

Brussels, **XXX**
[...](2021) **XXX** draft

COMMISSION DELEGATED REGULATION (EU) .../...

of **XXX**

**amending Delegated Regulation (EU) 2015/2446 as regards certain provisions relating to
the origin of goods**

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EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (Code), in consistency with the Treaty on the Functioning of the European Union (TFEU), delegates to the Commission the power to supplement certain non-essential elements of the Code, in accordance with Article 290 TFEU. The Commission has therefore exercised these powers by adopting on 28 July 2015, Commission Delegated Regulation (EU) 2015/2446 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code. This Commission Delegated Regulation established provisions of general application to supplement the Code in accordance with the Commission's delegated powers and with a view to ensuring a clear and proper application of the Code.

The present amending Delegated Regulation aims at:

- clarifying certain rules laid down in Delegated Regulation (EU) 2015/2446, which supplement Article 60 of the Code on the acquisition of a non-preferential origin by goods, either wholly obtained in a single country or territory, or the production of which involves more than one country or territory; and
- updating Annexes 22-01, 22-03 and 22-04 of Delegated Regulation (EU) 2015/2446 to the version of 2022 of the Harmonized System¹.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The Commission carried out a consultation in line with paragraph 4 of the Common Understanding on delegated acts between the European Parliament, the Council and the European Commission.

The Commission developed this Delegated Act in accordance with the Framework Agreement on relations between the European Parliament and the European Commission and with the Common Understanding of the European Parliament, Council and Commission on delegated acts. Member States and all other relevant stakeholders have been duly involved and constantly consulted on the draft provisions.

The Commission carried out consultations on the draft text with Member States through meetings of the group of experts (Customs Expert Group), as well as consultations of the business community through the consultative stakeholder body (Trade Contact Group – TCG) in joint meetings with Member States experts.

The Commission has actively considered all comments received during this consultation exercise, and, to the greatest extent possible, included them in the version provided herewith.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The legal basis for this Regulation is contained in the delegations of power of Articles 62 and 65 of the Code.

Subsidiarity principle

¹ 'Harmonized System' or 'HS' means the goods nomenclature established under the International Convention on the Harmonized Commodity Description and Coding System.

The proposal falls under the exclusive competence of the EU according to Article 3(1)(e) of the Treaty on the Functioning of the European Union (TFEU).

Proportionality principle

In terms of proportionality, this Regulation respects the limits of the empowerments granted by the co-legislators and concerns only elements to better adapt the existing legal provisions to the requirements of the day-to-day practice of customs authorities and economic operators and persons other than economic operators.

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code², and in particular Articles 62 and 65 thereof,

Whereas:

- (1) Article 60 of the Union Customs Code lays down rules for the determination of the non-preferential origin of goods. In accordance with paragraph 1 thereof, goods wholly obtained in a single country or territory shall be regarded as having their origin in that country or territory. In order to make clearer the rule for the determination of the non-preferential origin of vegetable products to be considered as wholly obtained in a single country or territory, it is to be specified in Article 31(b) of Delegated Regulation (EU) 2015/2446 that the vegetable products are to be grown and harvested only in the said country or territory.
- (2) In order to align for goods, covered or not by Annex 22-01 to Delegated Regulation (EU) 2015/2446, the determination of the non-preferential origin of products for which the processing or working operations are not economically justified, it is to be specified in Article 33, third paragraph of the same Regulation that the application of the major portion rule should be based on the weight or on the value of the materials used. The specification is to be done per chapter of the goods nomenclature established under the International Convention on the Harmonized Commodity Description and Coding System (Harmonized System).
- (3) In order to provide for a method of determining the non-preferential origin in cases where the last transformation of goods consists of a minimal operation Article 34 of Delegated Regulation (EU) 2015/2446 is to be supplemented. Such goods are to be considered to have undergone their last substantial working or processing in the country or territory where the major portion of the materials originated, based on either the weight or the value of the materials, as appropriate per chapter of the Harmonized System.
- (4) The wording of Article 35(3) of Delegated Regulation (EU) 2015/2446 should be aligned to the wording of Article 35(2) of the same regulation regarding the essential spare parts for goods previously released for free circulation in the Union.
- (5) Annex 22-01 of Delegated Regulation (EU) 2015/2446 provides for specific rules for determining the country where certain goods underwent their last substantial transformation within the meaning of Article 32 of the same Regulation. The rules provided in that Annex are to be applied to those goods in particular on the basis of

² OJ L 269, 10.10.2013, p. 1.

their classification in the Harmonized System. To ensure proper application of the rules, the list is updated to its last version, which will apply from 1 January 2022.

- (6) Annex 22-03 of Delegated Regulation (EU) 2015/2446 lays down the conditions for products to be considered as originating in beneficiary countries for the purpose of the Generalised System of Preferences ('GSP'). The rules provided in that Annex are to be applied to those products in particular on the basis of their classification in the Harmonized System. To ensure proper application of the rules, Annex 22-03 should be updated to its last version, which will apply from 1 January 2022.
- (7) Annex 22-04 of Delegated Regulation (EU) 2015/2446 lists the materials excluded from regional cumulation in the context of the GSP. The rules provided in that Annex are to be applied to those materials in particular on the basis of their classification in the Harmonized System. To ensure proper application of the rules, Annex 22-04 should be updated to its last version, which will apply from 1 January 2022.
- (8) Delegated Regulation (EU) 2015/2446 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Delegated Regulation (EU) 2015/2446

Delegated Regulation (EU) 2015/2446 is amended as follows:

- (1) in Article 31, point (b) is replaced by the following
'(b) vegetable products grown and harvested only there;'
- (2) in Article 33, the third paragraph is replaced by the following:
'For goods not covered by Annex 22-01, where the last working or processing is deemed not to be economically justified, the goods shall be considered to have undergone their last substantial, economically justified processing or working, resulting in the manufacture of a new product or representing an important stage of manufacture, in the country or territory where the major portion of the materials originated. Where the final product is to be classified under Chapters 2 to 5; 7 to 14; 16 to 17; 19 to 29; 31 to 40 the major portion of the materials is determined on the basis of the weight of the materials. Where the final product is to be classified under Chapters 1; 6; 15; 18; 30; 41 to 97 the major portion of the materials is determined on the basis of the value of the materials.'
- (3) in Article 34, the following paragraph is added:
'For goods covered by Annex 22-01, the Chapter residual rules for those goods shall apply. For goods not covered by Annex 22-01, where the last working or processing is deemed to be a minimal operation, the origin of the final product is the country or territory where the major portion of the materials originated. Where the final product is to be classified under Chapters 2 to 5; 7 to 14; 16 to 17; 19 to 29; 31 to 40 the major portion of the materials is determined on the basis of the weight of the materials. Where the final product is to be classified under Chapters 1; 6; 15; 18; 30; 41 to 97 the major portion of the materials is determined on the basis of the value of the materials.'
- (4) in Article 35(3), point (a) is replaced by the following:

‘(a) components without which the proper operation of a piece of equipment, machine, apparatus or vehicle which have been put into free circulation cannot be ensured; and’

- (5) Annex 22-01 is amended as set out in Annex I to this Regulation.
- (6) Annex 22-03 is amended as set out in Annex II to this Regulation.
- (7) Annex 22-04 is amended as set out in Annex III to this Regulation.

Article 2

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

The Annexes shall apply from 1 January 2022.

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

Done at Brussels,

For the Commission
The President
Ursula VON DER LEYEN