of sea fishing and other products taken from the sea as mentioned in (h) above, fish caught within the territorial waters are considered to be wholly obtained. However, fish caught outside the territorial waters or on high seas are only be considered to be wholly obtained or originated in Myanmar if they are caught by a vessel that satisfies the definition of "its vessel". The EU GSP RoO defines "its vessel" as:

- the vessel is registered in Myanmar or in an EU Member State; and
- the vessel sails under the flag of Myanmar or of an EU Member State; and
- The ownership has to be of a majority of Myanmar or EU Member States' citizens
   or of a company with its head office in Myanmar or in EU Member States, and with
   the additional requirement of majority ownership (public or private) by Myanmar or
   by EU Member States.

#### Examples of wholly obtained goods are:

- (i) Stones or iron ore extracted out of a quarry;
- (ii) Fresh milk obtained from cows farmed locally;
- (iii) Cheese produced exclusively from local milk;
- (iv) Rice harvested in Myanmar;
- (v) Fish fillets from fish produced by aquaculture in Myanmar (born and raised) or caught in the sea outside the territorial waters of Myanmar by a boat fulfilling the vessel conditions above;
- (vi) Coconut milk obtained from local coconuts;
- (vii) Wooden furniture from local wood, unpainted, using only local input materials.

# 3.5 SUFFICIENT TRANSFORMATION OF THIRD COUNTRY INPUTS "SUFFICIENTLY WORKED OR PROCESSED PRODUCTS"

Products that are not wholly produced in a single country are made with one or more imported materials. The Rules of Origin define exactly what kind of transformation must occur to the imported material in order for the exported product to be considered as originating in the country of exportation. Substantial transformation is normally expressed or defined by one, or a combination of, the following methodologies: a required change in tariff classification to the imported material; a required degree of value that must be added to the imported material in relation to the finished product; or the imported material must undergo a specifically listed operation or a particular form of manufacturing (processing rule).

Art. 76 of the EU GSP RoO regulation refers directly to Annex 13a, the so-called list rules. The list rules define the rules of origin applicable, depending on the Harmonised System (HS) classification of the goods concerned.

#### Note:

Unlike other Rules of Origin systems, e.g. those of the ASEAN Free Trade Area, the EU GSP Rules of Origin do not contain horizontal rules of origin on sufficiently worked or processed products. All origin rules are to be found exclusively in the product specific list laid down in a special Annex.

#### 3.6 THE LIST RULES

#### 3.6.1 INTRODUCTION

The list rules contain several different rules of origin depending on the classification of the product concerned.

The introductory notes to the list rules include a variety of explanations of the list rules themselves, as well as specific tolerance rules for the textile and clothing sector. They also define, for certain products, the specifically applicable rules of origin. For instance, Note 8 defines specific processes that are considered as origin-conferring in respect of mineral oils and fuels.

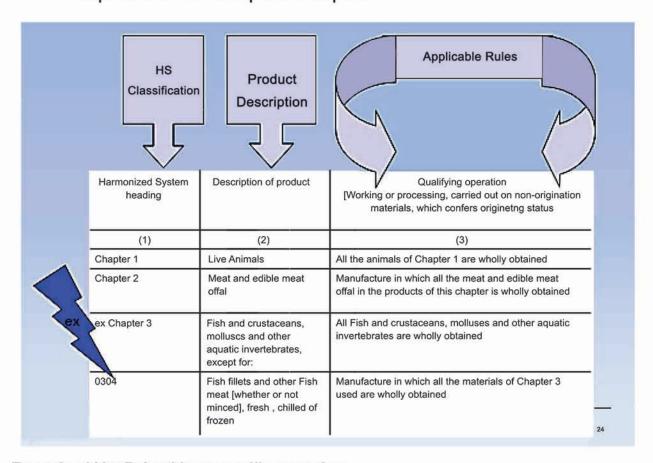
The chapter rule stipulates a rule or several rules of origin applicable to each HS chapter, followed sometimes by the words "except for". The list rules then provide a specific rule of origin for a certain heading or sub-heading of the HS. This exception dismisses the application of the chapter rule, if there is a product-specific rule applicable to the product concerned.

The specific rules of origin are applicable solely for the products concerned; there is no horizontal rule of origin for sufficiently worked or processed products.

#### Note:

The Harmonized Commodity Description and Coding System generally referred to as the "Harmonized System" or simply "HS" is a multi-purpose internationally applied nomenclature related to goods in trade and developed by the World Customs Organization (WCO). In some cases, use of the HS classification is absolutely mandatory to find and apply the product specific rule of origin. The reference to "Chapter" means the first 2-digit HS numbers, and "heading" in the rules of origin refers to the 4-digit HS heading.

#### Example of List Rule with specific exception:



#### Example of List Rule without specific exception:

Harmonized System heading	Description of product	Qualifying operation (working or processing, carried out on non- originating materials, which confers originating status)
Chapter 42	Articles of leather; saddlery and harness; travel goods, handbags and similar containers; articles of animal gut (other than silk worm gut)	Manufacture from materials of any heading, except that of the product or  Manufacture in which the value of all the materials used does not exceed 70% of the exworks price of the product

Chapter 61	Articles of apparel and clothing accessories, knitted or crocheted:		
	- Obtained by sewing together or otherwise a ssembling, two or more pieces of knitted or crocheted fabricwhich have been either cutto form or obtained directly to form	(a) LDCS Manufacture from fabric	(b) Other beneficiary countries knitting and making-up (including cutting)
	- Other	Spinning of natural and/of n or extrusion of man-made fi each case accompanied by or Dyeing of yarn of natural fib knitting (knittedd to shape p	lament yam, in (knitted to shape products) ares accompanied by

#### 3.6.2 How does a Change of Tariff Heading Rule Work

Based on the HS, the **change of tariff heading rule (CTH)** works on the assumption that if an imported material changes its tariff heading in the course of its processing, it has been sufficiently transformed. The reference to "Heading" in the EU GSP rules of origin refers to the 4-digit HS heading. If the main article is classified in 8403.10 and the parts in 8403.90, they are part of the same heading for the purpose of the origin rule.

#### Examples:

- "Manufacture from materials of any heading, except that of the product";
- "Manufacture from materials of any heading";
- "Manufacture from materials of any heading, except that of the product and of heading 8522":
- "Manufacture from materials of any sub-heading, except that of the product".

On the positive side, the CTH rule is objectively based on the HS and allows both exporters and customs administrations to easily confirm and document if the finished product originates in the country of exportation. All that is required is that the imported material undergoes the change in classification. Additionally, the classification of the imported material is already a matter of record. All these features make the CTH rule easily ascertainable and verifiable.

One of the major disadvantages of the CTH rule is that the HS was not designed for rules of origin purposes. Therefore, the application of exceptions or additional rules is often needed, such as value added and/ or listed operations, to the CTH rule.

Another difficulty associated with the CTH rule of origin is that classification under the HS can be a complicated and esoteric affair. Accurate tariff classification depends on a sophisticated understanding of the HS and detailed product information (which can be very hard to secure).

This is a combination that rarely exists within either the private or the public sector. The result is a considerable degree of classification inconsistency within and between customs administrations.

