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Overview

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Part 1 – Issues to be addressed

1. Issues to be addressed (1)

- What are the latest trends in regional integration and what is their economic impact on the rules of origin?
- And what will be the impact of globalization and Global Value Chains on rules of origin?
- What are the latest developments in Africa – and how to define the role of rules of origin in regional integration on the African continent?
- What is the effectiveness and efficiency of preferential rules of origin and how can we ensure further promotion and utilization of free trade agreements?

1. Issues to be addressed (2)

- What progress has been made in relation to the WTO Nairobi Decision on Preferential Rules of Origin for Least Developed Countries? What are the challenges and future direction in relation to the implementation of the Decision?
- How can procedural harmonization facilitate trade? How can the WCO Revised Kyoto Convention and other WCO origin tools play a better role of further simplification and harmonization of Customs procedures?
- How can the trade community and Customs actively contribute to and initiate a useful roadmap for the way forward on rules of origin?

Part 2 – Legal basis for preferences

2. Legal basis for preferences – Art. XXIV: 5 GATT (1)

- […] the provisions of this Agreement shall not prevent […] the formation of […] a **customs union** […]; *provided* that:

  the **duties** and other regulations of commerce imposed at the institution of any such union […] respect of **trade** with contracting parties **not parties** to such union or agreement shall **not** on the whole be **higher** or more restrictive than the general incidence of the duties and regulations of commerce applicable in the constituent territories prior to the formation of such union […]

2. Legal basis for preferences – Art. XXIV: 5 GATT (2)

- […] the provisions of this Agreement shall not prevent […] the formation of […] a **free-trade area** […]; *provided* that:

  the **duties** and other regulations of commerce maintained in each of the constituent territories and applicable at the formation of such free-trade area […] to the **trade** of contracting parties **not included** in such area or not parties to such agreement shall **not** be **higher** or more restrictive than the corresponding duties and other regulations of commerce existing in the same constituent territories prior to the formation of the free-trade area

2. Legal basis for preferences – Art. XXIV: 8a GATT (3)

- A **customs union** shall be understood to mean the substitution of a single customs territory for two or more customs territories, so that

  (i) **duties** and other restrictive regulations of commerce […] are **eliminated** with respect to **substantially all the trade** between the constituent territories of the union or at least with respect to substantially all the trade in **products originating** in such territories, and,

  (ii) […] **substantially the same duties** and other regulations of commerce are applied by each of the members of the union to the trade of territories not included in the union;

2. Legal basis for preferences – Art. XXIV: 8b GATT (4)

- A free-trade area shall be understood to mean a group of two or more customs territories in which the **duties** and other **restrictive regulations** of commerce […] are **eliminated** on **substantially all** the **trade** between the constituent territories in products **originating in** such **territories**.

- Nota bene: Neither the GATT nor any of the WTO agreements lays down rules on how to establish the origin of goods benefiting from preferences. This is therefore one of the great loopholes in international trade law.

2. Legal basis for preferences – enabling clause (5)

- […] contracting parties may accord differential and **more favourable** treatment to **developing countries**, without according such treatment to other contracting parties, i,e.

  a) Preferential tariff treatment accorded by developed contracting parties to products **originating** in developing countries in accordance with the **Generalized System of Preferences (GSP),**

  c) **Regional or global arrangements** entered into amongst l**ess-developed** contracting parties for the mutual reduction or elimination of tariffs and […] for the mutual reduction or elimination of non-tariff measures, on products **imported** from one another;

  d) **Special treatment** on the **least developed** among the developing **countries** in the context of any general or specific measures in favour of developing countries.

2. Legal basis for preferences – comments (6)

1. **Developed countries** can benefit from preferences only in the context of a customs union or free trade agreement.

2. **Developing countries** can benefit from preferences either under the GSP or under a customs union or free trade agreement.

3. While customs unions **can** restrict the preference to goods originating in the partner country, free trade areas and the GSP **must** use the concept of **origin**.

4. Preferential arrangements can be **between**

- either **developing countries**
- or **developing** and **developed countries**.

4. **Least developed countries** can benefit from more favourable rules both under the GSP and under preferential agreements.

Part 3 – International origin rules

3. The WTO Origin Agreement (1)

- For the purposes […] of this Agreement, rules of origin shall be defined as those laws, regulations and administrative determinations of general application applied by any Member to determine the country of origin of goods provided such **rules of origin** are **not related to** contractual or autonomous trade regimes leading to the granting of **tariff preferences**

3. Art. 3 WTO Trade Facilitation Agreement (2)

- Each Member shall issue an **advance ruling** in a reasonable, time-bound manner to the applicant that has submitted a written request containing all necessary information. If a Member declines to issue an advance ruling, it shall promptly notify the applicant in writing, setting out the relevant facts and the basis for its decision.
- An advance ruling is a written decision provided by a Member to the applicant prior to the importation of a good covered by the application that sets forth the treatment that the Member shall provide to the good at the time of importation with regard to […] the **origin of the good**.

3. Art. 3 WTO Trade Facilitation Agreement (3)

- Each Member shall publish, at a minimum:

  (a) the requirements for the application for an advance ruling, including the information to be provided and the format;

  (b) the time period by which it will issue an advance ruling; and

  (c) the length of time for which the advance ruling is valid.
- Comment: While the WTO Origin Agreement covers only non-preferential origin, under the WTO TFA the obligation to provide binding information is not restricted to non-preferential rules of origin.

3. The Nairobi WTO decision (4)

- When applying an ***ad valorem*** percentage criterion to determine substantial transformation, Preference-granting Members shall:

  a) Adopt a method of calculation based on the **value** of **non-originating materials**. […];

  b) Consider, as the Preference-granting Members develop or build on their individual rules of origin arrangements applicable to imports from LDCs, allowing the use of **non-originating materials up to 75%** of the final value of the product, or an equivalent threshold in case another calculation method is used, to the extent it is appropriate and the benefits of preferential treatment are limited to LDCs;

  c) Consider the **deduction** of any **costs** associated with the **transportation** and **insurance** of inputs from other countries to LDCs.

