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EUROPESE FISCALE STUDIES

Registered EXporter (REX) system: "curse and a blessing for EU importers?"

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Table of contents

Table of contents 1
List of abbreviations 2
1. Introduction 3
2. Reform of EU's Generalised Scheme of Preferences 6
2.1. EU GSP scheme 6
2.1.1. General 6
2.1.2. Applicable conditions for claiming tariff preferences 7
2.2. The reform of GSP rules of origin 7
2.2.1. EC's Green Paper on the future rules of origin 7
2.2.2. EC's Communication and Impact Assessment on the future rules of origin 8
3. The REX system 10
3.1. Legal basis and framework 10
3.1.1. Regulation 1063/2010 10
3.1.2. Regulation 2015/428 12
3.2. Main features of the REX system 12
3.2.1. REX registration and revocation 12
3.2.2. Data access, management and publication 16
3.2.3. Origin certification and verification 18
3.2.4. Obligations of the EU importer 20
3.2.5. Replacement statements on origin 21
3.2.6. Transitional periods for beneficiary countries 23
3.2.7. Collaboration with Norway and Switzerland 24
4. EU importers further at risk? 25
4.1. Good faith under EU Customs law 25
4.2. Action Plan for monitoring the functioning of EU GSP scheme 27
4.3. Good faith under REX system 28
5. Conclusion 29
Literature list 32
Legislation and Case law 32
Sources 32
Websites 33

List of abbreviations

CCC	Community Customs Code
CCIP	Implementing Provisions of the Community Customs Code
Competent authorities	Competent authorities of the beneficiary countries or the competent customs authorities of the EU MS who are authorized to act and to comply with their obligations under the new REX system.
EBA	Everything But Arms
EC	European Commission
ECJ	European Court of Justice
EU	European Union
EU GSP scheme	European Union’s Generalised Scheme of Preferences
EU MS	Member States of the European Union
EUR 1	Movement Certificate EUR 1
Form A	Certificate of Origin Form A
FTA	Free Trade Agreement between EU and Third Country (or group of Third Countries)
LDC	Least Developed Countries
PTA	Preferential Trade Agreements between EU and Third Country (or group of Third Countries)
REX system	System of self-certification on origin by registered exporters in relation to the EU GSP scheme, including the registration of registered exporters in the REX database
UCC	Union Customs Code
WCO	World Customs Organisation
WTO	World Trade Organisation

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1. Introduction

“*I’m glad you’re here to tell us these things*.” – Han Solo

Unilateral trade arrangements as well as bi- or multilateral trade agreements provide for preferential import tariffs in case qualifying products meet the criteria for having the required (preferential) origin and this origin can be demonstrated upon release of the products into free circulation within the European Union (“EU”). The question how the origin can be demonstrated is well-defined in the relevant unilateral trade arrangements (e.g. EU’s Generalised Scheme of Preferences (“EU GSP scheme”) or other (bi- or multilateral) trade agreements (e.g. Free Trade Agreements between EU and third country (“FTAs”)). Traditionally, this usually takes place by means of a certificate of preferential origin issued by the competent authorities of the exporting country to the exporter.

Currently existing bi- or multilateral trade agreements, where the EU is involved, the competent authorities are currently (directly or indirectly) involved in the issuing of certificates of origin through the authentication of certificates (e.g. certificates of origin such as movement certificate EUR 1 (“EUR 1) or certificate of origin Form A (“Form A”) *or* the authentication of approved exporters who are authorized by the competent authorities of the exporting country to issue the proof of origin themselves without any direct authentication by the competent authorities (e.g. invoice declarations irrespective of the value of the consignments).

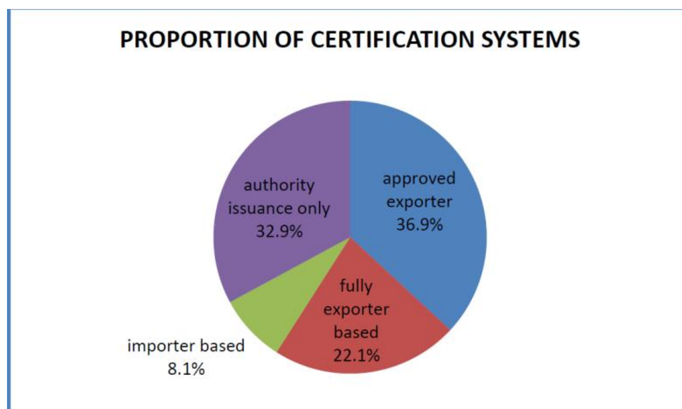
With respect to the (unilateral) EU GSP scheme the preferential origin of products should in principle be demonstrated by the use of a Form A, to be issued by the competent authorities in the exporting country.

In a comparative study[1] on the certification of origin performed by the World Customs Organization[2] (“WCO”) it was highlighted that there is a clear worldwide trend in Free Trade Agreements (currently existing or coming into force in the near future) which introduce a form of self-certification system on origin by either exporters or importers. In this respect, the comparative study showed the following results on the 149 FTAs which were studied and mentioned a form of self-certification:

- 100 out of the 149 FTAs (67.1%) introduce a kind of self-certification, which are either approved exporter, fully exporter-based certification or importer-based system.
- 55 out of the FTAs studied (36.9%) require preferential certificates of origin to be issued by competent authorities, but provide for the option of origin declarations to be issued by approved exporters. In most FTAs of this type, which are mainly used in the FTAs involving EU and/or one or more other European countries, the customs authorities are the competent authority that issues the certificate of origin or are in charge of the authentication of approved exporters.
- 33 agreements (22.1%) have the fully exporter-based certification, typically utilized in the FTAs by countries in the Americas, while 12 agreements (8.1%) have an importer-based system. In total, in 45 agreements out of all FTAs studied (30.2%), authorities are never involved in the issuance of certificates of origin.
- In 49 out of the FTAs studied (32.9%), mainly used in FTAs involving African and Asian countries, only the competent authorities are allowed to issue preferential certificates of origin. The issuer of the certificates of origin could be the customs authorities, Trade ministries or delegated private bodies.