### 3.6.3 WHAT IS THE "EX-WORKS PRICE"-BASED VALUE CONTENT CRITERIA

Unlike other Regional Trade Agreements (RTAs) or Free Trade Agreements (FTAs), the EU GSP Rules of Origin (RoOs) do not define the value added to the imported material, but start from the "Ex-works price" of the product obtained and refer to the value of non-originating materials used. The ex-works price is the price paid for the product ex-works to the manufacturer in whose undertaking the last working or processing is carried out). From this ex-works price, the value of the non-originating materials has to be deducted. This allows goods to originate in the beneficiary country by respecting a prescribed maximum value of non-originating material incorporated into the final product.

The EU approach, focusing on the final ex-works price of the product and the value of the materials used, avoids some of the tricky calculations necessary to assess the value of overhead and production costs. Non-originating materials used can be taken into consideration for the customs value at the time of importation. The reference price of the product (consignment) is its ex-works price.

A negative aspect of the value added criterion is the potential for changes to prices of imported materials or to the ex-works prices of the products, e.g. due to exchange rates or other factors.

When applying the value added rule, operators might have to reveal their price calculations (possibly viewed as trade secrets) to the customs administration in the process of verification of origin.

Examples of value content rules:

- "Manufacture in which the value of all the materials used does not exceed 50 % of the exworks price of the product" (e.g. many industrial products from Chapters 25 to 97 with exception to textiles and garments of Chapters 50 to 63);
- "Manufacture in which the value of all the materials used does not exceed 70 % of the exworks price of the product" (e.g. for assembly operations in the machinery sector, for LDCs only).

#### 3.6.4 SPECIFIC OPERATIONS

This method of defining sufficient transformation usually identifies the component in a product that gives the product its essential character and specifies that the component be produced in the beneficiary country. "Prescribed operations" also refers to the use of lists that describe for each product the processing operations that must be performed on the materials. These operations are considered to be sufficiently important to the manufacturing of a particular good and therefore able to confer originating status to the finished product. Some examples are:

- For yarn of wool: "Spinning of natural fibres or extrusion of man-made fibres accompanied by spinning."
- Rule for woven fabrics of man-made staple fibres:

"Spinning of natural and/or man-made staple fibres or extrusion of man-made filament yarn, in each case accompanied by weaving

Or

Weaving accompanied by dyeing or by coating

Or

Yarn dyeing accompanied by weaving

Or

Printing accompanied by at least two preparatory or finishing operations (such as scouring, bleaching, mercerising, heat setting, raising, calendering, shrink resistance processing, permanent finishing, decatising, impregnating, mending and burling), provided that the value of the unprinted fabric used does not exceed 47,5 % of the exworks price of the product."

The new rule of origin in the textiles sector applicable for LDC apparel production is highly beneficial for Myanmar, since it requires only a so-called "single" transformation step. As seen in the example at 3.6.1, the rule of origin for assembled (sewn together) garments is "manufacture from fabric". This rule applies in HS Chapters 61 and 62. The rule is a perfect fit for the Myanmar garment industry, which performs "cutting, manufacturing, packaging" (CMP) operations. Myanmar producers are therefore allowed to source fabric from any competitive supplier, from their own producers, or from third countries. This rule accordingly ensures a high degree of competitiveness in the EU market for the final product.

#### 3.6.5 COMBINATIONS

List rules often provide further alterations to the rules presented, combining them in different manners. Some examples:

- "Manufacture:
  - o from materials of any heading, except that of the product, and
  - in which the value of all the materials of Chapter 4 used does not exceed 40 % of the weight of the final product."
- "Printing accompanied by at least two preparatory or finishing operations (such as scouring, bleaching, mercerising, heat setting, raising, calendering, shrink resistance processing, permanent finishing, decatising, impregnating, mending and burling), provided that the value of the unprinted fabric used does not exceed 47.5 % of the exworks price of the product."

#### 3.7 CUMULATION SYSTEM

#### 3.7.1 BILATERAL CUMULATION

The manufacturer in the beneficiary country is allowed to use **materials originating in the EU** in local production and account for them as originating Myanmar materials in the determination of origin. This system is called bilateral cumulation and applies for all agricultural and industrial products.

Furthermore, the EU, Norway, Switzerland and latterly Turkey agreed in an exchange of letters to apply similar GSP rules of origin and to recognise each other's products as originating if used in the production of goods in a developing country. However, this cumulation option between the four partners applies only to industrial goods falling under HS chapters 25 to 97.

The beneficiary country can integrate materials originating in the EU, Norway, Switzerland or Turkey and take them into consideration as its own originating materials in the determination of origin. This option naturally stimulates the use of materials from the EU and its GSP partners. The condition is that the European exporter issues a **certificate of origin EUR1** (or invoice declaration if applicable) for the purpose of bilateral cumulation under the GSP rules of origin.

#### Reminder:

To apply cumulation and claim preferential GSP origin, the manufacturing or processing in the beneficiary country has to go beyond minimal operations (see also hereafter).

#### 3.7.2 REGIONAL CUMULATION

'Regional cumulation' means a system whereby products which originate in a country which is a member of a regional group are considered as materials originating in another country of the same regional group (or a country of another regional group where cumulation between groups is possible) when further processed or incorporated in a product manufactured there.

Indeed the working or processing has to **go beyond minimal operations** (see point 3.8.1).

There are four regional groups for which regional cumulation applies.

#### Until 31 December 2013, the four regional groups are as follows:

- (a) Group I: Brunei, Cambodia, Indonesia, Laos, Malaysia, Philippines, Singapore, Thailand, Vietnam;
- (b) Group II: Bolivia, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Peru, Venezuela;
- (c) Group III: Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, Sri Lanka;
- (d) Group IV: Argentina, Brazil, Paraguay and Uruguay.

#### As of 1 January 2014, the four regional groups will be as follows:

- (a) Group I: Brunei, Cambodia, Indonesia, Laos, Malaysia, **Myanmar/Burma**, Philippines, Thailand, Vietnam;
- (b) Group II: Bolivia, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Peru, Venezuela;
- (c) Group III: Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, Sri Lanka;
- (d) Group IV: Argentina, Brazil, Paraguay and Uruguay.

Under the conditions set out in the GSP RoO (Art. 86 (3) and Annex 13b), some materials are excluded from the regional cumulation if tariff preferences upon export towards the EU would be different for the countries from which the specific material is sourced (i.e. meat, rice, rice flour, cocoa or coffee and their preparations).

The new rules of regional cumulation applicable as of 1 January 2014 provide however that regional cumulation may only take place with countries that are "beneficiary" countries of the GSP, but not with countries that are "eligible" for the GSP (See further details in Section 5.1). Considering that, with effect from 1 January 2014, both Brunei and Malaysia will no longer be

"beneficiary" countries of the GSP and will become "eligible" countries due to their higher income economy status, they will no longer be part of the regional cumulation. This means that from 1 January 2014, Myanmar will no longer be able to cumulate materials with Malaysia and Brunei. The same will apply for cumulation with Thailand with effect from 1 January 2015.

#### Note:

The rules of origin to confer origin on the input material used in the regional group are based on the EU GSP RoO, not on the RoO of the regional preferential arrangement.

# 3.7.3 CROSS- (INTER-) REGIONAL CUMULATION BETWEEN GROUP I ("ASEAN") AND GROUP III ("SAARC")

At the request of the authorities of a Group I or Group III beneficiary country, regional cumulation between countries of those groups **may be granted** by the Commission, provided that the Commission is satisfied that each of the conditions as set out in the Regulation on GSP RoO are met.

