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Security, safety, Trade Facilitation, Rules of origin & International cooperation

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Working document

### **CUSTOMS EXPERT GROUP**

#### **ORIGIN SECTION**

**Subject: Possible future amendments to the Delegated Act of the UCC in the area of non-preferential origin**

This working document addresses possible amendments in the area of non-preferential rules of origin to the Delegated Act for the UCC (Regulation (EU) 2015/2446).

A recent ruling in case [C-686/17](#) dealt with the interpretation of ‘wholly obtained’. From this ruling it became apparent that clarifications should be added to the text of Art 31 (b) UCC-DA, notably indicating that vegetable products can only be considered as wholly obtained in a single country or territory for the purposes of the determination of their non-preferential origin if they were grown and harvested in the said country or territory.

A second amendment is suggested to remedy the fact that no provision is foreseen on the determination of origin where a minimal operation is taking place in the last country of production, in application of Article 34 UCC-DA.

Indeed, for the purposes of conferring non-preferential origin, certain minimal operations shall not be considered as substantial, economically justified processing or working. However, it is not stipulated how the origin should be determined in such case. Therefore, TAXUD suggests to add to that provision that the goods shall be considered to have undergone their last substantial working or processing in the country or territory where the major portion of the materials originated, as determined on the basis of the weight or the value of the materials, as appropriate for the Chapter concerned.

In order to remain consistent in this approach the origin determination in the last paragraph of Article 33 UCC-DA should be amended accordingly.

Another amendment would be brought to the text dealing with ‘Accessories, spare parts or tools’. In Article 35, 3 (a) UCC-DA reference to ‘or previously exported’ would be deleted. This deletion would be in line with the fact that the non-preferential rules of origin do not apply to exports.

A final amendment is proposed for the update of Annex 22-01 to the HS 2022 version. After comparing the changes to the HS 2017 version the description of heading 8541 needs to be amended. This change will only enter into force on 1/1/2022.

At the request of a delegation this revised version provides an example on the application of the major portion rule for the determination of the non-preferential origin in an annex to this document.

### **Overview of suggested amendments:**

In Article 31, letter (b) is replaced by the following:

‘(b) vegetable products grown and harvested only there;’.

In Article 33, the 3<sup>rd</sup> 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.’

In Article 34 the following paragraph is added:

‘2. 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.’

In Article 35,3 letter (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’

In Annex 22-01 the description of heading 8541 is replaced by the following:

Semiconductor devices (for example, diodes, transistors, semiconductor based transducers); photosensitive semiconductor devices, including photovoltaic cells whether or not assembled

in modules or made up into panels; light-emitting diodes (LED), whether or not assembled with other light-emitting diodes (LED); mounted piezo-electric crystals.

Once the amendments enter into force, the Guidance on Non-preferential origin will need to be adapted to reflect those changes.

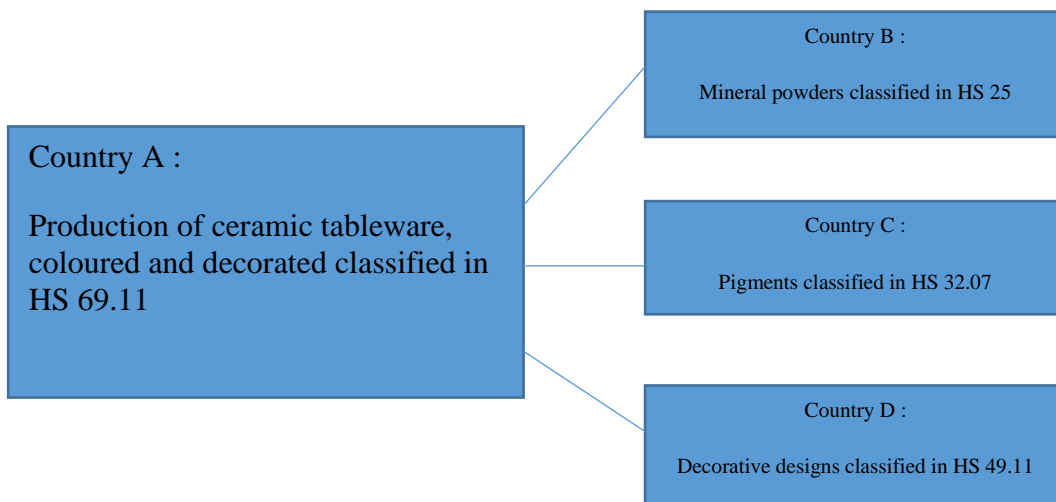
## Annex

Some examples to provide a better understanding of the application of the ‘major portion rule’ in the determination of the non-preferential origin.

