



EUROPEAN
COMMISSION

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**

This draft has not been adopted or endorsed by the European Commission. Any views expressed are the preliminary views of the Commission services and may not in any circumstances be regarded as stating an official position of the Commission.

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)¹, 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 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 Code². 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 on the non-preferential origin of goods, as concerns specifically vegetable products wholly obtained in a single country or territory; products for which the production involves more than one country or territory; and products for which the processing or working operations are not economically justified; and
- updating Annexes 22-01, 22-03 and 22-04 of Delegated Regulation (EU) 2015/2446 in line with the 2022 version of the Harmonized System³.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

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, the Council and the 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 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 to the Commission laid down in Articles 62 and 65 of the Code.

Subsidiarity principle

¹ OJ L 269, 10.10.2013, p. 1.

² OJ L 343, 29.12.2015, p. 1.

³ '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) TFEU.

Proportionality principle

In terms of proportionality, this Regulation respects the limits of the empowerments granted to the Commission by the co-legislators and concerns only elements which are necessary to 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 Code⁴, and in particular Articles 62 and 65 thereof,

Whereas:

- (1) Article 60 of Regulation (EU) No 952/2013 lays down rules for the determination of the non-preferential origin of goods. In accordance with paragraph 1 of that Article, goods wholly obtained in a single country or territory are to be regarded as having their origin in that country or territory. In order to clarify how to determine the non-preferential origin of vegetable products that are to be considered as wholly obtained in a single country or territory, it is necessary to amend Article 31, point (b), of Commission Delegated Regulation (EU) 2015/2446⁵ to specify that the vegetable products must not only have been harvested, but also grown only in the relevant country or territory.
- (2) In order to align the determination of the non-preferential origin of products for which the processing or working operations are not economically justified, covered or not by Annex 22-01 to Delegated Regulation (EU) 2015/2446, it is necessary to amend the third paragraph of Article 33 of that Regulation, to specify that the criterion concerning the determination of the major portion of the materials used should be based on the weight or on the value of the said materials. The specification should be done per Chapter of the Nomenclature of the Harmonized Commodity Description and Coding System, adopted by the Organization set-up by the Convention establishing a Customs Co-operation Council, done at Brussels on 15 December 1950 (Harmonized System).
- (3) In accordance with Article 34 of Delegated Regulation (EU) 2015/2446, minimal operations are not considered as substantial, economically justified processing or working for the purposes of conferring non-preferential origin. Therefore, in cases where the last transformation of the goods consists of a minimal operation, it is necessary to establish a method allowing the determination of the non-preferential origin of the goods concerned. Article 34 of Delegated Regulation (EU) 2015/2446 should be supplemented to set out that such goods should be considered to have undergone their last substantial working or processing in the country or territory where

⁴ OJ L 269, 10.10.2013, p. 1.

⁵ Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 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 (OJ L 343, 29.12.2015, p. 1).

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) According to Article 35(2) of Delegated Regulation (EU) 2015/2446, essential spare parts for use with goods listed in specific Sections of the Combined Nomenclature previously released for free circulation in the Union are to be deemed to have the same origin as those goods if the incorporation of the essential spare parts at the production stage would not have changed their origin. For the sake of consistency, the definition of “essential spare parts” in Article 35(3) of that Regulation should be amended to remove the reference to goods previously exported in point (a) of that provision.
- (5) Annex 22-01 of Delegated Regulation (EU) 2015/2446 sets out specific rules for determining the country where certain goods have undergone their last substantial transformation within the meaning of Article 32 of that Regulation. The rules provided in that Annex are to be applied to goods listed there on the basis of their classification in the Harmonized System. Since the Harmonized System has been amended in its 2022 version, Annex 22-01 should be updated accordingly.
- (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. Since the Harmonized System has been amended in its 2022 version, Annex 22-03 should be updated accordingly.
- (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. Since the Harmonized System has been amended in its 2022 version, Annex 22-04 should be updated accordingly.
- (8) The Harmonized System’s version of 2022 will only apply from 1 January 2022, and therefore the amendments to Annexes 22.01, 22.03 and 22.04 of Delegated Regulation (EU) 2015/2446 stemming from the Harmonized System’s 2022 version should apply from 1 January 2022.
- (9) Delegated Regulation (EU) 2015/2446 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

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 1 to 29 or 31 to 40 of the Harmonized System, the major portion of the materials shall be determined

on the basis of the weight of the materials. Where the final product is to be classified under Chapters 30 or 41 to 97 of the Harmonized System, the major portion of the materials shall be determined on the basis of the value of the materials.’;

- (3) in Article 34, the following subparagraph 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 1 to 29, or 31 to 40 of the Harmonized System, the major portion of the materials shall be determined on the basis of the weight of the materials. Where the final product is to be classified under Chapters 30 or 41 to 97 of the Harmonized System, the major portion of the materials shall be 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 has 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 twentieth day following that of its publication in the *Official Journal of the European Union*.

Points (5), (6) and (7) of Article 1 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