#### 3.7.4 EXTENDED CUMULATION

At the request of any beneficiary country's authorities, extended cumulation between a beneficiary country and a country with which the European Union has a free-trade agreement in accordance with Article XXIV of the General Agreement on Tariffs and Trade (GATT) in force, may be granted by the Commission, provided that each of the conditions as set out in the Regulation on GSP RoO are met.

It is important to note that materials falling within Chapters 1 to 24 of HS are excluded from the extended cumulation.

#### 3.8 OTHER RULES AND REGULATIONS

There are a host of additional rules and regulations related to the operation of rules of origin. These rules impose restrictions on the application of the rules of origin cited above.

## 3.8.1 MINIMAL OPERATIONS (INSUFFICIENT WORKING OR PROCESSING)

Even if an origin rule found in the list is fulfilled, some operations are excluded from conferring origin to the product. Those operations also prevent the change in origin in the case of cumulation of origin. Such minimal operations are:

- (a) preserving operations to ensure that the products remain in good condition during transport and storage;
- (b) breaking-up and assembly of packages;
- (c) washing, cleaning; removal of dust, oxide, oil, paint or other coverings;
- (d) ironing or pressing of textiles and textile articles;
- (e) simple painting and polishing operations;
- (f) husking and partial or total milling of rice; polishing and glazing of cereals and rice;

- (g) operations to colour or flavour sugar or form sugar lumps; partial or total milling of crystal sugar;
- (h) peeling, stoning and shelling, of fruits, nuts and vegetables;
- (i) sharpening, simple grinding or simple cutting;
- (j) sifting, screening, sorting, classifying, grading, matching (including the making-up of sets of articles);
- (k) simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations;
- affixing or printing marks, labels, logos and other like distinguishing signs on products or their packaging;
- (m) simple mixing of products, whether or not of different kinds; mixing of sugar with any material;
- (n) simple addition of water or dilution or dehydration or denaturation of products;
- (o) simple assembly of parts of articles to constitute a complete article or disassembly of products into parts;
- (p) a combination of two or more of the operations specified in points (a) to (o);
- (q) slaughter of animals.

For the purposes of the textile sector, some additional simple operations mentioned in Annex 16 to the EU GSP RoO are considered as not conferring origin in a regional cumulation. Those operations are:

- fitting of buttons and/ or other types of fastenings,
- · making of button-holes,
- · finishing off the ends of trouser legs and sleeves or the bottom hemming of skirts and
- · dresses etc.,
- hemming of handkerchiefs, table linen etc.,
- · fitting of trimmings and accessories such as pockets, labels, badges, etc.,
- ironing and other preparations of garments for sale 'ready-made',
- · or any combination of such working.

#### 3.8.2 PRINCIPLE OF TERRITORIALITY

All working or processing to obtain an originating product must be carried out inside the beneficiary country without interruption.

Where exported originating goods return, they must be considered as non-originating unless:

- the returning goods are the same as those exported; and
- they have not undergone any operation beyond that necessary to preserve them in good condition.

## 3.8.3 Non-Manipulation Rule (PREVIOUSLY 'DIRECT TRANSPORT')

This rule has been significantly simplified since the direct transport rule is no longer necessary. The rule says that goods presented to customs upon declaration for release for free circulation in the European Union have to be the same ones that left the beneficiary country of export and have not been altered or transformed in any way en route. Compliance with this rule is considered as satisfied unless customs has doubts that the rule has been respected. In such

cases, the declarant of the goods has to prove, by any available means related to transport, that the goods have not been altered.

#### 3.8.4 RELAXATIONS TO THE ORIGIN RULES

#### a) Tolerance rule for all products except the textiles sector

Non-originating materials which, according to the conditions set out in the list rules are not to be used in the manufacture of a given product, may nevertheless be used provided that their total value or net weight assessed for the product does not exceed:

- 15 % of the weight of the product for products falling within Chapters 2 and 4 to 24 of the HS, other than processed fishery products of Chapter 16;
- 15 % of the ex-works price of the product for other products, except for products falling within Chapters 50 to 63 (textiles sector) of the HS.

#### Note:

The tolerance rule does not allow exceeding the percentages of non-originating materials set in the product specific list rules.

#### b) Special tolerance rules for the textiles sector

The introductory notes to the list rules of origin contain a detailed set of special tolerance rules applicable exclusively in the textiles sector (products falling within Chapters 50 to 63 of the HS).

#### c) Derogation from meeting the rules of origin

Upon the EU Commission's initiative or in response to a request from a beneficiary country, derogations from meeting the rules of origin can be granted based on Art. 89 of the EU GSP RoO regulation. The precondition is either that internal or external factors temporarily deprive the beneficiary country of the ability to comply with the applicable rules of origin, or that it requires time to prepare it to comply with the set of rules of origin.

Such a request for derogation should be made in writing to the EU Commission.

If such a derogation is granted for specific products, this has to be stated in Box 4 of the certificate of origin Form A issued by the competent authority in the beneficiary country (in the case of Myanmar, this is the Ministry of Commerce).

#### 3.8.5 DUTY DRAWBACK

Usually in RTAs or FTAs, a specific rule forbids beneficiary countries from applying duty drawback to non-originating inputs, and at the same time from claiming preferential treatment of the final product upon importation in the EU. There is no such requirement in the EU GSP RoOs, however. This notion is also important as processing in free zones (FZs) or special economic zones (SEZs) does not negatively influence the origin determination of the product.

#### 3.8.6 ACCESSORIES, SPARE PARTS AND TOOLS

If accessories, spare parts and tools are normally included in an item of equipment (e.g. a spare wheel, safety triangle, or toolkit in a car), their origin should be assessed following the rules applied to that equipment..

#### 3.8.7 COMPOSITION OF SETS

When a set of different articles is composed of originating and non-originating components, the value of non-originating products included in the set may not exceed 15% of the ex-works price of the set. This means that 85% of the articles in the set have to satisfy the rules of origin.

#### 3.8.8 IF STILL IN DOUBT - BINDING ORIGIN INFORMATION

If, after all, doubts persist about the correct origin determination for a specific product, a so-called binding origin information (BOI) decision might be envisaged. The BOI can be obtained in the EU Member State's customs administration where the information will be used (country of future importation). It is valid for three years. Or it can be obtained by the importer into the EU. The latter option presumes, however, that there is a certain trust between exporter and importer as sensitive production data or cost calculations might be exchanged.

BOIs may be annulled if it emerges that they were based on wrong or incomplete information provided. A change in the law might also render a BOI invalid.

A list of the EU Member States authorities responsible for issuing BOIs is published in the EU Official Journal (OJ C 329, 24.12.2008, p. 10).

### 4 PROOF OF ORIGIN

#### 4.1 DOCUMENTARY EVIDENCE IN THE EU GSP

#### 4.1.1 CERTIFICATE OF ORIGIN (CO) FORM A

Until the system of **registered exporters** (REX system) is in place, the principal proof of origin applicable for business purposes is the certificate of origin (CO) **Form A**. This form was adopted in 1970 by UNCTAD's Working Group on Rules of Origin as a common CO for the purposes of the GSP. Usually the Form A has to be issued and shipped with the consignment. Form A remains the only harmonised instrument in the several GSPs applied worldwide.

The validity of a proof of origin is 10 months from the date of issuance and cannot be extended. Exceptionally, it can be presented to the customs authorities of the EU after expiry, subject to certain conditions.