[1] World Customs Organization, February 2014, Comparative Study on Certification of Origin
[2] See http://www.wcoomd.org

The above mentioned results from the study can be depicted as follows:



Next to worldwide trends on self-certification by economic operators and the growing demand for simplification and trade facilitation relating to (proofs of) preferential origin, the EU is also moving more and more from the current applied systems where the certification of proofs of origin is performed by the competent authorities to a system of self-certification and –issuing of statements or declarations of origin performed by exporters themselves.

The FTAs between EU and the Republic of South-Korea (in force) and the EU and Singapore (not yet in force) are good examples of this policy as the issuing of the EUR 1 certificate by competent authorities is no longer applicable. In these FTAs the (approved) exporter has to self-certify the origin of its products and confirm the origin with an origin statement without assistance or intervention from any authority.

The main reason of the change in policy lies in the fact that the EU Commission ("EC") wishes to shift responsibilities on the certification of proofs on origin from the competent authorities to exporters who are in a better position to determine the origin of their products and therefore the EC deems it appropriate, also from a trade facilitation point of view, to require that exporters directly provide their customers with statements on origin. Furthermore, the EC also wish, in terms of safeguarding the economic interests of the EU, to concentrate on more effective post export controls and "*tackle the excessive application of the good faith provisions*[3]" EU importers are frequently invoking when the proof of origin itself turns out to be invalid.

With the introduction of the new Registered EXporter (REX) system[4] for the EU GSP scheme the move by the EC to self-certification of proofs of preferential origins by exporters will enter into a new important phase. In this respect the following question arises:

Will the new REX system be a better-balanced system which protects both the interests of the EU as well as those of the EU importers?

In this thesis, I will first discuss in chapter 2 the main changes of the reform of the EU GSP scheme since 2003 which eventually has led to the introduction of the new REX system. I will then move on to discuss in chapter 3 in detail the aim, scope and main features of the new

[3] See chapter 4 of this thesis as well as section 2.6 of the summary report of the 173rd meeting held by the Customs Code Committee – Origin Section on January 21 and 22, 2009.
[4] See chapter 3 of this thesis as well as the main scope and aim of the REX system as mentioned in Regulation (EU) No 1063/2010 and Regulation (EU) No 2015/428, both amending Regulation (EEC) No 2454/93.

REX system. In chapter 4 I will briefly discuss the possible implications of the new REX system for EU importers and finally come to a conclusion in chapter 5 on the above mentioned question.

2. Reform of EU's Generalised Scheme of Preferences

"You can't stop change any more than you can stop the sun from setting." – Shmi Skywalker

In this chapter 2 I will discuss the EU GSP scheme in general and what relevant developments and factors led to the reform of the EU GSP scheme during the period 2003 until 2012, eventually introducing the new REX system.

2.1. EU GSP scheme

2.1.1. General

The EU GSP scheme is designed to support poor and developing countries' export to the EU and so facilitate their own development, security, regional cooperation and integration into international markets.

This is done by reducing import duties for their products when entering the EU market. It is a unilateral measure by the EU and therefore there is no requirement that this access is reciprocated by the countries concerned. It is also based on defined rules set by the World Trade Organisation[5] ("WTO").

The EU has applied a GSP scheme since 1971. The scheme has been revised several times to reflect evolutions in international trade and development patterns. The latest revision (not connected to the REX system) was on October 31, 2012 and applies as of 1 January 2014[6].

The overall aim of the EU GSP scheme is to concentrate import duty preferences on those countries most in need: the least-developed countries ("LDCs") and other low and lower-middle income countries. The EU GSP scheme applies to 90 countries and territories and covers about EUR58bn of imported products into the EU.

The EU GSP scheme covers three separate regimes[7]:

1. The standard arrangement ("**GSP**") provides for import duty reductions on about 66% of the tariff lines. In 2012, this represented more than 70.2% of all EU imports benefiting from GSP and about EUR40.7bn worth of imported products.
2. The specific incentive arrangement ("**GSP+**") offers deep tariff cuts for vulnerable countries that ratified and implemented international conventions relating to human and labour rights, environment and good governance. It concerns additional tariff reductions for essentially the same 66% tariff lines. In 2012, this represented 8.5% of all GSP preferences and about EUR4.9bn of imported products;
3. "Everything but arms" arrangement ("**EBA**") offers full duty free, quota free access for all products except arms and ammunition for 49 LDCs on 99% of all tariff lines. It is the most generous of the three regimes. In 2012, this represented 21.3% of all GSP preferences and imports worth EUR12.4bn.

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[5] https://www.wto.org

[6] Commission Implementing Regulation (EU) No. 530/2013, June 10, 2013 amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code, in combination with Regulation (EU) No. 978/2012, October 25, 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008.

[7] European Commission, memo of December 19, 2013 on the "revised EU trade scheme to help developing countries applies on 1 January 2014".

The current GSP scheme is the result of an in-depth review carried out by the Commission during 2010–2012. It also included an independent study, public consultation and an Impact Assessment. The review highlighted three key objectives for the new GSP system: (1) more focusing on countries in need, (2) further promotion of core principles of sustainable development and good governance and (3) enhancing stability and predictability.

Firstly, the last two decades have seen the emergence of a new group of countries – advanced developing countries – which are becoming more and more competitive on the global markets. On the other hand, many poorer countries continue to lag behind. They have been affected by competition from advanced developing countries and have suffered during the global economic crisis which began in 2008.

The advanced developing economies were amongst the biggest users of the EU GSP scheme, in competition with the poorer countries. In 2012, the high and upper middle income countries accounted for about 32% of preferences used under EU GSP scheme. Hence, the need to concentrate preferences to the poorest countries (the LDCs and other low and lower-middle income countries) which, in addition, do not have other preferential agreements to enter the EU market.