In examples 1-3 the final product is coloured and decorated ceramic tableware classified HS 69.11 which is imported into the EU from country A. The primary rule laid down in Annex 22-01 of the UCC-DA for decorated ceramic tableware classified in ex 69.11 reads CTH (change of tariff heading). Colouring and decorating is not listed in the list of minimal operations of Article 34.

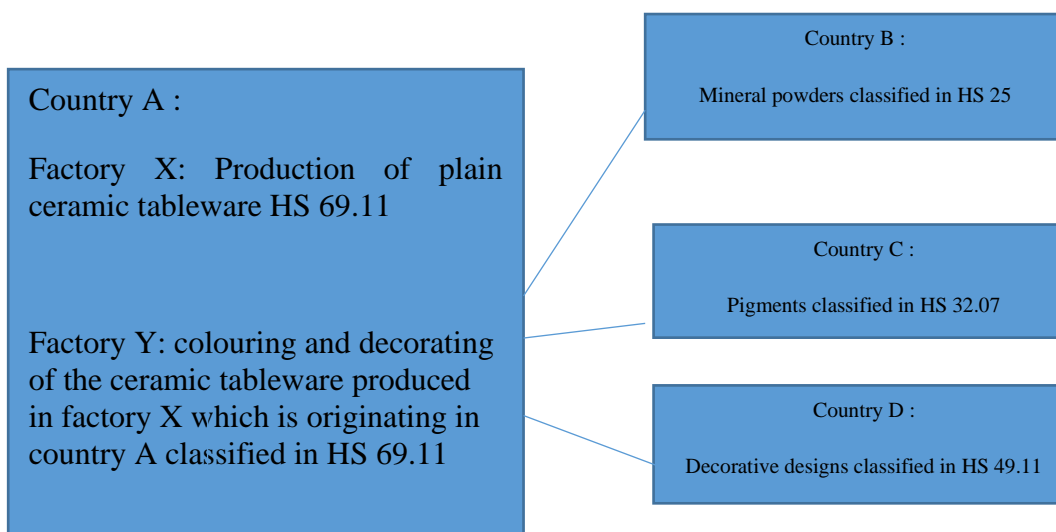
In example 4 the last operation is putting up in a set, this is listed in Article 34 as a minimal operation.

### Example 1:



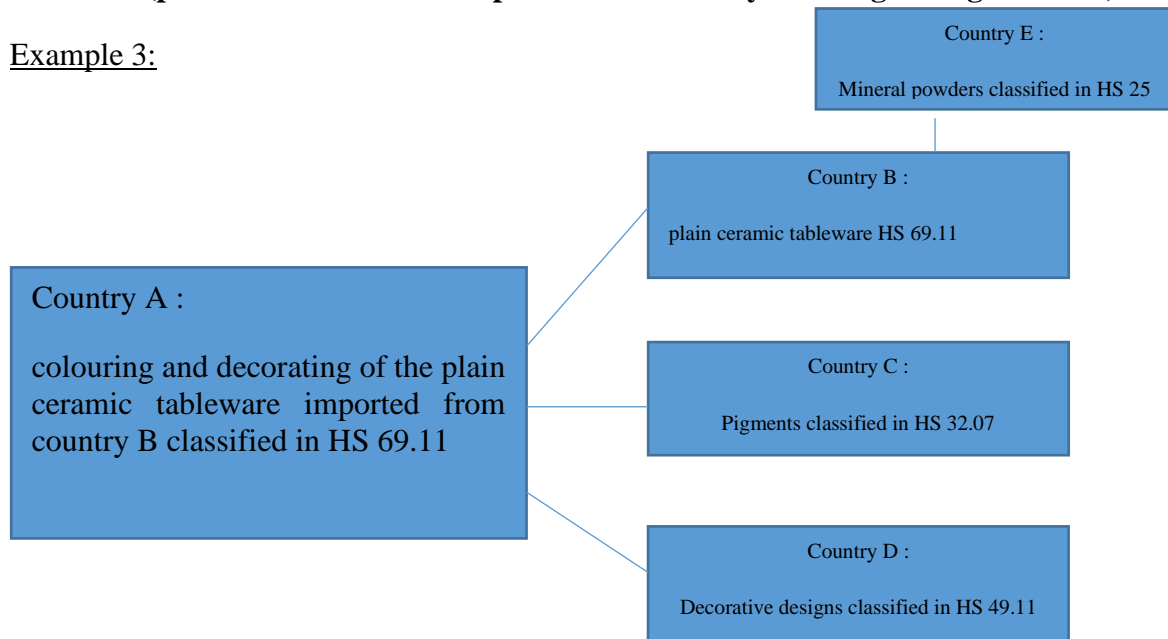
**The origin of the decorated ceramic tableware manufactured in Country A, imported into the EU, is country A because the CTH rule is fulfilled.**