From 2017, a new system of registered exporter (REX) will enter into force (see Section 5.2).

#### 4.1.2 INVOICE DECLARATION

For smaller invoices an origin declaration on the invoice itself is allowed (for consignments below the value of EUR 6,000). No evidence is required for small private packages (below EUR 500 in value) and for travellers' luggage (below EUR 1,200 in value).

# 4.2 GSP REINSTATEMENT AND ISSUANCE OF CO FORM A RETROSPECTIVELY

Regulation 607/2013 reinstates Myanmar into the GSP from 19 July 2013 but with **retroactive application of preferences as from 13 June 2012**. But how can Myanmar exporters benefit retrospectively from the EU GSP?

The procedure is the following:

- Art. 97L of the EU RoO regulation allows under special circumstances to apply and issue a Certificate of Origin Form A after the shipment has left and even if a shipment has already entered the EU.
- The reinstatement of Myanmar in the EU GSP is considered such a special circumstance because no preference existed at the time of export. To get the custom duty refund, , a Certificate of origin Form A has to be issued, by the Ministry of Commerce (the competent authority) after verifying relevant information, for shipments qualifying for the EU GSP and released into free circulation after 13 June 2012 and before entry into force of the reinstatement of the GSP.
- The competent authority will apply a notion in Box 4 of the Form A saying 'Issued Retrospectively'.

The reason for this retrospective issuance is the possibility offered by the EU Customs Code to claim preferential treatment even after the goods have already entered the EU customs territory for free circulation. A belated claim can be made by the EU importer/ trader for goods exported from Myanmar after 13 June 2012 and qualifying under the GSP RoO.

#### Note:

The initiative to claim belated preferential tariff treatment relies on the EU importer or trader. Myanmar exporters should not automatically apply for a retrospective issuance of a Form A, but may obviously advise their EU customer or customs agent that such a possibility exists.

#### 4.3 DUPLICATE FORM A

A duplicate Form A may be issued if the original Form A has been lost, stolen or destroyed. Upon the written request of the exporter, the Ministry of Commerce will issue a new Form A. In this case Box 4 has to contain the serial number of the original Form A lost, and the wording "Duplicate".

# 4.4 COOPERATION UNDER THE GSP ROO IN EUROPE REPLACEMENT FORM A

The EU, Switzerland, Norway and latterly Turkey have agreed to:

- · Apply similar rules of origin for their respective GSPs; and
- Recognise proofs of origin established by each other's customs administrations (so called replacement certificates Form A).

As a result, Myanmar exporters can benefit from the following improvements:

- Recognition of origin in the EU is also valid in Norway, Switzerland and Turkey;
- Enhanced cumulation is possible with materials from the EU, Norway, Switzerland and Turkey, as previously indicated;
- Easier transit of GSP-benefiting products across the European continent (as long as the
  products stay under customs control). The splitting-up of consignments is possible to
  customers in Norway, Germany and in Switzerland for instance. In such cases, the
  customs authorities of the transit country will issue the appropriate replacement Certificate
  of Origin Form A.

### 5 FUTURE DEVELOPMENTS IN THE EU GSP

#### 5.1 GSP DEVELOPMENTS FROM 2014

As pointed out already, the EU GSP regulation underwent a major revision in 2012. The most important reasons for the latest revision are to:

- Better focus on those countries in need;
- Further promote core principles of sustainable development and good governance;
- Enhance legal certainty and stability.

It is worth noting that the new GSP regulation creates a distinction between "eligible" countries (all developing countries) and "beneficiary" countries.

As a result, the new GSP focuses preferences exclusively on those countries that need them. The number of GSP "beneficiaries" is reduced from 176 to 89. Countries that are no longer beneficiary countries are **either** countries with other preferential regimes to access the EU market **or** high and upper middle income countries.

Although 87 countries will exit the scheme as of 1 January 2014, and hence will no longer be beneficiary countries, these countries will remain "eligible". This means that they could come back into the "beneficiary" list if their income status deteriorates or the preferential market arrangement was terminated.

The new EU GSP regulation, applicable from 1 January 2014, will continue to target competitive sectors from certain developing countries and further proceed with the so-called sector graduation which will be reviewed every three years.

Countries that meet the graduation criteria, meaning that they reach for 3 consecutive years the threshold of upper middle or high income country classified by the World Bank will be fully graduated (country exit). This will be reviewed on an annual basis. Countries that meet the threshold of upper middle or high income for three consecutive years will be granted a transitional period of one year before exiting the scheme. At the same time the GSP will no longer be applicable for countries that already have another preferential access to the EU market. It can be assumed that approximately half of the GSP eligible countries (176) will lose GSP status. This concentration to 80 to 90 beneficiary countries means also that fewer competitors to Myanmar will have special GSP treatment, above all if they are LDCs.

The legal certainty is ensured by the 10-year application period for the normal GSP (previously this was 3 years only), avoiding continuous revisions over the years to come. That part of the regulation dealing with LDC treatment, the "everything but arms" principle, is valid without limitation.

For instance, in addition to the jewellery sector (pearls and precious metals), Thailand will be graduated in the sectors of preparations of meat and fish, as well as prepared foodstuffs in 2014 and is very likely to be fully graduated after 2015. Thai producers that will face high tariffs upon importation of their products into the EU might conceivably be interested in investing in Myanmar due to its special status as a LDC.

LDCs such as Myanmar also enjoy major relaxations in the EU GSP rules of origin, which should increase the attraction for investors to seek to produce there. For instance in the textile sector, the rule of origin for garment production in LDCs now requires only **one production step** instead of two (the so-called "single transformation"). The new rule of origin fits well with the production pattern of Myanmar, which performs the so-called CMP (Cutting, Making and Packing) of garments from imported fabrics, since it allows for the use of third country fabric.

# 5.2 Rules of Origin Arrangements from 2017: Registered EXPORTER (REX) - Self Certification in form of Statements of Origin

The EU GSP RoO makes provision for beneficiary countries and their competent authorities to introduce a system of registered exporters for the implementation of the GSP. The EU ROO regulation requests the competent authorities of the beneficiary country to establish and keep up to date at all times an electronic record of registered exporters located in that country. The competent authority must be able to attribute a register number to exporters applying for it. This follows the EU expertise in the field of preferential trade agreements, where so-called "approved exporters" can issue a simple invoice declaration instead of a certificate of origin. In the case of the GSP, exporters can issue – once registered – simple statements of origin regardless of the value of the consignment. However, the self-certification applies only for the product category registered.

Specifically, the record information, which has also to be submitted to the EU, must contain the following details:

- name and full address of the place where Registered Exporter is established/ resides, including the identifier of the country or territory (ISO alpha 2 country code);
- number of Registered Exporter;
- products intended to be exported under the scheme (indicative list of Harmonized System chapters or headings as considered appropriate by the applicant);
- · dates as from and until when the exporter is/ was registered;
- the reason for withdrawal (registered exporter's request/ withdrawal by competent authorities). This data shall only be available to the competent authorities.

The EU has set the date for the implementation of this system in the beneficiary countries for 1st January 2017. The beneficiary countries should notify the EU Commission 3 months ahead of the implementation of the system (and mention the competent authorities). The competent authorities of the beneficiary countries must also notify the Commission of the national numbering system used for designating registered exporters. The number shall begin with ISO alpha 2 country code (i.e. Number MM0123456). The details of the implementation are still under consideration by the EU Commission.

