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EU-Vietnam Free Trade Agreement (EVFTA)

Guidance on the Rules of Origin

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General disclaimer

These guidance documents are of an explanatory and illustrative nature. Customs legislation in the EU and its Member States, as well as customs legislation of Vietnam takes precedence over the content of these documents and should always be consulted. The authentic texts of the EU legal acts are those published in the Official Journal of the European Union. There may also be national instructions.

Drafting procedure

This guidance document has been drafted by DG TAXUD and has been endorsed by the Customs Expert Group – Origin Section (CEG-ORI).

Acronyms:

EVFTA Origin Protocol: the Protocol on rules of origin and origin procedure of the EU-Vietnam Free Trade Agreement

UCC: Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013

UCC-DA: Commission Delegated Regulation (EU) 2015/2446, as amended

UCC-IA: Commission Implementing Regulation (EU) 2015/2447, as amended

1. Proof of origin for products originating in the EU exported to Vietnam

1.1 Relevant provisions

- EVFTA Origin Protocol : Article 15
- EU legal base: Article 68 UCC-IA

1.2 Application of the REX system

Article 15(1)(c) of the EVFTA Origin Protocol establishes that products originating in the Union shall, on importation into Vietnam, benefit from the EVFTA upon submission of a statement of origin made out by exporters registered in an electronic database in accordance with the relevant legislation of the Union after the Union has notified to Vietnam that such legislation applies to its exporters. In addition, that paragraph (c) also indicates that such notification may stipulate that points (a) and (b) shall cease to apply to the Union.

The European Union notified Vietnam on 8 April 2020 that point (c) of Article 15(1) of Protocol 1 of the EVFTA will apply as from the date of entry into force of the EVFTA, and that point (a) and point (b) of the same paragraph will not apply. Therefore, products originating in the European Union shall, on importation into Vietnam, benefit from the tariff preference of the EVFTA upon submission of statements on origin. Certificates of origin EUR.1 and origin declarations will not be issued or made out in the European Union to benefit from the preferential tariff treatment in Vietnam.

In the EU, the relevant legislation for registration of exporters in an electronic database, which defines that that database is the Registered Exporter System (REX), is Article 68 UCC-IA, in particular paragraph 1 of that Article.

Article 19 of the EVFTA establishes the conditions for making out an origin declaration. Paragraph 6 of that Article defines that:

> 6. The conditions for making out an origin declaration referred to in paragraphs 1 to 5 apply *mutatis mutandis* to statements of origin made out by an exporter registered as provided for in subparagraphs 1(c) and 2(c) of Article 15 (General Requirements).

Therefore, the conditions for making out a statement on origin are laid down in Article 19 of the EVFTA.

1.3 Validity of registrations of EU exporters

Registration of an EU exporter in the REX database is according to Article 26 UCC valid throughout the customs territory of the Union and consequently the REX number assigned to an exporter may be used irrespective of the place where products are declared for exportation and where the real export is taking place. This means that the REX number can be used to export the products from different Member States and not only from a Member State where it was assigned.

Moreover, as the registration data of registered exporters do not specify the countries for which the registration is done, the registration number may be used in the context of any

arrangements/agreements in which the REX system is applicable. An exporter already holding a REX number for the purpose of his exports to GSP beneficiary countries (bilateral cumulation), to Japan or to Canada, for instance, may use the same number for the purpose of his exports to Vietnam.

1.4 Text of the statement on origin

Annex VI of the EVFTA Origin Protocol contains the text of the origin declaration, which refers to a '(customs authorization No…)'. Footnote 1 of that Annex refers to authorisation number of approved exporter.

> Annex VI – English version
>
> The exporter of the products covered by this document (customs authorization No ...(1)) declares that, except where otherwise clearly indicated, these products are of ...(2) preferential origin
>
> ……(3)
> (Place and date)
>
> ...……(4)
> (Signature of the exporter, in addition to the name of the person signing the declaration has to be indicated in clear script)
>
> (1) When the invoice declaration is made out by an approved exporter, the authorisation number of the approved exporter shall be entered in this space. When the invoice declaration is not made out by an approved exporter, the words in brackets shall be omitted or the space left blank.
> (2) Origin of products to be indicated. When the invoice declaration relates, in whole or in part, to products originating in Ceuta and Melilla, the exporter shall clearly indicate them in the document on which the declaration is made out by means of the symbol "CM".
> (3) These indications may be omitted if the information is contained on the document itself.
> (4) In cases where the exporter is not required to sign, the exemption of signature also implies the exemption of the name of the signatory.