3. The Nairobi WTO decision (5)

- When applying a **change of tariff classification** criterion to determine substantial transformation, Preference-granting Members shall:

  a) As a general principle, allow for a **simple** (i.e. not double) **change** of tariff heading or change of tariff sub-heading;

  b) **Eliminate** all exclusions or **restrictions** to change of tariff classification rules, except where the Preference-granting Member deems that such exclusions or restrictions are needed, including to ensure that a substantial transformation occurs;

  c) Introduce, where appropriate, a **tolerance allowance** so that inputs from the same heading or sub-heading may be used.

3. The Nairobi WTO decision (6)

- When applying a manufacturing or **processing operation** criterion to determine substantial transformation, Preference-granting Members shall […] allow as follows:

  a) if applied to **clothing** of chapters 61 and 62 of the Harmonised System nomenclature, the rule shall allow assembling of fabrics into finished products;

  b) if applied to **chemical products**, the rule shall allow chemical reactions that form a new chemical identity;

  c) if applied to **processed agricultural products**, the rule shall allow transforming of raw agricultural products into processed agricultural products;

  d) if applied to **machinery** and **electronics**, the rule shall allow assembling of parts into finished products, provided that the assembly of parts goes beyond simple assembly.

3. The Nairobi WTO decision (7)

- Preference-granting Members shall, to the extent possible, **avoid** requirements which impose a **combination** of two or more criteria for the same product. […]
- Preference-granting Members are encouraged to offer **alternative rules** for the same product. In such cases, the above-mentioned provisions will be applicable to only one of the alternative rules.

3. The Nairobi WTO decision (8)

- Recognizing that the development of **cumulation** possibilities should be considered in relation to the rules applied to determine sufficient or substantial transformation, Preference-granting Members are encouraged to expand cumulation to facilitate compliance with origin requirements by LDC producers using the following possibilities:

  a) cumulation with the respective **Preference-granting Member** (so-called donor's content);

  b) cumulation with other LDCs;

  c) cumulation with GSP beneficiaries of the respective Preference-granting Member; and

  d) cumulation with developing countries forming part of a **regional group** to which the LDC is a party, as defined by the Preference-granting Member.

3. The Nairobi WTO decision (9)

- With a view to reducing the administrative burden related to documentary and procedural requirements related to origin, Preference-granting Members shall:

  a) As a general principle, refrain from requiring a certificate of non-manipulation for products originating in a LDC but shipped across other countries unless there are concerns regarding transhipment, manipulation, or fraudulent documentation;

  b) Consider other measures to further streamline customs procedures, such as minimizing documentation requirements for small consignments or allowing for **self-certification**.

3. The Nairobi WTO decision - comments (10)

- This decision highlights the problems with preferential rules of origin:

  1. the diversity of rules establishing origin:
     - change of tariff heading
     - value added
     - type of processing operations
  2. the diversity of cumulation rules
  3. the diversity of certification types and procedures (even in case of self-certification)

- A more radical approach would be the creation of harmonised preferential origin rules, at least for the least developed countries

Part 4 – The Revised Kyoto Convention

4. The Revised Kyoto Convention K 1 (1)

- Where two or more countries have taken part in the production of the goods, the origin of the goods should be determined according to the **substantial transformation** criterion. (Recommended Practice 3)
- In applying the substantial transformation criterion, use should be made of the International Convention on the Harmonized Commodity Description and Coding System. (Recommended Practice 4) – Presumably this means using the change of tariff heading criterion

4. The Revised Kyoto Convention K 1 (2)

- Where the substantial transformation criterion is expressed in terms of the **ad valorem** percentage rule, the values to be taken into consideration should be :

  - for the materials imported, the dutiable value at importation or, in the case of materials of undetermined origin, the first ascertainable price paid for them in the territory of the country in which manufacture took place; and

  - for the goods produced, either the ex-works price or the price at exportation, according to the provisions of national legislation. (Recommended Practice 5)

4. The Revised Kyoto Convention K 1 (3)

- Operations which do not contribute or which contribute to only a small extent to the essential characteristics or properties of the goods, and in particular operations confined to one or more of those listed below, should **not** be regarded as constituting **substantial manufacturing** or **processing** :

  (a) operations necessary for the preservation of goods during transportation or storage;

  (b) operations to improve the packaging or the marketable quality of the goods or to prepare them for shipment, such as breaking bulk, grouping of packages, sorting and grading, repacking;

4. The Revised Kyoto Convention K 1 (4)

(c) simple assembly operations;

(d) mixing of goods of different origin, provided that the characteristics of the resulting product are not essentially different from the characteristics of the goods which have been mixed. (Recommended Practice 6)

4. The Revised Kyoto Convention K 2 (5)

- When revising present forms or preparing new forms of certificates of origin, Contracting Parties should use the model form in Appendix I to this Chapter, in accordance with the Notes in Appendix II, and having regard to the Rules in Appendix III. (Recommended Practice 6)

4. The Revised Kyoto Convention K 2 (6)

1. Exporter (name, address, country)
Exportateur (nom, adresse, pays)

2. Number – Numéro

CERTIFICATE OF ORIGIN
CERTIFICAT D'ORIGINE

3. Consignee (name, address, country)
Destinataire (nom, adresse, pays)

4. Particulars of transport (where required)
Renseignements relatifs au transport (le cas échéant)

5. Marks & Numbers : Number and kind of packages : Description of the goods
Marques et numéros : Nombre et nature des colis : Désignation des marchandises

6. Gross weight
Poids brut

7.

8. Other information – Autres renseignements

Stamp – Timbre

It is hereby certified that the above-mentioned goods originate in :
Il est certifié par la présente que les marchandises mentionnées ci-dessus sont originaires de :

_____

CERTIFYING BODY
ORGANISME AYANT DELIVRE LE CERTIFICAT.