### Example 2:



**The origin of the decorated ceramic tableware manufactured in Country A imported into the EU, is country A because the CTH rule is fulfilled on all the non originating materials (plain ceramic tableware produced in factory X is originating material).**

Example 3:



**The origin of the coloured, decorated ceramic tableware manufactured in Country A imported into the EU, is country B.**

The primary rule, CTH, is not fulfilled in country A because the imported plain ceramic tableware is classified in HS 69.11, which is the same heading as the final product.

Therefore, the origin is determined based on the chapter residual rule, the so-called ‘major portion rule’.

‘Where the country of origin cannot be determined by application of the primary rules, the country of origin of the goods shall be the country in which the major portion of the materials originated, as determined on the basis of the value of the materials.’

The materials used cover both originating and non-originating materials, in this example we only have the following non-originating materials:

Plain ceramic tableware HS 69.11 originating in country B, with a value of 90€; (it is clarified that we do not trace back to the raw materials originating in country E used for the production of the plain ceramic tableware)

Pigments classified in HS 32.07 originating in country C, with a value of 8€;

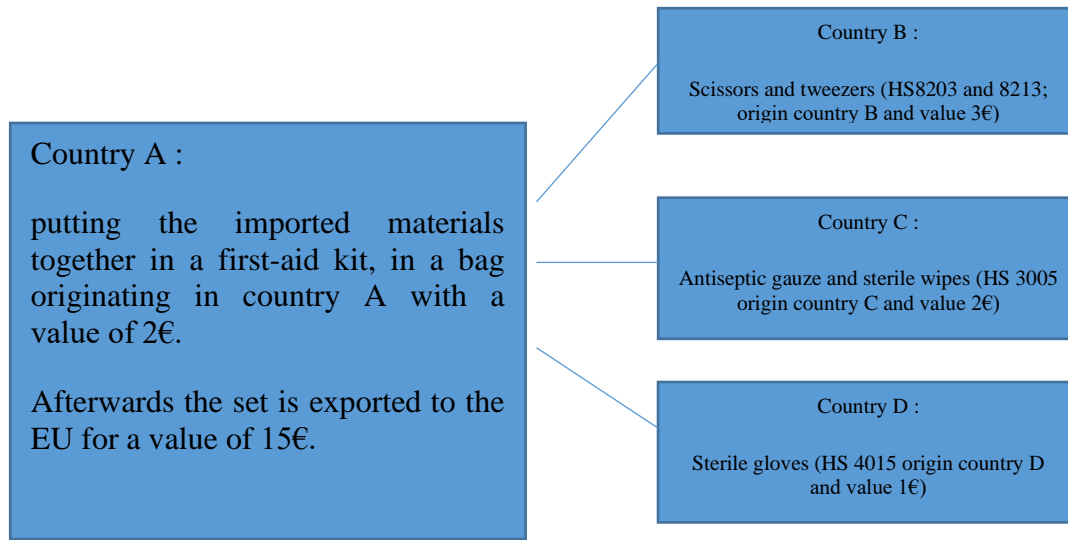
Decorative designs classified in HS 49.11 originating in country D, with a value of 2€.

- ➔ the major portion of the materials on the basis of the value of the materials is the plain ceramic tableware originating in country B
- ➔ **conclusion : the origin of the final product is country B**

#### Example 4:

First-aid boxes and kits are used to keep all of the necessary supplies for first-aid emergencies in one place. It generally consists of a bag containing a variety of bandages, gauze, antiseptic, sterile wipes, sterile gloves, scissors, tweezers, and other essential items.

The materials are imported from countries B-D and in country A they are put up in a bag originating in country A, afterwards the first-aid kits are imported into the EU.



**The origin of the set put together in Country A imported into the EU, is country B.**

The primary rule, CTH, is fulfilled on all non-originating materials, however it is due to a minimal operation so it is not considered a substantial transformation in Country A.

Therefore, the amended text of Article 34 implies that the origin is determined based on the ‘major portion rule’.

‘Where the country of origin cannot be determined by application of the primary rules, the country of origin of the goods shall be the country in which the major portion of the materials originated, as determined on the basis of the value of the materials.’

The materials used cover both originating and non-originating materials, in this example the major portion on the basis of the value of the materials used originates in country B, therefore the origin of the set is country B.

**→ conclusion : the origin of the final product is country B**