As EU exporters have to use their registration number and not their approved exporter authorisation number to export to Vietnam, the text of Annex VI should be read as follows (modifications emphasized in bold):

> Annex VI applied mutatis mutandis to statement on origin – English version
>
> The exporter of the products covered by this document (**registration** No ...(1)) declares that, except where otherwise clearly indicated, these products are of ...(2) preferential origin
>
> ……(3)
> (Place and date)
>
> ...……(4)
> (Signature of the exporter, in addition to the name of the person signing the **statement on origin** has to be indicated in clear script)
>
> (1) When the **statement on origin** is made out by a registered exporter, the registration number of the registered exporter shall be entered in this space. When the **statement on origin** is not made out by a registered exporter, the words in brackets shall be omitted or the space left blank.

(2) Origin of products to be indicated. When the **statement on origin** relates, in whole or in part, to products originating in Ceuta and Melilla, the exporter shall clearly indicate them in the document on which the **statement on origin** is made out by means of the symbol "CM".
(3) These indications may be omitted if the information is contained on the document itself.
(4) In cases where the exporter is not required to sign, the exemption of signature also implies the exemption of the name of the signatory.

For goods originating in the EU, the origin to be indicated in (2) is "EU".

1.5 Statement on origin for consignments of a value below 6000 EUR

As indicated in point 2 (Application of the REX system), the EU notified Vietnam that paragraph (c) of Article 15(1) applies from the entry into force of the EVFTA and that paragraphs (a) and (b) will not apply. That paragraph (b) concerns origin declarations made out by any exporter for consignments the total value of which does not exceed 6 000 euros.

However, according to Article 68(4) UCC-IA, an exporter who is not a registered exporter may complete a document on origin up to the value threshold of EUR 6 000, for each consignment.

In such cases, footnote 1 of Annex VI of the EVFTA Origin Protocol sets out that the words in brackets concerning the '(Registration No…)' in the statement on origin shall be omitted or the space left blank.

1.6 Signature of a statement on origin

By application of Article 19(4):

- Statements on origin made out by registered exporters do not need to be signed
- Statements on origin made out by an exporter who is not registered (i.e. a consignments of a value below 6 000 euros) must be signed by the exporter

2. Proof of origin for products originating in VN exported to the EU

2.1 Relevant provisions

- EVFTA Origin Protocol : Article 15

- Relevant legislation in Vietnam:
  - Decree 31 of 2018 giving instructions for C/O application
  - Circular N°5 of 2018 of MoIT giving guidance on how to provide the supporting documents and proving origin of goods
  - A new circular dedicated to the EVFTA (reference to be confirmed)

2.2 Introduction

Article 15(2) establishes the valid proofs of origin for products originating in Vietnam to benefit from the EVFTA, at import in the EU. As Vietnam has not notified (yet) the EU that Article 15(2)(c) applies, Article 15(2)(a) and (b) will apply as from the entry into force of the agreement.

Therefore, the proof of origin applicable for goods originating in the Vietnam are:

- A certificate of origin EUR.1 (Article 15(2)(a))
- An origin declaration made out by any exporter for consignments the total value of which is to be determined in the national legislation of Vietnam and shall not exceed 6 000 euros (Article 15(2)(b)).

The Vietnamese national legislation defines the threshold allowing any exporter to make out an origin declaration without being an approved exporter has being 6 000 euros.

2.3 Certificate EUR.1

The specimen of the certificate of origin EUR.1 is given in Annex VII of the EVFTA Origin Protocol ('Movement Certificate').

The body in charge of issuing the certificates of origin EUR.1 in the context of the EVFTA is the Ministry of Industry and Trade (MoIT). As reminder, in the context of the GSP, the certificates of origin Form A were issued by the VCCI (Vietnam Chamber of Commerce and Industry).

The Vietnamese exporter has to apply electronically for a certificate, providing all required supporting documents. Then the certificate is printed, stamped manually and provided to the exporter on paper.

2.4 Retrospective issue of certificates of origin

In application of the transitional measures of Article 38, the exporters in Vietnam may have to ask to the MoIT to issue certificates of origin EUR.1 retrospectively, providing the full set of required documents.

The procedure to obtain a certificate of origin retrospectively is the same as the one to obtain a certificate of origin at the time of export.

In case a Form A certificate was already issued but the goods would eventually be imported into the EU after the entry into force of the FTA, exporters would need to apply for EUR.1 retrospectively.

2.5 Origin declaration

Annex VI of the EVFTA Origin Protocol contains the text of the origin declaration.