From 1 July 2016 and by 1 July 2019 at the latest the Commission will examine the state of preparation of beneficiary countries for the application of the registered exporter system. The Commission will propose any necessary adjustments. Indeed, beneficiary countries that may not be able to implement the system in 2017 will have to notify the EU Commission at the latest by July 2016 and request an extension of the deadline. The EU regulation allows an extension until 1 January 2020.

On the one hand, the system will bring an additional administrative burden for the implementing authority, while on the other hand it is clearly a simplification for exporters once registered.

Implemented or not, the REX will substitute from 1 January 2017 the older invoice declaration with the "statement of origin" on invoices or other commercial documents. However, if not registered yet, the statement of origin will have the same value limits as the invoice declaration had previously (i.e. EUR 6,000 for commercial consignments).

# 6 RESPONSIBILITIES OF COMPETENT AUTHORITIES AND OF EXPORTERS

#### 6.1 RESPONSIBILITIES OF THE MINISTRY OF COMMERCE

The EU regulation (as well as those for Norway, Switzerland and Turkey) requests that the competent authorities are governmental ones. The EU GSP RoO requires the beneficiary countries:

- To notify the competent governmental authority. In Myanmar this will be the Union of Myanmar Ministry of Commerce (MoC), Directorate of Trade. Any changes have to be notified immediately to avoid interruptions in the granting of preferences;
- To print and provide the business community with the certificates of origin Form A: layout, colour, format, numbering and text are prescribed in detail.
- To notify the stamps used: the original, legible specimens of stamps used have to be notified to the EU Commission. Any changes in the official stamps used have to be notified immediately. The EU Commission will forward copies of the information received to the customs authorities of the Member States of the EU.
- The Ministry of Commerce, Directorate of Trade, has to ensure full mutual administrative cooperation. This involves allowing EU customs verification of Certificates of Origin Form A (and invoice declarations) in Myanmar. The EU regulation requests specifically for administrative and investigative cooperation missions in the beneficiary country. On the other hand, Myanmar is entitled to verify the EU proofs of origin submitted by the EU exporter for the purpose of bilateral cumulation.
- The new GSP regulation, as seen in the previous section, further requests the notification of the competent authorities to approve registered exporters and to fulfil the enhanced administrative cooperation obligations.

# 6.2 PREFERENTIAL MARKET ACCESS AND RESPONSIBILITIES FOR THE BUSINESS COMMUNITY

Regardless of their location within a domestic, regional or international supply chain, each company and each business sector must be aware of the evolution that occurs during the process of negotiating preferential rules of origin or the introduction of new sets of rules in unilateral preferential schemes like the EU GSP.

Preferential market access, culminating in duty free access, is subject to satisfying preferential rules or origin and indicating the same in a properly completed and valid certificate of origin. These simple facts place a significant information and documentation burden on the business community including:

 Detailed awareness and records concerning the manufacturing process and the use, value, weight, classification, origin of manufactured inputs to ensure proper documentation upon application or verification of the origin declared.

- Improved supplier management including improved terms and conditions relating to origin, and vendor origin management.
- Developing origin awareness, including the exact interpretation of applicable rules of origin, throughout the corporation. The import of materials has to be not only targeted to an efficient cost structure, but has also to ensure that origin doesn't get lost due to some third country materials acquired.
- Developing origin systems throughout the company to support qualifying sales to other parties and facilitate any potential origin verification audits.

It follows that there are undeniable costs involved with administering and complying with rules of origin regimes. Once producers and manufacturers have spent the time and money to have their staff become familiar with all these origin-related requirements, there are the costs of simply filling out and verifying certificates of origin for a particular set of origin rules.

Moreover, from the private sector perspective, it is rare that an internationally competitive manufacturer exports to only one region or to only one RTA. Consequently, most manufacturers must comply with several different sets of rules of origin and certification procedures. The complexity and difficulty of the certification is nearly impossible to articulate: some certificates of origin require months to complete and in some cases can require five inches of paperwork to document. While the EU GSP RoOs follow the usual layout of EU FTAs, they are unique and require additional efforts to be implemented.

#### Advice to business operators and exporters:

Private sector stakeholders in beneficiary countries should check if their products are already granted MFN zero tariffs upon importation into the European Union before going into the cumbersome exercise of applying the rules of origin and having to obey several administrative requirements to claim a non-existent preference.

#### 6.3 RESPONSIBILITIES OF THE EU IMPORTER

It has to be clear for all exporters in Myanmar, and for the Ministry of Commerce (MoC), that the correct origin determination in the beneficiary country is essential for the EU importer as the latter will bear the risk of a wrong claim for preferential tariff treatment.

Where doubts about the correct origin arise upon importation, the EU importer might obtain the release into free circulation of the goods only after paying a security that is usually equivalent to the MFN tariff rate and other fees (Art. 94). If the goods have been released into free circulation already and a subsequent verification shows that the EU importer erroneously claimed preferential treatment, he might face not only the payment of the correct MFN duties, but also penalties.

It can be expected that EU importers might request from the exporter in Myanmar, documentation or at least some information about the origin determination in order to minimise their risk of incurring penalties and fines later on.

A right of the EU importer is to claim preferential treatment for goods that have been already released into free circulation up to three years from the date of importation. On the other hand,

the risk of paying belated duties and penalties is also set at three years from the date of importation (release into free circulation).

## 6.4 How to APPLY FOR A CERTIFICATE OF ORIGIN (CO) FORM A

In Myanmar, the Ministry of Commerce is the competent authority in charge of issuing CO Form A and for providing the business community with the correct form. Exporters obtaining Form A from the Ministry should also ask which additional documentation they need to submit.

Exporters should fill out and sign the application form and the Form A (a duly authorised representative can also perform these tasks, but the exporter remains liable). Exporters should take care when completing the information required in each box. Errors could lead to the refusal of the Ministry of Commerce to stamp the Form A or to the rejection of the certificate or to refusal of preferences upon importation in the EU. See the guidance and also the sample Form A in Annex B.

## 6.5 How to verify the origin determination by the exporter

At the time of application for a CO Form A, the exporter has to show in a satisfactory way that he fulfils the relevant rules of origin. The following supporting documents could be used to determine the origin:

- Information on the CO Form A itself
- Application form (filled out and signed)
- Manufacturer declaration
- Import declarations
- Certificates of origin EUR1, invoice declarations, materials used, production descriptions/ fabrication processes, etc.
- Accounting system, commercial papers, etc.

At the time the shipment has already left the country and doubts arise, or a verification request is received, it is at the discretion of the competent authorities to decide what the appropriate method of verifying the origin is. This could be:

- Paper-based:
  - verification of the CO and the documentation submitted at the time of exportation (this requires close cooperation between the Ministry of Commerce and the Customs Department)
  - Written request to the exporter to submit further documentation/ proofs/ calculations
- Verification/ investigation on-site/ post verification audits:
  - Pre-announced visit to the premises of the exporter/ manufacturer

- Request to the exporter/ manufacturer to appear at the offices of the competent authority – enquiry and/ or submission of documentation
- In other cases, a visit without prior announcement to the premises of the exporter/ manufacturer

#### REMINDER:

The origin must be proven by the exporter each time he applies for the issuance of a Form A. It is always valid for one consignment only (exceptions for multiple shipments are possible). So the origin has to be verified for each consignment, this being true above all for the value-based criterion. All the records and other relevant evidence to prove the origin of the consignment for which a Form A has been issued have to be kept for three years.