Finally, the current EU GSP scheme will be in force for 10 years, improving certainty for business operators, while the previous scheme was reviewed every three years. The EBA scheme continues to be for an indefinite period.

2.1.2. Applicable conditions for claiming tariff preferences

In the context of the EU GSP scheme, tariff preferences should be given only to products from a beneficiary country. Therefore, in order to benefit from the EU GSP scheme the following four main conditions should be met:

1. The products must above all originate in the beneficiary country in accordance with the EU GSP rules of origin. In this respect, the products should be either “wholly obtained” in the beneficiary country or have undergone a sufficient degree of transformation (i.e. “sufficiently processed”) to be considered as originating in the beneficiary country.
2. A valid proof of origin must be issued by the competent authorities of the beneficiary country (i.e. certificate of origin Form A).
3. Essentially the products should not be altered or transformed when transported from the beneficiary country to the EU.
4. The beneficiary country has to comply with a series of administrative obligations (i.e. notification of the competent authorities issuing the certificate of origin Form A and granting administrative cooperation in respect of the verification of certificates of origin).

2.2. The reform of GSP rules of origin

2.2.1. EC’s Green Paper on the future rules of origin

Various assessments and analyses[8] performed in the past showed relatively low use rates by many developing countries or LDC’s. Many factors affected this, but one reason was that the applicable rules of origin acted as a barrier to trade, because they were either too complex and/or too stringent. Furthermore, rules of origin did not affect all sectors or beneficiaries equally. Products which were not "wholly obtained" in a beneficiary country had to be

[8] UN Conference on Trade and Development, New York/Geneva August 2003, Trade preference for LDCs: An early assessment of benefits and possible improvements.

"sufficiently worked or processed" there. At one point in time there were up to 500 different list rules[9] used for the determination of preferential origin.

In 2003 the EC published a Green Paper[10] on the "*future rules of origin in preferential trade arrangements*". The objectives of this Green Paper were to help the Commission to formulate guidelines to fundamentally review the preferential origin rules, especially in view of the level of duties likely to emerge from the new round of multilateral trade negotiations, the role to be played by preferential origin rules in free trade agreements and the policy of market access and supporting sustainable development.

The Green Paper provided input on the following points:

- An overall assessment of the problems of origin in preferential arrangements.
- A focus on aspects which require a consistent approach to bring them under control
- An overview of the options available, particularly with regard to the systems for certification, declaration, and control of the originating status of products and ways of refocusing the system of administrative cooperation.

2.2.2. EC's Communication and Impact Assessment on the future rules of origin

The Green Paper was followed by a Communication[11] from the EC on March 16, 2005 on the rules of origin in preferential trade arrangements with the main objectives: "*simplification*" and "*more development country friendly-rules*".

The Communication explained the new approach to rules of origin in all preferential trade arrangements involving the EU and in particular in development-orientated arrangements such as the EU GSP scheme. Furthermore, the Communication specifically mentioned that new customs procedures should be developed to ensure the proper implementation and the control of the use of the preferences by the economic operators as well as the development of instruments ensuring that the beneficiary countries comply with their obligations.

With respect to the proper implementation and control of the use of preferences, the EC mentioned that it was in favour of a new system which should meet the following main conditions[12]:

1) the self-certification of the originating status by the exporters themselves, subject to prior registration by the authorities of the exporting country based on pre-established common standards;
2) an improvement in the exchange of information between the exporters and the authorities of the exporting countries on the use of the preferential arrangement and the reinforcement of controls by these authorities on the exporters;
3) a clarification of the basic rights and obligations of the importers claiming preferential treatment on the basis of statements on origin made out by their foreign suppliers;

[9] List of working or processing required to be carried out on non-originating materials in order that the product manufactured can obtain originating status.
[10] European Commission, COM (2003) 787 final, December 18, 2003, Green Paper on the future of rules of origin in preferential trade arrangements.
[11] European Commission, COM (2005) 100 final, March 16, 2005, Communication from the Commission to the Council, the European Parliament and Social Committee on the rules of origin in preferential trade arrangements – "orientations for the future".
[12] See chapter 2 of Com (2005) 100 final, March 16, 2005, Communication from the Commission to the Council, the European Parliament and Social Committee on the rules of origin in preferential trade arrangements – "orientations for the future".

4) the inclusion of special clauses on compliance with origin requirements in commercial transactions between exporters and importers, including the possibility to transmit proofs of origin by electronic means;
5) the reinforcement of the exchange of information and administrative co-operation between the authorities of the exporting and importing countries when verifying origin, based on clear obligations and procedures.

With the first point the EC introduced for the first time the concept of a system of self-certification of origin by economic operators[13].

On October 25, 2007, the EC published an Impact Assessment[14] to support a draft proposal for the reform of GSP rules of origin. Only after two years and a half of lengthy discussions within the Community Customs Code Committee, Origin Section the Commission Regulation (EU) No 1063/2010[15] was finally adopted on November 18, 2010 and as a result the new REX system was introduced and came to life, albeit still in its somewhat immature and incomplete form and shape.

The EC also issued a memo[16] on November 18, 2010 where they mentioned the following:

"In the current system, customs authorities are not often able to make proper checks at export and determine the legality of exported goods, so the protection offered by certificates of orgin is sometimes illusory. Under the new scheme, the authorities would be able to concentrate their resources on more effective post-clearance controls. Requiring exporters to be registered would ensure that the authorities know who they were dealing with".

The new REX system will be discussed in the next chapter 3.