Footnote 1 of that Annex sets outs that when the invoice declaration is not made out by an approved exporter, the words in brackets shall be omitted or the space left blank.

Origin declaration are made out by Vietnamese exporters in application of Article 15(2)(b), i.e. any exporters who are not approved exporters for a consignment the value of which does not exceed 6000 euros. Therefore, no number of approved exporter is to be indicated by Vietnamese exporters in an origin declaration.

In accordance with Article 19(4) of the EVFTA Origin Protocol, origin declarations made out by exporters in Vietnam have to bear the signature of the exporter.

2.6 Codes to be used in the import declaration in the EU

The importer claims the benefit of the EVFTA indicating a code corresponding to the proof of origin he is using.

- For a certificate of origin EUR.1, the code is N954.
- For an origin declaration, the code is U162 ("Invoice declaration or origin declaration made out on invoice by any exporter or any other commercial document neither in the framework of GSP nor EUR-MED for a total value of originating products not exceeding 6000 EUR").

2.7 Replacement of proofs of origin in the EU

Article 69 UCC-IA sets out the rule for the replacement of proofs of origin in case of re-consignment in the EU of goods imported under the EVFTA.

Contrary to the GSP (Article 101 UCC IA), replacement of proofs of origin when goods are re-consigned from/to Norway/Switzerland is not possible. If goods originating in Vietnam transit through Norway or Switzerland, re-consignment to the EU is still possible, but in that case those countries are considered as country of transit and the non-alteration provision of the EVFTA has to be respected (Article 13 EVFTA Origin Protocol). The re-consignor in Norway or Switzerland may not replace the proof of origin issued for or made out by the Vietnamese exporter.

3. Commercial document that may be used for the statement on origin (EU) or the origin declaration (VN)

3.1 Relevant provisions

- EVFTA Origin Protocol :
  - Article 19
  - Annex VIII Explanatory Notes: explanatory note 1

3.2 Types of commercial document

Article 19(3) sets out that "an origin declaration shall be made out by the exporter on the invoice, the delivery note or any other commercial documents which describe the products concerned in sufficient details to enable them to be identified […]".

Annex VIII Explanatory Note 7 sets out that:

> 7. For the purpose of paragraph 3 of Article 21 (Validity of Proofs of Origin) "another commercial document" can be, for example, an accompanying delivery note, a pro-forma invoice or a packing list. A transport document, such as a bill of lading or an airway bill, shall not be considered as another commercial document. An origin declaration on a separate form is not permitted. The origin declaration may be submitted on a separate sheet of the commercial document when the sheet is an obvious part of this document.

[There is an error in the text of the explanatory note 7; Article 21 should be read as Article 19]

[…]

In addition, in Annex VIII, explanatory Note 1 sets out that:

> 1. For the purpose of subparagraph (e) of Article 1 (Definitions) the "exporter" is not necessarily the person (the seller) that issues the sales invoice for the consignment (third party invoicing). The seller can be located in the territory of a non-Party to this Agreement.

[…]

4. Cumulation

4.1 Relevant provisions

- EVFTA Origin Protocol :
  - Article 3
  - Article 6

4.2 Introduction

Cumulation is a facilitation provided for in preferential arrangements for the acquisition of preferential origin.

General information on cumulation is available on the EU website at the following address:

https://ec.europa.eu/taxation_customs/business/calculation-customs-duties/rules-origin/general-aspects-preferential-origin/common-provisions_en

4.3 Possibilities of cumulation under the EVFTA

4.3.1 Bilateral cumulation

Article 3(1) of EVFTA Origin Protocol provides for bilateral cumulation.

Products incorporating materials originating in the other party shall be considered as originating in the exporting party if these materials undergo operations going beyond the insufficient operations listed in Article 6 of the EVFTA (insufficient working or processing).

An exporter using materials originating in the other party under bilateral cumulation has to possess a proof of origin for these materials, as applicable by that other party (see point 1 and 2 of that document).

4.3.2 Cumulation for some species of fish originating in ASEAN countries having an FTA with the EU (Article 3, paragraph 2 to paragraph 6 of EVFTA Origin Protocol)

The possible input materials which can be used for such cumulation are listed in Annex III of the EVFTA Origin Protocol. The final products that may benefit from this cumulation are listed in Annex IV of the EVFTA Origin Protocol.

Vietnam confirmed that this type cumulation will not be applicable at the entry into force of the Agreement.