_____
Place and date of issue – Lieu et date de délivrance

_____
Authorised signature – Signature autorisée

4. The Revised Kyoto Convention K 2 (7)

- Where documentary evidence of origin is required, a **declaration** of **origin** should be accepted in the following cases :

  (a) goods sent in small consignments addressed to private individuals or carried in travellers' baggage, provided that such importations are of a non-commercial nature and the aggregate value of the importation does not exceed an amount which shall not be less than US$500;

  (b) **commercial consignments** the aggregate value of which does not exceed an amount which shall not be less than US$300.

4. The Revised Kyoto Convention K 2 (8)

- Where several consignments of the kind referred to in (a) or (b) are sent at the same time, by the same means, to the same consignee, by the same consignor, the aggregate value shall be taken to be the total value of those consignments. (Recommended Practice 6)

4. The Revised Kyoto Convention K 3 (9)

- The Customs administration of a Contracting Party which has accepted this Chapter may **request** the competent authority of a Contracting Party which has accepted this Chapter and in whose territory documentary evidence of origin has been established to carry out **control of** such **evidence** :

  (a) where there are reasonable grounds to doubt the authenticity of the document;

  (b) where there are reasonable grounds to doubt the accuracy of the particulars given therein;

  (c) on a random basis. (Recommended Practice 3)

4. The Revised Kyoto Convention - comments (10)

- The RKC is far from harmonising preferential origin rules:

  1. The substantial transformation criterion is not defined in detail (even less than in the WTO decision).

  2. The certificate of origin is considered as the standard type of proof (self-certification being the exception up to certain values).

  Conclusion: Annex K needs a modernisation.

Part 5 – IT requirements

5. IT requirements (1)

- Generation of Requests for Supplier Origin Documentation
  - Aggregation of all parts delivered per supplier
  - Request handling for customer specific period of time
  - Customer specific attribute handling per supplier
  - Requests per supplier for multiple FTAs
- Request / Maintenance of Supplier Origin Documentation
  - Support for different request processes:
    - Email and data maintenance by supplier via web platform
    - Flat file
    - Paper (with barcode handling)
  - Type of request/maintenance can be configured for each supplier
- Integrated Follow-Up Process for Supplier Declarations
- No Supplier Response => Automatic Assignment of ‘QU’ (Country Unknown)

5. IT requirements (2)

- Full Audit Trail
- Logic for Default-Handling of Preferential and Non-Preferential ROO

  Facilitates filing of supplier declarations for suppliers

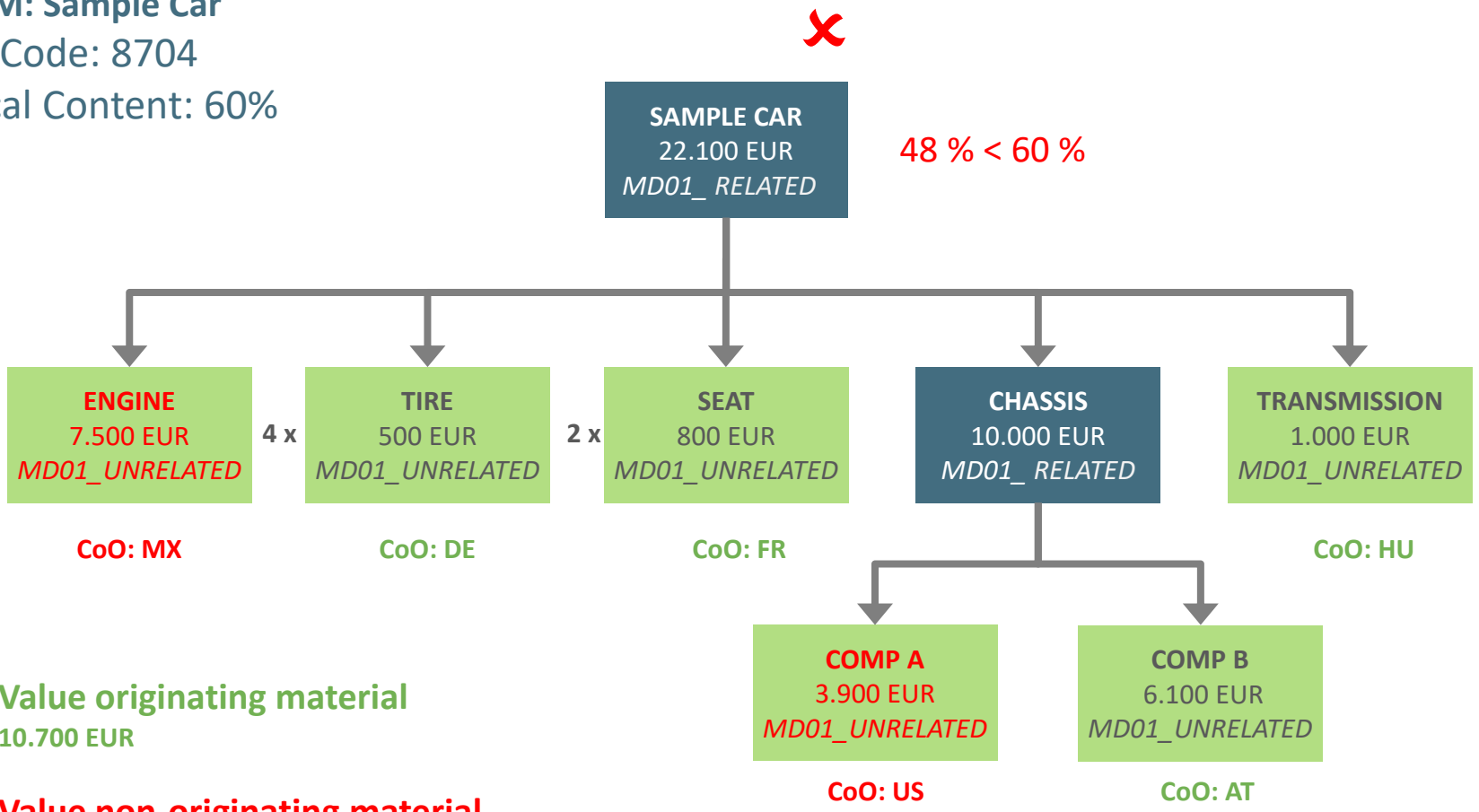
  1. Based on supplier's previous response
  2. Based on default values of last generated, unanswered supplier declaration
  3. Based on default values from ERP system
- Activation / De-Activation of Parts
  - Automatically
  - Manually