#### 6.6 DEADLINES FOR VERIFICATION

The requesting EU Member State's customs authority will set a 6-month initial deadline to communicate the results of the verification, starting from the date of the verification request. If there is no reply, or if there is still reasonable doubt or if the information submitted is not satisfactory, the competent authorities will submit a further request with a maximum of 4 months additional deadline.

After this date, if there is still no satisfactory reply, or no reply at all, preferential treatment can be refused for the concerned shipment into the EU.

If several verifications fail, the EU Commission could be inclined to withdraw temporarily the GSP preferences because of a serious malfunction in the administrative cooperation.

## **LIST OF ANNEXES**

Annex	Subject	
Α	Sources of Further Information About the EU GSP	
В	How to Apply for a Certificate of Origin Form A	
С	Invoice Declaration	
D	Statement of Origin	
E	Movement Certificate EUR1	
F	EU Regulation: Reinstatement of GSP for Myanmar	

#### Sources of further information about the EU GSP/ RoO

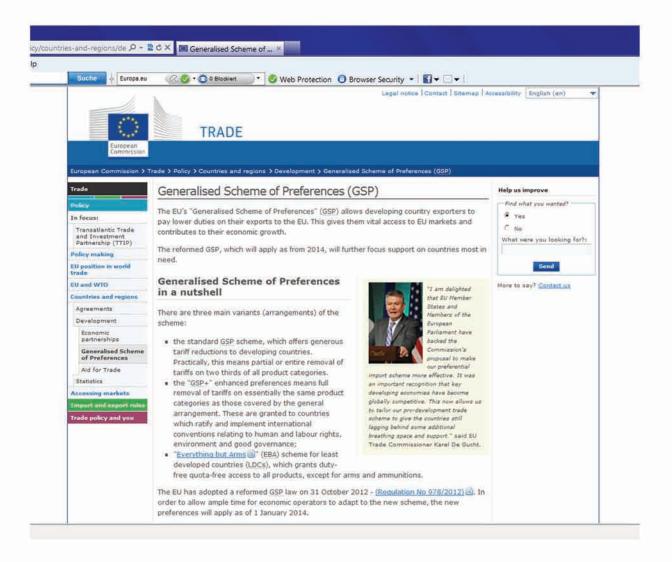
Information given at the homepage of the Directorate General for Taxation and Customs Union (DG TAXUD, European Commission) (on RoO):

http://ec.europa.eu/taxation\_customs/customs\_duties/rules\_origin/preferential/article\_83 9\_en.htm



# Information given at the homepage of the Directorate General for Trade, European Commission (on the EU GSP Scheme):

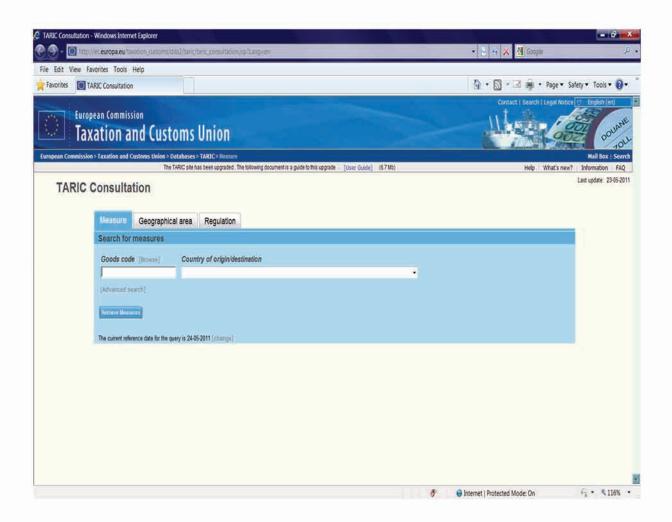
http://ec.europa.eu/trade/policy/countries-and-regions/development/generalised-scheme-of-preferences/index\_en.htm



Information about the purposes of classification and checking the tariff preferences applicable to the goods may be obtained at the following address:

Online TARIC consultation:

http://ec.europa.eu/taxation\_customs/dds2/taric/taric\_consultation.jsp?Lang=en



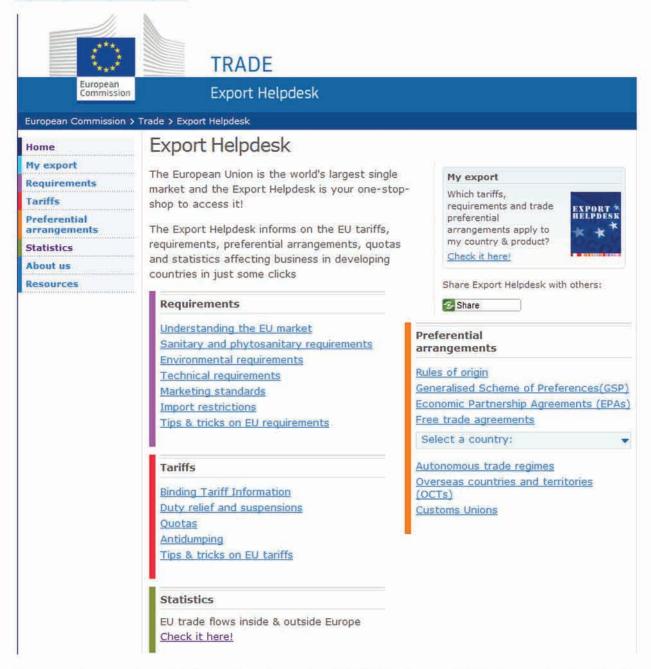
Some information about GSP is also available at the homepage of UNCTAD, but it is **not** up to date.

http://www.unctad.org

http://unctad.org/en/Docs/itcdtsbmisc25rev3\_en.pdf

#### DG TRADE's Export Helpdesk

#### http://exporthelp.europa.eu



The website contains all information about the EU GSP scheme, EU Rules of Origin, Proof of Origin, and GSP customs duty rates. In addition to the information on GSP, the website also provides information on EU import requirements, tariffs, statistical data, and market information.

To help better explain the EU rules of origin, DG TRADE has also published factsheets per product/trade agreement. An example of the factsheets explaining EU RoO for fishery products can be retrieved from the link below:

http://trade.ec.europa.eu/doclib/docs/2013/may/tradoc 151173.pdf

## How to apply for a Certificate of Origin Form A

Now that you are clear about the rules of origin, you are sure that your products qualify for EU GSP treatment, and you have also checked in the EU tariff that your product will be granted GSP treatment, you can proceed with these steps:

First step: Where do I get the certificate of origin Form A?



In Myanmar, the Ministry of Commerce (MoC), Department of Trade, is the competent authority in charge of issuing certificates of origin Form A, and for providing the business community with the correct form of the certificate. Ask the Department of Trade exactly which documentation you need to submit.

Second step: Who fills out the Form A, and how?



Either the exporter or a duly authorised representative can complete Form A. In the latter case, the exporter remains liable. Fill out the application form on the back of the certificate of origin, plus the front of the Form A. Carefully and accurately provide all of the information required in each box. Errors could lead to the refusal of the Department of Trade to stamp the Form A, or to the withdrawal of preferences upon importation into the EU. See also the sample Form A on the next page, and the description of the various boxes.

**NOTE**: Please date and sign the application form on the back of Form A, since failure to do so will invalidate the certificate of origin.