4.3.3 Cumulation with fabrics originating in South Korea (Article 3, paragraph 7 to paragraph 11 of EVFTA Origin Protocol)

The final products that may benefit from this cumulation are listed in Annex V of the EVFTA Origin Protocol.

Vietnam confirmed that the discussions are progressing with South-Korea but that the administrative tasks will not be completed before the entry into force of the agreement. Therefore, this cumulation will not be applicable at the entry into force of the Agreement.

4.3.4 An enabling clause for cumulation for fabrics originating in a country with which both the EU and Vietnam have an FTA (Article 3, paragraph 12 and 13 of EVFTA Origin Protocol)

Vietnam confirmed that that cumulation will not be applicable at the entry into force of the Agreement.

5. Accounting segregation

5.1 Relevant provisions

- EVFTA Origin Protocol :
  - Article 11
  - Annex VIII Explanatory note 3

- EU legal base : Article 14(1) UCC

5.2 Application of accounting segregation

If originating and non-originating fungible materials are used in the working or processing of a product, the management of the materials could be realized by using the accounting segregation method without keeping the different materials in separate stocks.

The EVFTA provides for the application of accounting segregation of fungible materials. In the meaning of the Agreement fungible materials means materials that are of the same kind and commercial quality, with the same technical and physical characteristics, and which cannot be distinguished from one another once they are incorporated into the finished product.

Before applying the method of accounting segregation, an exporter needs to ask an authorisation to his competent authorities.

Explanatory Note 3 concerns accounting segregation:

> 3. For the purpose of Article 11 (Accounting Segregation) "general accounting principles" means the recognised consensus or substantial authoritative support in the territory of a Party, with respect to the recording of revenues, expenses, costs, assets and liabilities; the disclosure of information; and the preparation of financial statements. Those standards may encompass broad guidelines of general application as well as detailed standards, practices and procedures.

In the EU, as a suitable inventory (stock) management system is needed to apply this method correctly and in the case of subsequent verifications the evidence of origin of the products needs to be reproduced, the EU exporter should preferably ask his customs authorities for support before applying this system. The provision of information by the customs authorities to any person requesting the application of customs legislation is governed by Article 14 of the UCC.

6. Transport rule

6.1 Relevant provisions

- EVFTA Origin Protocol: Article 13

6.2 Non-alteration

The EVFTA provides for a rule of non-alteration and not a stricter rule of direct transport.

The products imported in the EU/Vietnam shall be the same products as exported from Vietnam/the EU. They shall not be altered, transformed in any way or subjected to operations other than operations to preserve them in their condition or other than adding or affixing marks, labels, seals or any other documentation to ensure compliance with specific domestic requirements of the importing Party.

Storage of products may take place if the products remain under customs supervision in the country(ies) of transit.

Splitting of consignments may take place where carried out under the responsibility of the exporter if the products remain under customs supervision in the country(ies) of transit

For transhipment or temporary warehousing in a third country it is necessary to be able to prove that the consignment or, in case of splitting of consignments the parts of the consignment, that have left the exporting party are the same as that which arrives in the importing country.

The customs authorities of the importing party may require documents to prove that the originating products have not undergone any processing operation that is not permitted. The proof required may be given by any means, including:

(a) contractual transport documents such as bills of lading;

(b) factual or concrete evidence based on marking or numbering of packages;

(c) any evidence related to the goods themselves;

(d) a certificate of non-manipulation provided by the customs authorities of the country or countries of transit or splitting, or any other documents demonstrating that the goods remained under customs supervision in the country or countries of transit or splitting.

Vietnam confirmed that the importer may decide which document he will provide to demonstrate that the non-manipulation rule has been respected. The customs authorities in Vietnam will not request specifically one type of document and will not ask on a systematic basis a a non-manipulation certificate.

7. Transitional arrangements

7.1 Relevant provisions

- EVFTA Origin Protocol:
  - Article 38 (transitional provisions)
  - Article 19 (conditions for making out an origin declaration)
  - Article 17 (certificates of origin issued retrospectively)

7.2 Explanation

Goods may benefit from the provisions of the Agreement if they comply with the provisions of the EVFTA Origin Protocol and "*which on the date of entry into force of this Agreement, are either in the Parties, in transit, in temporary storage, in customs warehouses or in free zones, subject to the submission of a proof of origin made out retrospectively to the customs authorities of the importing Party, and, if requested, evidence in accordance with Article 13 (Non-Alteration) showing that the goods have not been altered*" (Article 38 on the transitional provisions).

There is no limit in the time for the application of the transitional measures. I.e. the transitional measures are not limited for one year following the date of entry into force of the agreement.