[13] See chapter 2 of Com (2005) 100 final, March 16, 2005, Communication from the Commission to the Council, the European Parliament and Social Committee on the rules of origin in preferential trade arrangements – "orientations for the future".
[14] European Commission, TAXUD/C5/RL D (2007), October 25, 2007, Impact assessment on Rules of Origin for the Generalised System of Preference, which was updated on November 1, 2010.
[15] Commission Regulation (EU) No 1063/2010, November 18, 2010, amending Regulation (EEC) No. 2454/93 laying down provisions for the implementation of Council Regulation (EEC) 2913/92 establishing the Community Customs Code.
[16] European Commission, Memo of November 18, 2010 with title "Questions and Answers – Reform of GSP rules of origin".

3. The REX system

***“Hello, what have we here?”* – Lando Calrissian**

In this chapter I will discuss the (new) REX system[17] which will enter into force as of January 1, 2017. After discussing first the legal basis and framework of the REX system I will further discuss in detail the 7 most important features of the REX system.

3.1. Legal basis and framework

3.1.1. Regulation 1063/2010

As mentioned earlier, the EC’s Regulation (EU) No 1063/2010 was adopted on November 18, 2010 revising the rules of origin for products imported under EU GSP scheme[18]. Most of the new rules came into force as of January 1, 2011 which related to the relaxation of rules of origin (e.g. origin determining criteria), but also the introduction of other simplification measures, for example, on evidence required concerning direct transports to the EU, on various forms of cumulation of origin and on rules relating “insufficient working or processing”. For sake of this thesis I will not elaborate further on these changes, but I will focus specifically on the new (rules relating to the) REX system.

As also mentioned in the EC’s Regulation (EU) No 1063/2010 a new approach was introduced as well as new rules relating to the certification of origin of products, moving from a system based on the issuing of certificates of origin issued by competent authorities[19] (or invoice declarations made out by exporters for low-value consignments) to a (IT-supported) system wholly based on self-certification of origin by exporters making out statements on origin on their own behalf.

In this respect, point 17 of the preamble of the EC’s Regulation (EU) No 1063/2010 mentioned the following:

“At present, the authorities of beneficiary countries certify the origin of products and, where the declared origin proves to be incorrect, importers frequently do not have to pay duty because they acted in good faith and an error was made by the competent authorities. As a result, there is a loss to the European Union’s own resources and it is ultimately the European Union taxpayer who bears the burden. Since exporters are in the best position to know the origin of their products, it is appropriate to require that exporters directly provide their customers with statements on origin.”

The new (IT-supported) system facilitating these changes is called the REX system, system of registered exporters, and should be introduced for that purpose as of January 1, 2017. In this respect, from 2017 onwards, exporters will directly provide their customers with statements on origin. Exporters will be registered with the competent authorities of the beneficiary countries in order to facilitate targeted post-export controls. EU importers will, via the REX system’s central online database, be able to check before declaring products

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[17] Where the “REX system” is mentioned from now on in this thesis it will mean the system of self-certification on origin by registered exporters in relation to the EU GSP scheme, including the registration of registered exporters in the REX database as well as the verification of registered exporter’s REX numbers on the REX public website.

[18] Commission Regulation (EU) No 1063/2010, November 18, 2010, amending Regulation (EEC) No. 2454/93 laying down provisions for the implementation of Council Regulation (EEC) 2913/92 establishing the Community Customs Code.

[19] Where “competent authorities” is mentioned from now on in this thesis it will mean the competent authorities of the beneficiary countries or the competent customs authorities of the EU MS who are authorized to act and to comply with their obligations under the new REX system.

for release for free circulation that their supplier is a registered exporter in the beneficiary country concerned.

In general the REX system aims at implementing a system to make up-to-date and complete information on registered exporters established in the GSP beneficiary countries exporting products to the EU under preferential trade arrangements[20]. The REX system should therefore facilitate businesses from both export and import point of view, facilitate post-export controls and increase the availability and control of information for all parties involved.

As a result, the new procedures will require governments of beneficiary countries to establish the administrative structure, including the setting up and managing of the central online database on registered exporters. Beneficiary countries who cannot be ready for the implementation of the new procedures by January 1, 2017 may be granted a transition period, and for these countries the final implementation date will in principle be January 1, 2020 (with the final option to extend this deadline with 6 months until June 30, 2020). Under the new REX system, only registered exporters (and their customers) are eligible to benefit from the EU GSP, except when the total value of the originating products consigned does not exceed EUR6K.

Please also find below in a high level overview of the most important general requirements of the new procedures under the REX system (and the corresponding articles in the Community Customs Code's Implementing Provisions of Commission Regulation (EEC) No 2454/93[21]) as regards to the control of origin and administrative cooperation which are mentioned the EC's Regulation (EU) No 1063/2010. I will discuss most of these requirements in more detail in chapter 3.2 of this thesis:

- Responsibilities for the governments of beneficiary countries
  - Establishment and management of the database on registered exporters[22]
  - Control of origin[23]
  - Control of origin within the framework of cumulation[24]
- Responsibilities for the registered exporters[25]
- Documentary requirements by registered exporters[26]
  - Statement on origin
  - Length of validity of statement on origin
  - Record-keeping obligations
  - Statement on origin issued retrospectively
- Low value consignments without requiring a statement on origin[27]
- Discrepancies between a statement on origin and those in other documents[28]
- Presentation of statement of origin after expiry of the time limits[29]
- Procedures at release for free circulation in the European Union: Importers'

[20]Also EU operators making exports for the purpose of bilateral cumulation of origin will also need to be registered under the REX system with the competent authorities in the EU Member States and therefore movement certificates EUR 1 will have to be replaced by a new statement on origin to be issued by these EU operators.
[21] As of now the Community Customs Code's Implementing Provisions of Commission Regulation (EEC) No 2454/93 will be referred to as "CCIP" in this thesis.
[22] See articles 68(2)(a), 69(2), 91(1) and (3), 92 and 93(1) CCIP
[23] See article 97(g) CCIP
[24] See articles 86(2)(b) and 97l(1) CCIP
[25] See articles 92, 93 and 94 CCIP
[26] See articles 95 and 96 CCIP
[27] See article 97(a) CCIP
[28] See articles 97(b)(1) and (2) CCIP
[29] See article 97(b)(3) CCIP

responsibilities[30]

3.1.2. Regulation 2015/428

On March 10, 2015, the Commission Regulation (EU) 2015/428 was adopted which further clarifies and refines the provisions concerning the REX system of certification of origin by economic operators before its first application on January 1, 2017.