5. IT requirements (3)

- Flexible Calculation Process
  - Origin calculations by reference to assembly part number, supplier and FTA
  - Supports manual calculation
  - Supports batch jobs for bulk processing (e.g. quarterly, yearly)
  - Supports manual triggering of ad hoc calculations (what-if scenarios)
- Proof of (Preferential) Origin
  - Detailed report for each calculation
  - Data archive for audit purposes
- Interfaces to Avoid Manual Data Entry
  - Multi-level bills of material uploads
  - Part data including prices
  - Interface to purchasing databases for supplier information

5. Top-Down Approach (EU-CH) (4)

BOM: Sample Car
HS Code: 8704
Local Content: 60%



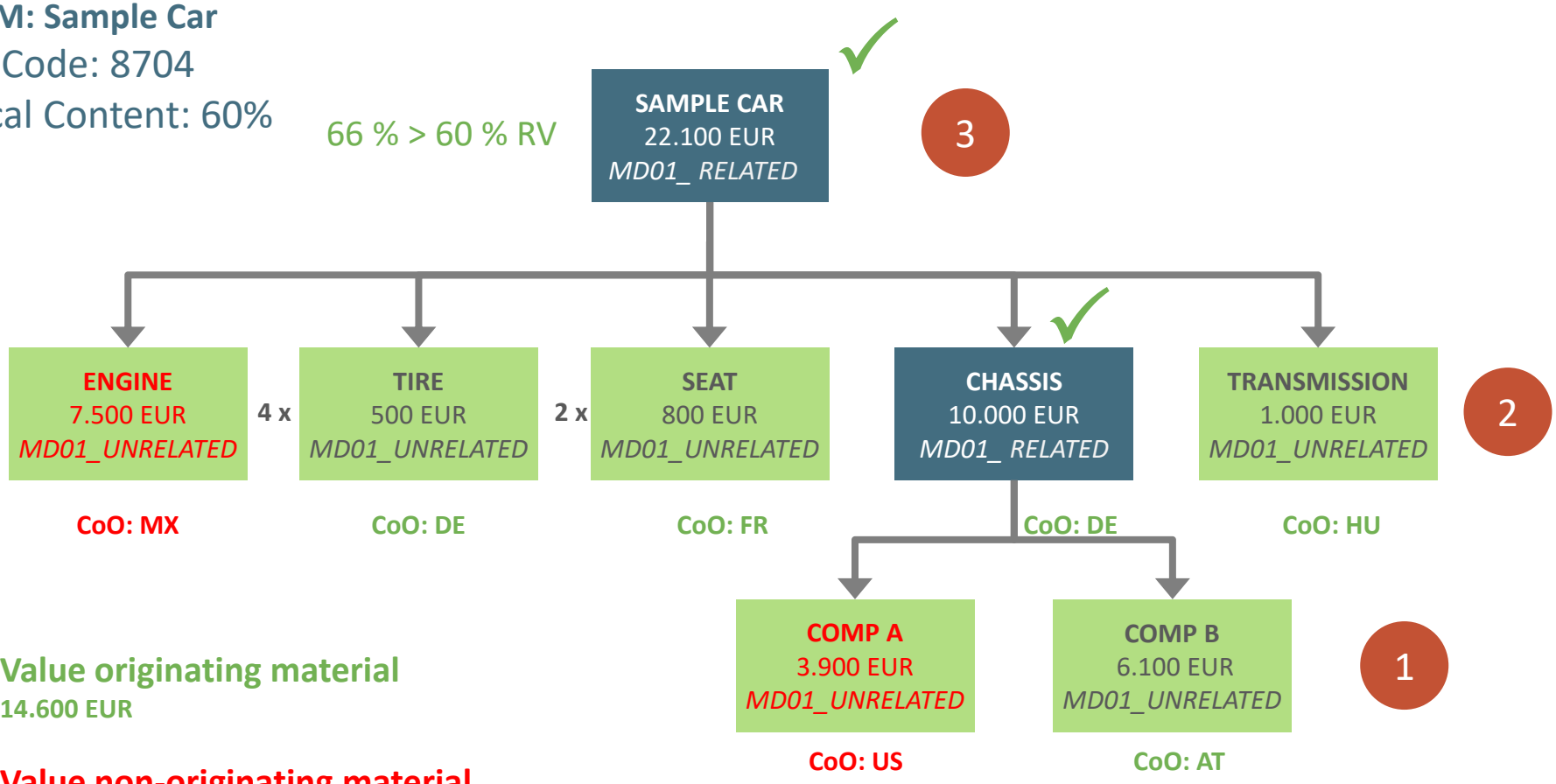
Value originating material
10.700 EUR

Value non-originating material
11.400 EUR

5. Bottom-Up Approach (EU-CH) (5)

BOM: Sample Car
HS Code: 8704
Local Content: 60%

66 % > 60 % RV



Value originating material
14.600 EUR

Value non-originating material
7.500 EUR

5. IT requirements (6)

- Calculation with minimum information required
  - Configurable defaults and tolerance levels
  - Incomplete HS numbers & unknown preferential status do not prevent origin calculation
- Top-Down & Bottom-Up Calculation
- Min / Max Price Concept
- Cross Plant & Cross System Origin Calculation
- Preliminary calculation results
- “What-if” calculation (e.g. for sourcing decisions)
- Prior and future year calculation
- “De Minimis” for tariff shift rule
- Regional value contents
- Calculation of threshold value