Third step: When will the Department of Trade stamp the Form A?

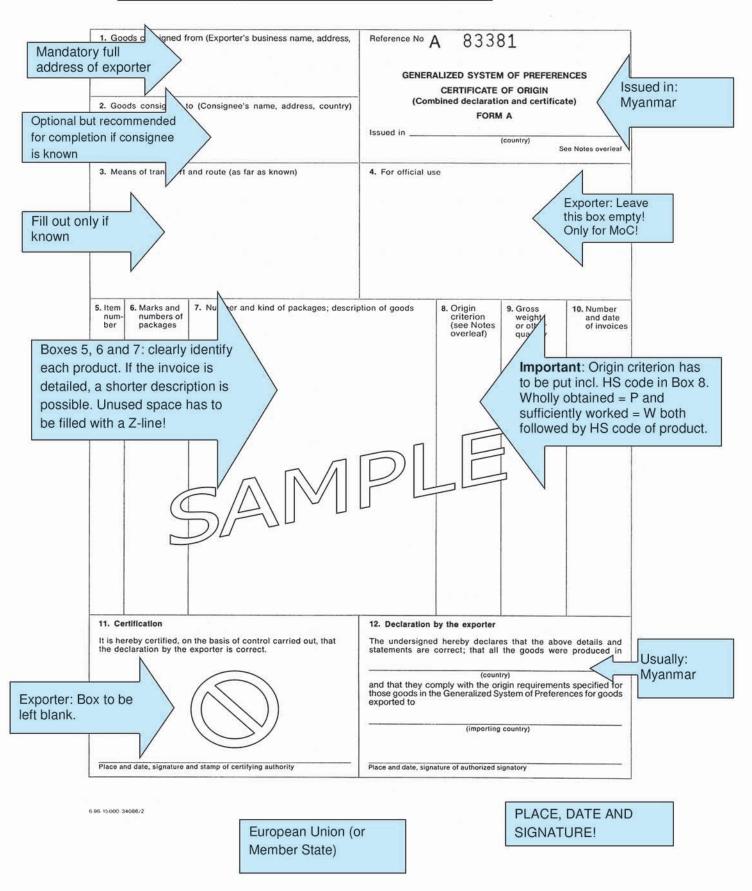


Usually, Form A will be stamped just before or during the processing of the export formalities for the consignment in question. Submit to the Department of Trade (MoC) the application form, the Form A itself, and the supporting documentation that proves that you satisfy the EU GSP rules of origin.

Final step: What next?

Attach Form A to all of the other export documentation that will accompany the export consignment. Provided that all of the documents are in order, your customer or the customs declarant in the EU will then be able to claim preferential tariff treatment upon importation of the goods to the EU.

## Certificate of Origin Form A: Guidance on Completion



#### Application form to be filled out and signed by the Myanmar exporter:

## APPLICATION FOR CERTIFICATE OF ORIGIN Form B

The undersigned, being the exporter of the goods described overleaf, DEC ARES that these goods were produced in (country)

SPECIFIES as follows the grounds on which the goods are claimed to comply vith GSP origin requirements!)

If necessary, MoC can SUBARTS the following supporting documents?) request the submission of additional documents to prove the origin of the goods.

UNDERTAKES to submit, at the request of the appropriate to prove the origin of the goods.

Exporter to explain which rule of origin was used and how he/ she obtained the exported goods covered by the Form A. It can also

UNDERTAKES to submit, at the request of the appropriate authorities of the exporting country, any additional surporting evidence which these authorities may require for the purpose of issuing a certificate of origin, and undertakes, if required, to agree to any inspection of his accounts and any check on the processes of manufacture of the above goods, carried out by the said authorities.

REQUESTS the issue of a certificate of origin for these goods.

Signature of the exporter as well as place (signature of authorized signatory)

Where the origin criteria involve a percentage value, give information enabling this percentage to be verified — for example the value of imported materials and components and those of undetermined origin and the ex-factory price of the exported goods, where applicable.

2) For example, import documents, invoices, etc., relating to the materials or components used.

#### NOTES

- A. Procedure for claiming preference. A declaration on the certificate of origin form must be prepared by the exporter of the goods and submitted in duplicate, together with a GSP application form, to the certifying authority of the country of exportation which will, if satisfied, certify the top copy of the certificate of origin and return it to the exporter for transmission to the importer in the country of destination. The certifying authority will at the same time return to the exporter for his retention the duplicate copy of the certificate of origin, but will itself retain the GSP application form duly completed and signed by the exporter.
- B. Sanctions. Persons who furnish, or cause to be furnished, information which relates to origin or consignment, and which is untrue in a material particular are liable to legal penalties and to the suspension of facilities for their goods to obtain preference.

i) To be completed if materials or components originating in another country have been used in the manufacture of the goods in question. Indicate the materials or components used, their Brussels Nomenclature tariff heading, their country or origin and, where appropriate, the manufacturing processes qualifying the goods as originating in the country of manufacture (application of the special conditions laid down in the Single List), the goods produced and their tariff heading.

## Invoice Declaration (applicable until the end of 2016)

#### Invoice declaration

The invoice declaration, the text of which is given below, must be made out in accordance with the footnotes. However, the footnotes do not have to be reproduced. This declaration applies until 31 December 2016.

#### French version

L'exportateur des produits couverts par le présent document [autorisation douanière n o ... <sup>(1)</sup>] déclare que, sauf indication claire du contraire, ces produits ont l'origine préférentielle ... <sup>(2)</sup> au sens des règles d'origine du Système des préférences tarifaires généralisées de la Communauté européenne et ... <sup>(3)</sup>.

#### **English version**

The exporter of the products covered by this document (customs authorization No ... <sup>(1)</sup>) declares that, except where otherwise clearly indicated, these products are of ... preferential origin <sup>(2)</sup> according to rules of origin of the Generalised Scheme of Preferences of the European Community and ... <sup>(3)</sup>.

(Place and date) (4)

(Signature of the exporter; in addition the name of the person signing the declaration has to be indicated in clear script) (5)

#### Footnotes:

(1) When the invoice declaration is made out by an approved European Union's exporter within the meaning of Article 97v (4), the authorization number of the approved exporter must be entered in this space. When (as will always be the case with invoice declarations made out in beneficiary countries) the invoice declaration is not made out by an approved exporter, the words in brackets shall be omitted or the space left blank.

(2) Country of origin of products to be indicated. When the invoice declaration relates, in whole or in part, to products originating in Ceuta and Melilla within the meaning of Article 97j, the exporter must clearly indicate them in the document on which the declaration is made out by means of the symbol "CM".

- (3) Where appropriate, enter one of the following indications: "EU cumulation", "Norway cumulation", "Switzerland cumulation", "Turkey cumulation", "regional cumulation", "extended cumulation with country x" or "Cumul UE", "Cumul Norvège", "Cumul Suisse", "Cumul Turquie", "cumul regional", "cumul étendu avec le pays x".
- (4) These indications may be omitted if the information is contained on the document itself.
- (5) See Article 97v (7) (concerns approved European Union's exporters only). In cases where the exporter is not required to sign, the exemption of signature also implies the exemption of the name of the signatory.'