As a result of ongoing discussions and working groups within the Customs Code Committee, Origin Section, the EC came up with a series of extensive changes and clarifications to the general legal framework in order to implement the REX system.

The most important amendments, which all relate or has an indirect impact on (the application of) the REX system, related to the following items, which I will (partly) discuss in following chapter 3.2:

1. New definition on “registered exporter”;
2. Further details and rules on the implementation of the REX system;
3. Further details and rules on the registration and certification process (including Annexes);
4. Further details and rules on the transition period from current system to new system for beneficiary countries for the period 2017-2020;
5. New rules concerning data protection and access rights to the REX system;
6. New rules on the collaboration with Norway and Switzerland regarding the use of the REX system;
7. New rules concerning the splitting of consignments in third countries carried out by the exporter or under his responsibility;
8. New rules concerning the retrospective issuing of certificates of origin Form A where the final destination of the products is only determined during transport, intermediate storage or after possible splitting.

3.2. Main features of the REX system

3.2.1. REX registration and revocation

REX registration

As mentioned above, the REX system will allow the competent authorities in beneficiary countries to register their exporters[31] and to maintain their data. Due to the new amendments, the REX system will not only allow customs authorities in the EU Member States (“EU MS”) to register their exporters for the purpose of bilateral cumulation but also their re-consignors for the purpose of splitting consignments to be sent to other locations within the EU, Norway and Switzerland (and possibly in future Turkey, once that country fulfils certain conditions)[32]. In this respect the definition of “*registered exporter*” has been changed and includes now the following three categories:

1) an exporter who is established in a beneficiary country and is registered with the competent authorities of that beneficiary country for the purpose of exporting products under the scheme, be it to the Union or another beneficiary country with which regional cumulation is possible;

[30] See article 97 CCIP
[31] See articles 67(t), 90 and 92 CCIP for the definition of exporter: “exporter” means a person exporting the goods to the European Union or to a beneficiary country who is able to prove the origin of the goods, whether or not he is the manufacturer and whether or not he himself carries out the export formalities.
[32] See article 67(1)(u) CCIP

2) an exporter who is established in a Member State and is registered with the customs authorities of that Member State for the purpose of exporting products originating in the Union to be used as materials in a beneficiary country under bilateral cumulation;
3) a re-consignor of products who is established in a Member State and is registered with the customs authorities of that Member State for the purpose of making out replacement statements on origin in order to re-consign originating products elsewhere within the customs territory of the Union or, where applicable, to Norway, Switzerland or Turkey ("*a registered re-consignor*").

In addition to the above, also a new paragraph has been added which states that where the exporter of record is represented for the purpose of carrying out export formalities and the representative of the exporter is also a registered exporter, this representative should not use his own registered exporter number[33].

As a result of the above, exporters established in the beneficiary countries as well as exporters and re-consignors in EU MS will need to be registered in the REX system in order to make out statements on origin. Exporters will have to submit a complete prescribed, yet simple application form to the competent authorities[34].

Please see below a print screen of such an application form:

'ANNEX 13c

(referred to in Article 92)

APPLICATION TO BECOME A REGISTERED EXPORTER

for the purpose of schemes of generalised tariff preferences of the European Union, Norway, Switzerland and Turkey (1)

1. Exporter's name, full address and country, EORI or TIN (2).

2. Contact details including telephone and fax number as well as e-mail address where available.

3. Specify whether the main activity is producing or trading.

4. Indicative description of goods which qualify for preferential treatment, including indicative list of Harmonised System headings (or chapters where goods traded fall within more than 20 Harmonised System headings).

5. Undertakings to be given by an exporter

The undersigned hereby:

— declares that the above details are correct,

— certifies that no previous registration has been revoked; conversely, certifies that the situation which led to any such revocation has been remedied,

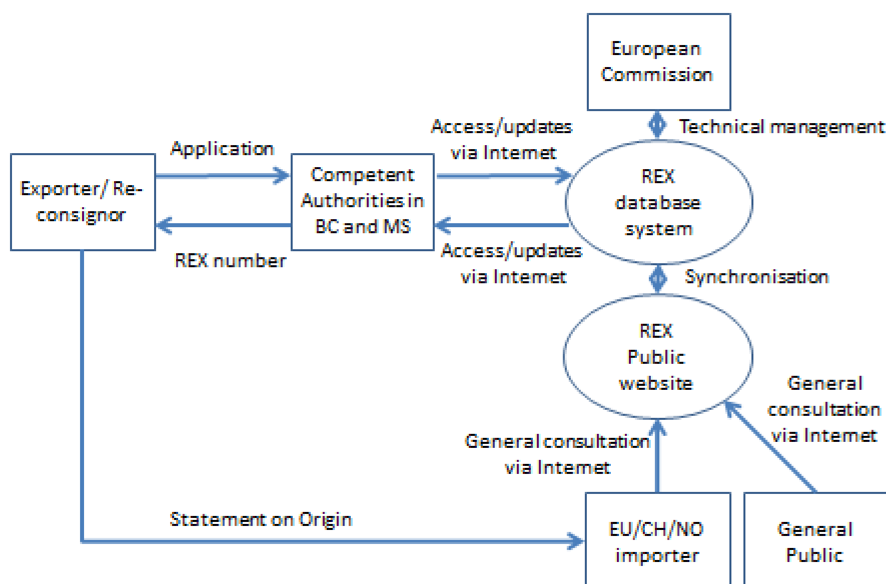
— undertakes to make out statements on origin only for goods which qualify for preferential treatment and comply with the origin rules specified for those goods in the Generalised System of Preferences

Where the competent authorities consider that the information provided in the application is incomplete, they will have to inform the exporter without delay[35]. Where the application is

33 See article 67(3) CCIP
34 See article 92 CCIP jo. Annex 13c CCIP
35 See article 69a(2) CCIP

complete and accepted, the competent authorities will encode the application in the REX system and assign a unique REX number to the exporter[36][37]. The registered exporter will use its REX number on statements on origin it will make out to its customer.