5. IT requirements (6)

- **Receiving Supplier Declaration Requests from Customers**
- **Printing Origin Declaration on Invoices**
  - Web service based return interface of calculation results to ERP systems (e.g. SAP)
  - Based on the received origin calculation results the printing of the origin declaration on invoices will be triggered in the ERP systems
- **Generation of Supplier Declarations for Customers**
  - New or changed preferential status of parts delivered from suppliers triggers an automatic re-calculation of the finished goods
  - New preferential status of finished goods triggers automatic re-submission of supplier declarations to customers

Part 6 – Criticism by the business

6. Criticism by traders and academics (1)

- Rules of origin are increasingly one of the most complex mechanisms in international business
- Manufacturers shift the production from the economically most advantageous country; this creates trade diversion, additional costs and reduces profits
- Trade is distorted due to incentives for manufacturers to use materials and intermediate products locally or from preferential partners
- Foreign investment is distorted where investors locate production in countries where compliance with the trade rules is easiest rather than where it is most efficient
- The diversity of rules of origin increases transaction costs and leads to an underutilisation of preferences

6. Criticism by traders and academics (2)

- Global value chains (in which only fragments of the production process take place in a given country) are not taken into account
- Success in exports requires easy access to imported inputs (including from suppliers outside the preferential arrangement)
- Changes of the currency exchange rate may influence the origin in cases where the origin is determined on the basis of the value added (for more details see Sowiński, World Customs Journal, Vol. 3, No. 2, 2010)

6. Criticism by traders and academics (3)

- The main reasons for the underutilisation of preferences are:
  - lack of information,
  - low margin of preference
  - delays and administrative costs
  - alternative duty saving schemes (export processing zones, inward and outward processing)
  - non-availability of inputs needed for attaining preferential origin
  - prohibitions and restrictions in the country of manufacture or destination

6. Criticism by traders and academics (4)

- Rules of origin increase compliance costs:
  - assembling the required information
  - processing the certificates of origin or the self-certification
  - adjusting the IT processes to these requirements
  - training of staff
  - risk of sanctions
  - risk of post-clearance recovery due to a denial of the preference (for 3 years in the EU, for 5 years in the US)

6. Criticism – US example (5)

- The US plan to seek rules of origin that ensure that the NAFTA Agreement “supports production and jobs in the United States”. One of the objectives of rules of origin in a regional agreement is to enable “cumulation” of the value of production inside the free trade area, but it does not distinguish between production taking place in the US, Canada, or Mexico. Tightening rules of origin will reduce the amount of non-NAFTA content in complex manufactured goods. It would also be possible to “weight” the rules of origin in such a way as to require a certain percentage of regional value content to originate in the United States, but this would be controversial and would smack of industrial policy.
- Limiting the application of cumulation rules could result in a relocation of production to the United States, thus reducing the benefit of the overall agreement to Canada and Mexico. Clearly rules of origin will be one of the most contentious parts of the renegotiation.

https://www.crowell.com/NewsEvents/AlertsNewsletters/all/This-Month-in-International-Trade-March-2017