## Statement of Origin (applicable from 2017)

The statement of origin for registered exporters and for low value consignments for all exporters from 1 January 2017:

To be made out on any commercial documents showing the name and full address of the exporter and consignee as well as a description of the goods and the date of issue (1)

#### French version

L'exportateur [Numéro d'exportateur enregistré — excepté lorsque la valeur des produits originaires contenus dans l'envoi est inférieure à EUR 6 000 <sup>(2)</sup>] des produits couverts par le présent document déclare que, sauf indication claire du contraire, ces produits ont l'origine préférentielle .... <sup>(3)</sup> au sens des règles d'origine du Système des préférences tarifaires généralisées de l'Union européenne et que le critère d'origine satisfait est ... <sup>(4)</sup>.

#### English version

The exporter (Number of Registered Exporter — unless the value of the consigned originating products does not exceed EUR 6 000 <sup>(2)</sup>) of the products covered by this document declares that, except where otherwise clearly indicated, these products are of ..... preferential origin <sup>(3)</sup> according to rules of origin of the Generalized Scheme of Preferences of the European Union and that the origin criterion met is ... <sup>(4)</sup>.

#### Footnotes:

- (1) Where the statement on origin replaces another statement in accordance with Article 97d, this shall be indicated and the date of issue of the original statement shall also always be mentioned.
- Where the statement on origin replaces another statement, the subsequent holder of the goods establishing such a statement shall indicate his name and full address followed by the mention (French version) "agissant sur la base de l'attestation d'origine établie par [nom et adresse complète de l'exportateur dans le pays bénéficiaire], enregistré sous le numéro suivant [Numéro d'exportateur enregistré dans le pays bénéficiaire]" (English version) "acting on the basis of the statement on origin made out by [name and full address of the exporter in the beneficiary country], registered under the following number [Number of Registered Exporter of the exporter in the beneficiary country]".
- (3) Country of origin of products to be indicated. When the statement on origin relates, in whole or in part, to products originating in Ceuta and Melilla within the meaning of Article 97j, the exporter must clearly indicate them in the document on which the statement is made out by means of the symbol "CM".
- (4) Products wholly obtained: enter the letter "P"; Products sufficiently worked or processed: enter the letter "W" followed by the Harmonized Commodity Description and coding System (Harmonized System) heading at the four-digit level of the exported product (example "W" 9618); where appropriate, the above mention shall be replaced with one of the following indications: "EU cumulation", "Norway cumulation", "Switzerland cumulation", "Turkey cumulation", "regional cumulation", "extended cumulation with country x" or "Cumul UE", "Cumul Norvège", "Cumul Suisse", "Cumul Turquie", "cumul regional", "cumul étendu avec le pays x".'



## **Movement Certificate EUR1**

#### MOVEMENT CERTIFICATE

1. Exporter (Name, full address, country)	EUR. 1 No	A 000,000	
	See notes overleef before completing this form		
	2. Certificate used in preferentia	I trade between	
3. Consignee (Name, full address, country) (Optional)			
	and		
	4. Country, group of countries	5. Country, group of countries	
	or territory in which the products are considered as originating	or territory of destination	
6. Transport details (Optional)	7. Remarks		
	1		
	<b>k</b> –		
8. Item number; Marks and numbers; Number and kind of packages ('); Description of goods as (kg)			
		or other mea- sure (litres, m*, etc.)	
9		,,	
		[	
		,	
11. CUSTOMS ENDORSEMENT	12 DECLADATE	ON BY THE EYPORTER	
Declaration certified	I, the under	12. DECLARATION BY THE EXPORTER     I, the undersigned, declare that the goods described above meet the conditions required.	
Export document (*) FormNoNo		of this certificate.	
Customs office	1		
Issuing country or territory	Stamp Place and da	te	
Date			
	-		
(Signature)	1	(Signature)	

## EU Regulation: Reinstatement of GSP for Myanmar

EN 29.6.2013 Official Journal of the European Union L 181/13:

REGULATION (EU) No 607/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 12 June 2013

repealing Council Regulation (EC) No 552/97 temporarily withdrawing access to generalised tariff preferences from Myanmar/Burma

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION.

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Acting in accordance with the ordinary legislative procedure (1),

#### Whereas:

- (1) Article 1 of Council Regulation (EC) No 552/97 of 24 March 1997 temporarily withdrawing access to generalized tariff preferences from the Union of Myanmar (2), as amended by Article 28(1) of Council Regulation (EC) No 732/2008 of 22 July 2008 applying a scheme of generalised tariff preferences from 1 January 2009 (3), provides that Myanmar/Burma's access to the tariff preferences granted by Regulation (EC) No 732/2008 is temporarily withdrawn.
- (2) Point (a) of Article 15(1) of Regulation (EC) No 732/2008 provides that the preferential arrangements provided for in that Regulation may be withdrawn temporarily, in respect of all or of certain products originating in a beneficiary country, for the serious and systematic violation of principles laid down in the conventions listed in Part A of Annex III to that Regulation, on the basis of the conclusions of the relevant monitoring bodies.
- (3) The International Labour Organisation (ILO) Convention concerning Forced or Compulsory Labour, 1930 (No 29), is listed in Part A of Annex III to Regulation (EC) No 732/2008.
- (4) Pursuant to Article 2 of Regulation (EC) No 552/97, the application of that Regulation should be brought to an end in the light of a Commission report on forced labour in Myanmar/Burma, showing that the practices referred to in point (a) of Article 15(1) of Regulation (EC) No 732/2008 no longer exist.
- (5) On 13 June 2012 the International Labour Conference (ILC) adopted a resolution 'Concerning the measures on the subject of Myanmar adopted under article 33 of the ILO Constitution' (ILC resolution). Taking note of the conclusions adopted on 4 June 2012 by the ILC Committee on the Application of Standards and considering that maintaining the existing measures would no longer help attaining the desired result, the ILC decided to lift restrictions, which excluded the Government of Myanmar/Burma from receiving ILO technical cooperation and assistance. It also

suspended for one year the ILO request of its members to review their relationships with Myanmar/Burma to ensure forced labour is not being used in those relationships.

- (6) On 17 September 2012, the Commission published a report pursuant to Article 2 of Council Regulation (EC) No 552/97 with respect to the forced labour in Myanmar/Burma, containing its findings ('the Report'). The Report concludes that the progress made by Myanmar/Burma towards complying with the ILO recommendations, which has been acknowledged by the competent ILO monitoring bodies, means that violations of the principles laid down in ILO Convention No 29 are no longer considered as 'serious and systematic' and recommends that access to generalised tariff preferences should be reinstated to Myanmar/Burma.
- (7) In view of the ILC resolution and of the Report, and pursuant to Article 2 of Regulation (EC) No 552/97, the temporary withdrawal of Myanmar/Burma's access to the tariff preferences granted by Regulation (EC) No 732/2008 should therefore be repealed, as of the date of the adoption of the ILC resolution.
- (8) The Commission should continue to monitor developments in Myanmar/Burma with respect to forced labour and react to them in accordance with the procedures in force, including, if necessary, with renewed withdrawal procedures,

HAVE ADOPTED THIS REGULATION:

#### Article 1

Regulation (EC) No 552/97 is hereby repealed.

- (1) Position of the European Parliament of 23 May 2013 (not yet published in the Official Journal) and decision of the Council of 10 June 2013.
- (2) OJ L 85, 27.3.1997, p. 8.
- (3) OJ L 211, 6.8.2008, p. 1.

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 13 June 2012.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 12 June 2013.

For the European Parliament The President M. SCHULZ

For the Council The President L. CREIGHTON



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