Please see also below picture on the main REX registration process:



The registration of an exporter/re-consignor should be a one-time operation and the registration should be valid from the moment the application is submitted by the exporter to the competent authorities[38]. Registered exporters do have the obligation to immediately inform the competent authorities of the beneficiary country or the customs authorities of the Member State of any changes to the information which they have provided for the purposes of their registration[39].

With respect to the above it seems that the registered exporter can be REX registered with retro-active effect. It is not entirely clear why this should be possible or required for the exporter, but perhaps it was introduced purely for formal or administrative purposes. In practice the EU importer will (or should) not be able to claim any preferential import tariff for which he may have received a statement on origin as long as the exporter will not show up as being registered in the REX system with a valid REX number.

Furthermore, it is also not clear what the impact would be for the exporter or the competent authorities if there were to be a technical problem for the registration of the exporter in the REX system or if the competent authorities would have organisational difficulties to register the exporter immediately in its own (IT) systems. However, the EU importer will, with or without a statement on origin, again not want to take any risks for claiming the preferential

[36] See article 69a(2) jo. 92(6) CCIP
[37] The REX number qualifies as an authorisation number identifying a certain customs status held by an economic operator. The REX number is different from the EORI or TIN number as these numbers are identification numbers assigned to economic operators in order to serve as a reference in their dealing with customs. Each economic operator may hold a set of separate authorisation numbers while it may only be assigned one identification number.
[38] See article 66a(1), 92(4), 92(5) CCIP
[39] See article 93(1) CCIP

import tariff where the registered exporter nor its REX number would be showing up as valid in the REX system.

In both cases the EU importer may want to ask, if still possible for certain situations until January 1, 2020 (or June 30, 2020 at the latest), for a Form A or consult with the customs authorities before claiming any preferential import tariffs.

Finally, the REX system foresees a derogation to the obligation to be registered for exporters whose consignments contain originating products the total value of which doesn't exceed EUR6K[40]. In my view the EUR6K threshold may in certain cases lead to the avoiding or circumventing the REX registration by exporters in the beneficiary countries (with the result that they are not being sufficiently monitored by the competent authorities). In this respect, exporters may intentionally split up their products into separate lower value parcels. It would be advised, also for the benefit and better protection of EU importers, to introduce additional rules for the mandatory REX registration (and the issuing of statements on origin) where, for example, the total value of the exports performed by the exporters in the beneficiary country exceeds a certain threshold on an annual basis (e.g. EUR100K or EUR200K).

Revocation of REX registration

The registered exporters who no longer meet the conditions for exporting products under the REX scheme or no longer intend to export products under the REX scheme are obliged to inform the competent authorities in the beneficiary country or the customs authorities in the Member State accordingly[41].

Also the competent authorities in a beneficiary country or the customs authorities in a Member State have the authority to revoke a REX registration in case (1) the registered exporter no longer exists, (2) intentionally or negligently draws up, or causes to be drawn up, an incorrect statement on origin which may possibly lead to wrongfully claiming the benefit of preferential tariff treatment or (3) if the registered exporter fails to keep the data concerning his registration up-to-date[42].

Exporters or re-consignors of products whose REX registration has been revoked may make a new application to become a registered exporter again[43]. Exporters or re-consignors of products whose registration has been revoked in accordance with the above mentioned points 2 and 3 may only be registered again if they prove to the competent authorities that they have fully remedied the situation which led to the revocation of their registration[44].

From the above, it is not clear whether the REX system will actually store the reasons for revocation. This would, of course, be relevant and important information for competent authorities in order to check, for example, whether an exporter who applies again for registration has already been revoked and on what basis.

The competent authorities need to inform the registered exporter about the revocation of his registration and of the date from which the revocation will take effect[45]. With respect to the exact moment and the actual implications of the revocation of REX registrations, the following is mentioned[46]:

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[40] See article 90(1)(b) CCIP
[41] See article 93(2) CCIP
[42] See article 93(3) and (4) CCIP
[43] See article 92 CCIP
[44] See article 93(9) CCIP
[45] See article 93(6) CCIP
[46] See article 93(5) CCIP

"Revocation of registrations shall only take effect for the future, i.e. in respect of statements on origin made out after the date of revocation. Revocation of registration shall have no effect on the validity of statements on origin made out before the registered exporter is informed of the revocation."

The above should also mean that the competent tax authorities should, in line with their obligations as mentioned below in section 3.2.2, remove the exporter's REX number from the REX database as of the date of revocation in order to inform EU importers on the invalidity of the statements on origin possibly received after the date of revocation.

Finally, there are also some specific rules relating to the data of the registered exporter connected to the revoked registration. This data should be kept in the REX system by the competent authorities for a maximum of 10 calendar years after the calendar year in which the revocation took place. After those 10 calendar years, the competent authorities will need to delete that data[47].

The EC also has the authority to revoke registrations of exporters in case a beneficiary country is removed or temporarily withdrawn from the list of beneficiary countries[48]. Where that country is re-introduced in that list or where the temporary withdrawal of the tariff preferences granted to the beneficiary country is cancelled, the EC will re-activate the registrations of all exporters registered in that country, provided that the registration data of the exporters are available in the system and have remained valid for at least the GSP schemes of Norway or Switzerland (or Turkey). Otherwise, exporters need to get registered again in accordance with article 92 CCIP[49].