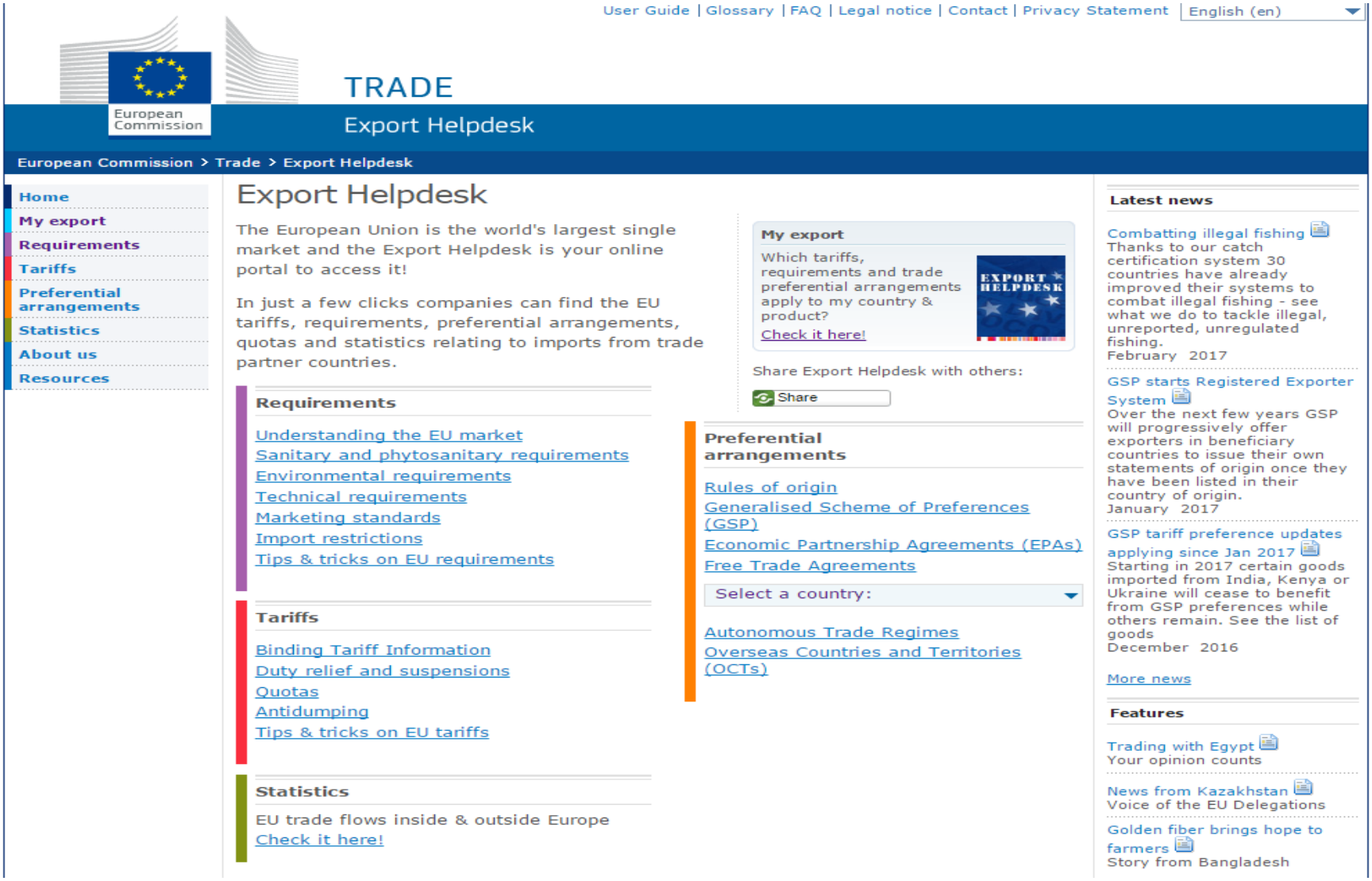
Part 7 – Access to information

7. Access to information (1)

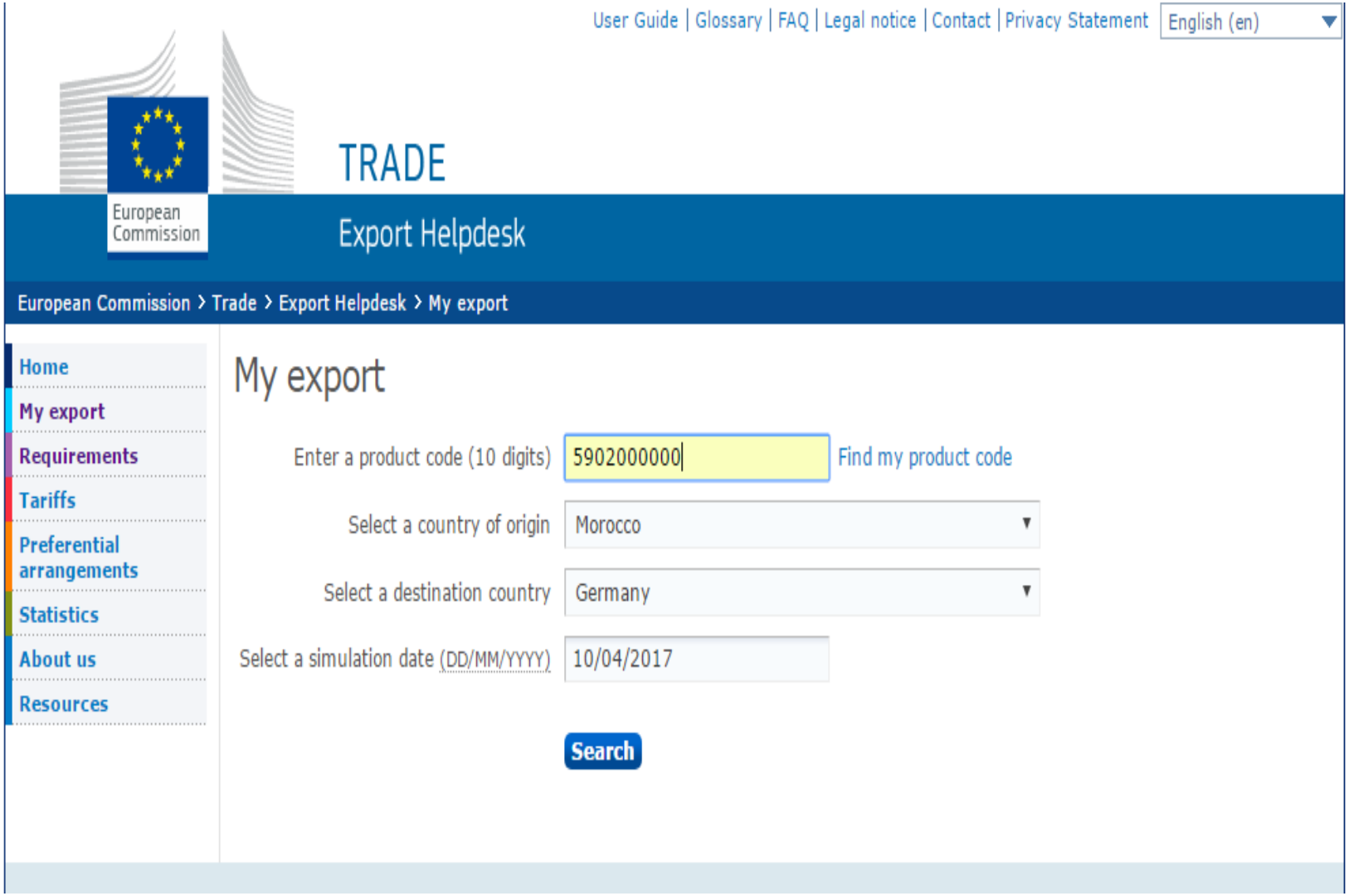
- Currently, no general database showing all preferential origin rules exists
- With regard to the EU's rules, the following sources are available for free:
  - www.//wup.zoll.de (in German)
  - http://exporthelp.europa.eu/thdapp/display.htm?pag%20e=cd%2fcd_RulesOfOrigin.html&docType=main&la%20nguageId=en
  - http://ec.europa.eu/taxation_customs/business/calculation-customs-duties/rules-origin/general-aspects-preferential-origin/arrangements-list_en