<u>For goods originating in Vietnam exported before the entry into force of the EVFTA</u>

When the goods have been exported from Vietnam before the entry into force of the agreement but have not been customs cleared yet and are either in the Parties, in transit, in temporary storage, in customs warehouses or in free zones, the certificate of origin EUR.1 should be issued retrospectively, or the origin declaration (for consignments for a value below 6000 EUR) should be made out on a copy of the invoice or on the copy of another commercial document related to the goods sent to the importer in the EU. The date of the declaration of origin, as provided by Annex VI of EVFTA Origin Protocol, cannot be omitted (see footnote 3 of Annex VI) and it should be the date of the making out of the origin declaration which cannot be before the entry into force of the agreement.

The procedure to obtain a certificate of origin EUR.1 retrospectively in the context of the application of the transitional measures is the same as the procedure to obtain a certificate of origin EUR.1 at the time of export (see 4. Retrospective issue of certificate of origin).

Article 19(5) establishes the rule for making out an origin declaration retrospectively (after exportation).

<u>For goods originating in the EU exported before the entry into force of the EVFTA</u>

When the goods have been exported from the EU before the entry into force of the agreement but have not been customs cleared yet and are either in the Parties, in transit, in temporary storage, in customs warehouses or in free zones, the statement on origin should be made out on a copy of the invoice or on the copy of another commercial document related to the goods sent to the importer in Vietnam. The date of the statement on origin, as provided by Annex VI of EVFTA Origin Protocol, cannot be omitted (see footnote 3 of Annex VI) and it should be the date of the making out of the statement on origin which cannot be before the entry into force of the agreement.

Article 19(4) combined with Article 19(5) establish the rule for making out a statement on origin retrospectively (after exportation).

8. GSP vs FTA

8.1 Relevant provisions

- EVFTA:
  - Annex 2-A
  - Article 13 of the EVFTA Origin Protocol

- EU legal base:

  - Article 5 of Regulation (EU) 978/2012
  - Article 69 UCC-IA
  - Article 101 UCC-IA

8.2 Benefit from the GSP

According to Article 5(2)(b) of the GSP regulation (Regulation (EU) 978/2012), a beneficiary country loses the benefit of the GSP 2 years after that an agreement is applied between the country and the EU:

> (b) the decision to remove a beneficiary country from the list of GSP beneficiary countries, in accordance with paragraph 3 of this Article and on the basis of point (b) of Article 4(1), shall apply as from two years after the date of application of a preferential market access arrangement.

If the EVFTA is applied as from 1 August 2020, then Vietnam will still benefit from the GSP until 31st July 2022.

During the period of 2 years when the GSP and the EVFTA will be applicable in parallel, the exporters and the importers may decide which arrangement they prefer to use. An exporter may for instance decide to continue using the GSP when, in a first phase, he complies with the product specific rule under the GSP but not with the product specific rule under the FTA.

8.3 Tariff applicable in the FTA

The Agreement contains the applicable tariff.

However, according to Annex 2-A, Section A, point 3 (general provisions) of the EVFTA, when a claim for preferential tariff treatment is made by an importer in the EU in the context of the FTA, and when then applicable tariff is less advantageous than the one of the GSP, the GSP duty rate will apply instead. That rule is applicable for the first 7 years of application of the Agreement

> *Annex 2-A*
>
> *Reduction or elimination of Customs Duties*
>
> *Section A – General provisions*
>
> *3. Without prejudice to Article 2.7 (Reduction or Elimination of Customs Duties), the Union preferential customs duty under this Agreement shall under no circumstances be higher than*

the Union customs duties applied to goods originating in Vietnam on the day before the date of entry into force of this Agreement. This obligation applies from that date until the seventh year after entry into force.

This means that, as long as the GSP applies, the tariff will never be a decision factor to use either the GSP or the EVFTA. The EVFTA will always be at least as advantageous than the GSP.

8.4 Proof of origin

When an export takes place under the GSP, the GSP rules of origin apply, including the provisions on proofs of origin. In particular, for an export from Vietnam taking place under the GSP, a statement on origin made out by a registered exporter is required (after the end of the transition period for the application of the REX system, i.e. 30 June 2020).

In the EU, an importer will not be able to claim the benefit of the GSP using a proof of origin as established by the EVFTA. Reversely, an importer will not be able to claim the benefit of the EVFTA using a proof of origin as established by the GSP.

Electronically signed on 30/06/2020 18:02 (UTC+02) in accordance with article 4.2 (Validity of electronic documents) of Commission Decision 2004/563