3.2.2. Data access, management and publication

Data access

The EC has the obligation to set up the REX system and make it available to the competent authorities by January 1, 2017[50]. The data registered in the REX system shall be processed solely for the purpose of the application of the REX system[51].

The EC will have access to consult all data of the REX system for monitoring and statistical purposes[52]. The EC will not control and manage any data in the REX system itself, but has the responsibility to manage and maintain the technical infrastructure of the REX system.

The competent authorities in the beneficiary countries will have access to only consult the data concerning exporters registered by them. The customs authorities of the EU MS shall have access to consult the data registered by them, by the customs authorities of other EU MS and by the competent authorities of beneficiary countries as well as by Norway and Switzerland (and Turkey if and when that country fulfils certain conditions under the scheme). This access to the data shall take place for the purpose of carrying out verifications or examinations of statements on origin[53].

The EC will have to provide secure (webbased) access to the REX system to the competent authorities of beneficiary countries as well as to the customs authorities of Switzerland and

[47] See article 93(10) CCIP
[48] See Regulation (EU) No 978/2012
[49] See article 93a (1) and (2) CCIP
[50] See article 69a(1) CCIP
[51] See article 69c(1) CCIP
[52] See article 69b (1) and (2) CCIP
[53] In accordance with articles 68 and 78(2) CCC

Norway. A secure access to the REX system shall also be provided to Turkey once that country fulfils certain conditions.

Where a country or territory has been removed from the GSP scheme, the competent authorities of the beneficiary country shall keep the access to the REX system as long as required in order to enable them to comply with their obligations on administrative cooperation[54].

Data management

As mentioned earlier, the data registered in the REX system can only be used and processed for the purpose of the application of the EU GSP scheme[55].

The competent authorities will, after the receipt of the complete application form, assign without delay the number of registered exporter to the exporter or, where appropriate, the re-consignor of products and enter (manually[56]) into the REX system the number of registered exporter, the registration data and the date from which the registration is valid. The competent authorities of beneficiary countries and the customs authorities of Member States will keep the data registered by them up-to-date[57]. Member States who replicate the REX data in their national systems will also keep the replicated data up-to-date.

Furthermore, each competent that has introduced data into the REX system shall be considered the *controller* with respect to the processing of those data and is responsible for entering, modifying and deleting data[58].

The EC shall be considered as a *joint controller* with respect to the processing of all data in order to guarantee that the registered exporter's rights are safeguarded in accordance with the relevant data protection legislation of the Member State which is storing their data[59].

Any request by a registered exporter to exercise the right of access, rectification, erasure or blocking of data shall be submitted to and processed by the controller of data. If the registered exporter fails to obtain his rights from the controller of data, the registered exporter is able to submit such request to the EC acting as joint controller. The EC will for those cases have the right to rectify, erase or block the data.

Data publication

The EC, as the owner and technical manager of the REX IT infrastructure, will make the relevant information available to the public with the consent given by the exporter (by signing box 6 of the form set out in Annex 13c)[60][61]. The information which can then be viewed by the general public, including the EU importers, would be the following:

1. The name, address of establishment and contact details of the registered exporter
2. The EORI or TIN number of the registered exporter
3. The REX (registration) number of the registered exporter

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[54] In accordance with article 71 CCIP and Regulation (EU) No 978/2010
[55] See article 69c CCIP
[56] The possibility of pre-entering data by the exporter in the REX system (which should then only be validated by the competent authorities) does not yet seem available.
[57] See article 69a(2) CCIP
[58] See article 69c(3) CCIP
[59] This in accordance with Regulation (EC) No 45/2001 and Implementing Directive 95/46/EC which regulates the protection of individuals with regard to the processing of personal data by community institutions and bodies.
[60] The refusal to sign box 6 shall not constitute a ground for refusing to register the exporter.
[61] See article 69b(7) CCIP

4. The date from which the REX (registration) number is valid, or even invalid in case of revocation of the REX (registration) number
5. The indicative description of the relevant products (including HS codes) which qualify for preferential treatment
6. The information whether the REX registration applies also to exports to Norway, Switzerland and Turkey, once that country fulfils certain conditions
7. The date of the last synchronisation between the REX system and the public website.

In case no consent is given by the registered exporter, then only the above mentioned data relating to points 3, 4, 6 and 7 will be made public[62].

In my view, all of the above mentioned data should, despite possible data protection regulations, always be made public in order to (better) protect the EU importers and to allow EU importers to (better) perform verifications whether or not statements on origin are correct and the REX registration does in fact cover the products received.

3.2.3. Origin certification and verification

Origin certification

The new rules on origin certification provide, in principle, for an important simplification in the sense that the proofs of origin currently applicable (i.e. Form A as well as EUR-1 certificates) will be replaced by one single type of proof of origin, the *statement on origin*. A statement on origin can be issued by an exporter where the exporter is exporting its product and the product can be considered as originating in the beneficiary country of export[63].

Statements on origin are to be made out by an exporter on any commercial document allowing the identification of both the exporter and the products concerned. The statement on origin will have to contain specific wording specified in Annex 13d[64]. The statements can be made out in either the English, French, or Spanish language. The English version is as follows:

*"**STATEMENT ON ORIGIN***

To be made out on any commercial documents showing the name and full address of the exporter and consignee as well as a description of the products and the date of issue

The exporter … (Number of Registered Exporter) of the products covered by this document declares that, except where otherwise clearly indicated, these products are of … preferential origin according to rules of origin of the Generalised System of Preferences of the European Union and that the origin criterion met is ……."