Such form of information is not suitable for electronic processing systems (for which commercial information, if and where available, must be bought)

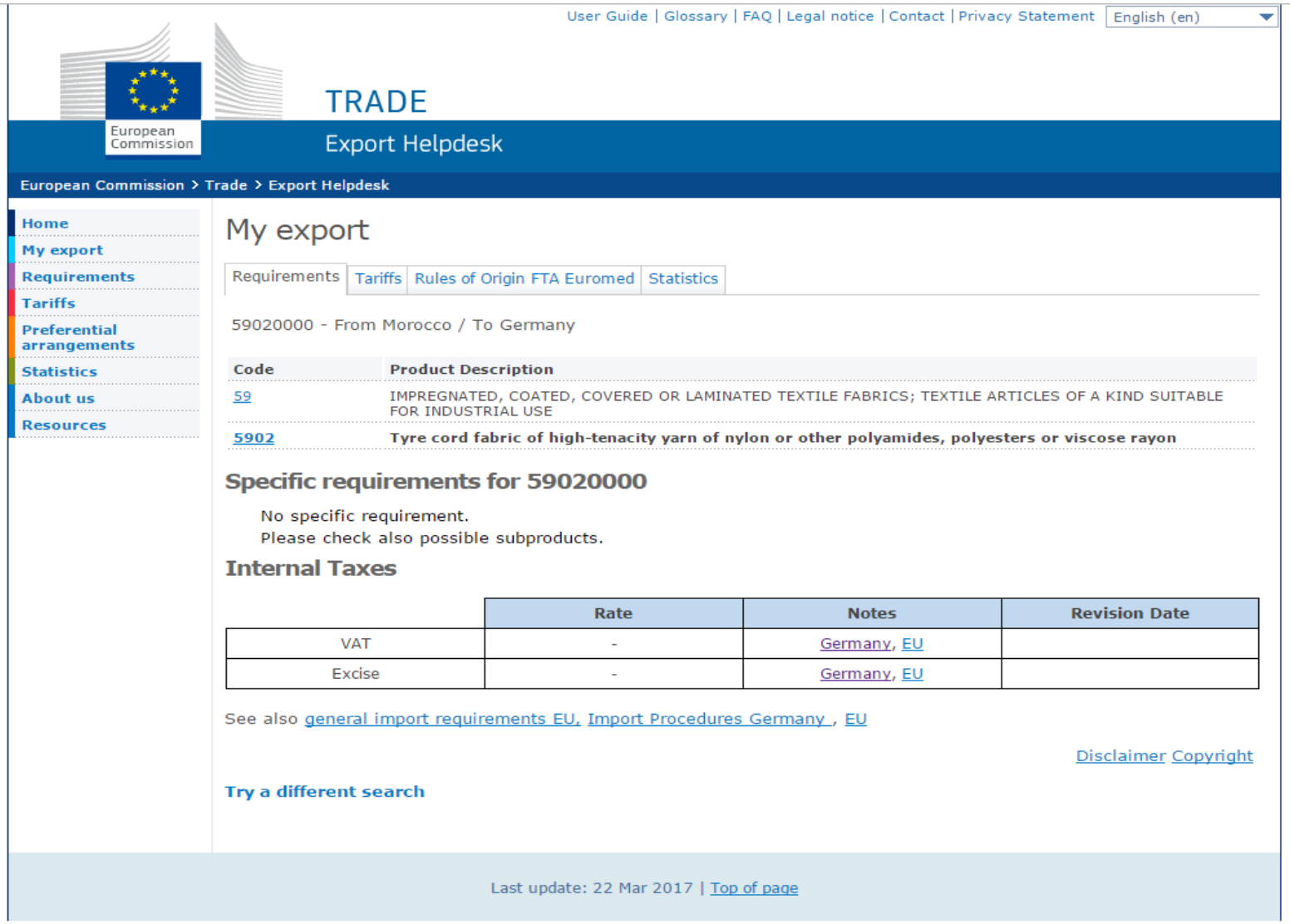
7. Access to information – Export Helpdesk (2)



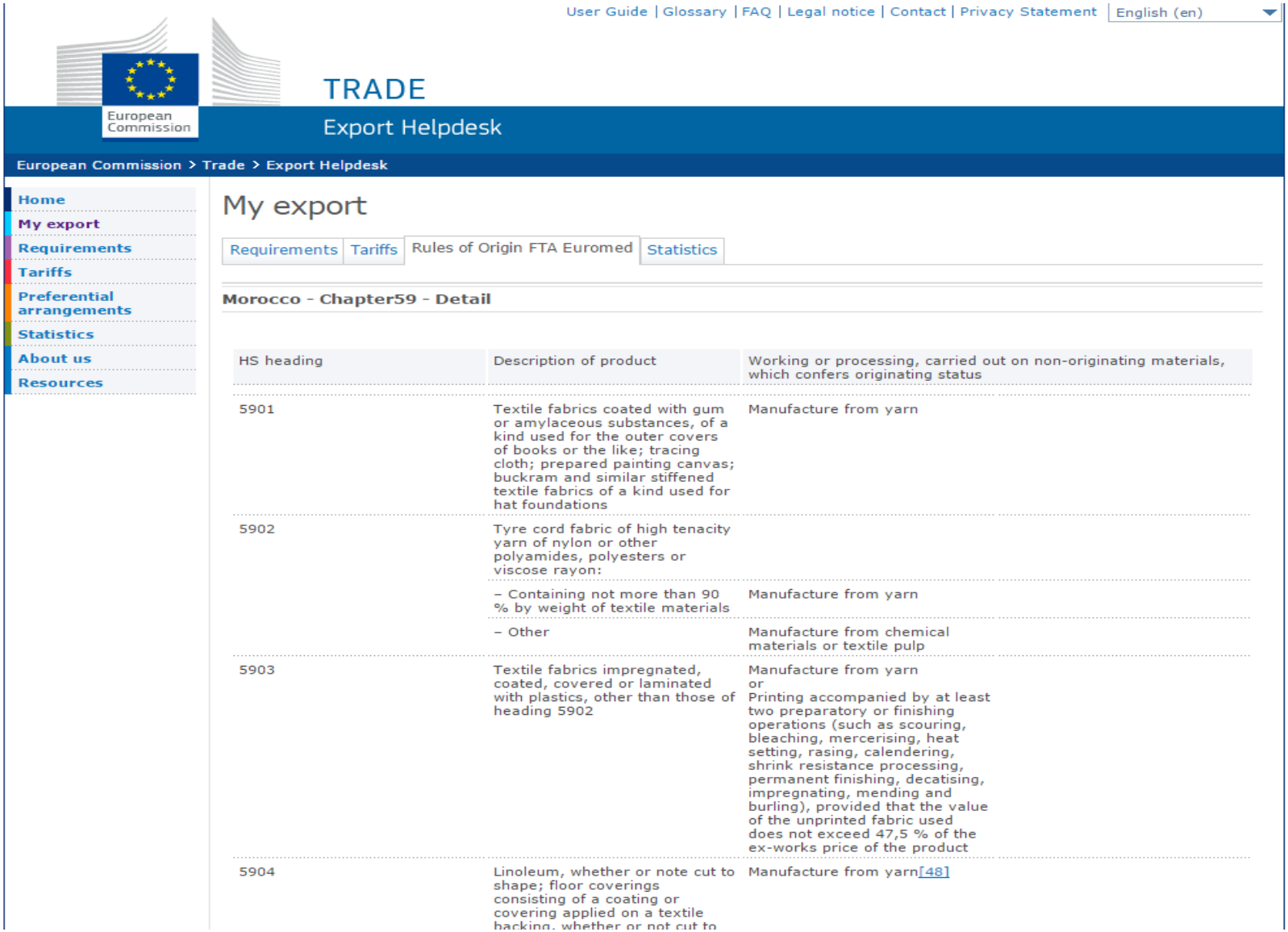
7. Access to information – Export Helpdesk (3)



7. Access to information – Export Helpdesk (4)



7. Access to information – Export Helpdesk (5)



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Morocco - Chapter59 - Detail

HS heading	Description of product	Working or processing, carried out on non-originating materials, which confers originating status
5901	Textile fabrics coated with gum or amylaceous substances, of a kind used for the outer covers of books or the like; tracing cloth; prepared painting canvas; buckram and similar stiffened textile fabrics of a kind used for hat foundations	Manufacture from yarn
5902	Tyre cord fabric of high tenacity yarn of nylon or other polyamides, polyesters or viscose rayon:	
	– Containing not more than 90 % by weight of textile materials	Manufacture from yarn
	– Other	Manufacture from chemical materials or textile pulp
5903	Textile fabrics impregnated, coated, covered or laminated with plastics, other than those of heading 5902	Manufacture from yarn or Printing accompanied by at least two preparatory or finishing operations (such as scouring, bleaching, mercerising, heat setting, rasing, 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 ex-works price of the product
5904	Linoleum, whether or note cut to shape; floor coverings consisting of a coating or covering applied on a textile backing, whether or not cut to	Manufacture from yarn[48]

Part 8 – Conclusions

8. Conclusions (1)

- Preferential origin rules are largely outside the scope of international disciplines.
- The freedom for WTO Members to agree on any preferential origin rules creates a great diversity of rules and allows for abuse by the stronger Members.
- Administrations and traders having to deal with such diverse rules need proper training of staff and IT support for the application of the rules. The data are not available for free for use in IT systems.
- Global value chains require the use of cumulation rules.
- De minimis thresholds favour global value chains.
- Low value added thresholds for least developed countries carry the risk that insufficient efforts for further industrialisation are made.

8. Conclusions (2)

- Even if African countries agree between themselves to use only one set of preferential origin rules, the origin rules for their preferential trade with non-African countries (e.g. Australia, Canada, China, EU, US) would still be different.
- Further international harmonisation would simplify international trade and increase compliance.
- A roadmap for future harmonisation requires that all participants have the political will to aim at common rules.
- If this political will is lacking, more and more diverse preferential origin rules will emerge, making international trade more and more complex.

8. Conclusions (3)

- As long as the current complexity remains, only large companies will benefit from preferences in cases where more than one country is involved in the production process.
- For small and medium-sized companies the compliance costs and risks of post-clearance recovery will in many cases be too great, so that
  - on importation they do not use the preferences and rather buy from other (non-preferential) sources, and
  - on exportation they cannot request or issue preferential proof of origin.

Part 9 – Options for the future

9. Options for the future

- Harmonise preferential origin rules at WTO or WCO level
- Create soft law or guidelines at WTO or WCO level
- Extend the regional scope of preferential agreements, so that there will be less preferential agreements (e.g. one free-trade area for Africa)
- Interlink preferential agreements through cumulation rules
- Create a database with all preferential rules in a form usable for IT systems from which data can be downloaded free of costs
- Create help desks and training material for preferential agreements
- Organise training sessions for traders and officials

Part 10 – Further reading

10. Further Reading

- Maria Donner Abreu, Preferential rules of origin in regional trade agreements, in: Acharya (ed.), Regional Trade Agreements and the Multilateral Trading System, 2016
- Dylan Geraets, Accommodating Global Value Chains in the Union Customs Code: Towards Rules of Origin That Better Reflect Business Realities?, Global Trade and Customs Journal 2017, 64
- Yiso Ji, Rules of origin and the use of free trade agreements: a literature review, World Customs Journal Vol. 9 No. 1, 2015
- Olivier Cadot, Antoni Estevaordal, Akiko Suwa-Eisenmann, Thierry Verdier (eds), The Origin of Goods, Rules of Origin in Regional Trade Agreements, 2006

Questions?

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