A statement on origin may also be made out after exportation ("retrospective statement") of the product concerned. Such a retrospective statement should still be accepted when presented to the customs authorities in the Member State of lodging of the customs declaration for release for free circulation within two years after the importation[65]. The statement on origin will be valid for 12 months from the date on which it is made out.[66]

From the above, it seems that the new process for issuing of statements of origin by exporters is fairly easy and straightforward, especially where there is also no (upfront) role

[62] See article 69b(8) CCIP
[63] See article 95(1) CCIP
[64] See article 95(3) CCIP jo. Annex 13d CCIP
[65] See article 95(2) CCIP
[66] See article 96(2) CCIP

left to play for any competent authority and the REX system itself is not required for issuing the statement on origin.

The above changes from the issuing of certificates of origin by authorities to the issuing of statements on origin by exporters can be clarified in the below schedule:

Proof of Origin	Pre/Post REX	To be requested by	To be issued (/stamped) by	Value of product
FORM A	Pre REX	Exporter in Beneficiary Country ("BC")	Competent authorities in BC	> EUR6K
EUR 1	Pre REX	Exporter in EU Member State ("MS")	Customs authorities in MS (bi-lateral cumulation)	> EUR6K
Invoice declaration	Pre REX	Exporter in BC or MS (bi-lateral cumulation)	N/a	< EUR6K
Statement on origin	Post REX	Exporter in BC or MS (bi-lateral cumulation)	N/a	> EUR6K
Statement on origin	Post REX	Any exporter	N/a	< EUR6K
Invoice declaration	Pre REX or Post REX	Approved Exporter in MS (bi-lateral cumulation)	N/a	> EUR6K

Origin verification

Beneficiary countries must carry out verifications of the originating status of products at the request of the customs authorities of EU MS and must also carry out regular checks on exporters at their own initiative[67]. These checks should ensure that exporters (continue to) comply with their obligations.

In this respect, the checks should be performed at an interval basis on appropriate risk analysis criteria and exporter should, when asked, provide the competent authorities in the beneficiary countries with copies of or a list of the statements on origin they have issued.

The competent authorities in the beneficiary countries can call for any evidence they require. This means that they can carry out inspections of the exporter's accounts or premises or any other checks they consider appropriate.

Subsequent verifications of statements on origin should also be carried out at random or whenever the customs authorities of the EU MS have reasonably doubts as to their authenticity, the originating status of the products concerned or the fulfilment of other requirements in the GSP rules of origin[68].

If these verifications or any other information appear to indicate that the rules on origin are being contravened, the exporting beneficiary country must carry out appropriate inquiries or arrange for such inquiries to be carried out with appropriate speed and timelines to identify

[67] See article 97g(1) and (2) CCIP
[68] See article 97h(1) CCIP

and prevent contraventions. These inquiries can be made at the own initiative of the beneficiary country or at the request of the customs authorities of the EU MS or the EC. In the latter case, the customs authorities of the EU MS or the EC may also take part in the inquiries.

These inquiries and subsequent proven infringements to the rules of origin may then lead to the revocation of the REX registration of the exporter as discussed above in chapter 3.2.1.2.

The consequences of the new REX system is that more and more responsibility is given to economic operators, especially to exporters on the REX registration, process of determining preferential origin and the issuing of statements on origin.

With respect to the competent authorities they need to set up and maintain the data in the REX system relating to exporters. However, they should also develop more and better "a posteriori" checks as well as perform better risks assessments relating to categories of exporters and/or products, the origin of their products as well as their statements on origin issued by exporters.

3.2.4. Obligations of the EU importer

An EU importer will in principle only to be entitled to claim a preferential import duty tariff from the EU GSP scheme upon presentation of a statement on origin where the products have been exported on or after the date on which the exporter has been registered for REX purposes[69].

In this respect, the EU importer should not accept any certificate Form A where the exporter already has been registered for REX purposes. In my view the EU importer should still be able to claim preferential import tariff in this specific situation by using the Form A certificate. However, in practice, some customs authorities in the EU may challenge this and disallow the application of the preferential import tariff unless perhaps a (retrospectively issued) statement on origin can be provided.

Furthermore, the products to be imported into the EU need to be the same products as exported from the beneficiary country in which they are considered to originate. In this respect, the products may not have been altered, transformed in any way or subjected to operations other than operations to preserve them in good condition or the adding or affixing of marks, labels, seals or any other documentation to ensure compliance with specific domestic requirements applicable in the Union, prior to being declared for release for free circulation (i.e. direct transport and non-manipulation rule)[70]. In addition to this, also special provisions have been introduced for the situations whereby products are temporarily stored or consignments are splitted by the exporter or under his responsibility in a country or countries of transit, provided the products concerned remain under customs supervision in the country or countries of transit[71].

The rule mentioning that "*the splitting of consignments may take place where carried out by the exporter or under his responsibility*" seems to rule out the possibility for any subsequent buyer to split the products in the country or countries of transit. I wonder how this would work in practice for registered exporters and buyers where usually it is the buyer who re-sells and delivers the products to various other end-customers.

[69] See articles 91 and 96a CCIP
[70] See article 74(1) CCIP
[71] See article 74(3) and (4) CCIP

The import declaration has to make a reference to the statement on origin issued by the exporter. The reference to the statement on origin will be its date of issue and, where the total value of the products exceeds EUR 6 000, the import declaration also needs to indicate the REX registration number of the registered exporter[72]. The statement on origin can be requested by customs authorities, which may want to use it for the verification of the declaration.

The EC and EU MS are also working on the automatic verification of data elements of import declarations, including the above mentioned references to the statement on origin[73]. The EC mentioned in its Electronic Customs Multi-Annual Strategic Plan 2014[74] that the REX registration number should have an impact on the processing and accepting of customs import declarations. As a result, the REX number will be validated in order to check whether (part of) the formal conditions for granting tariff preferences are fulfilled. In this respect, national customs systems need to be interfaced with the REX database (as well as other databases TARIC) to perform the required checks and risks assessments. At this moment these projects are still under discussion and/or testing phase[75].

The import declaration will always be considered as being incomplete, where the preferential import duty is claimed, without a statement on origin being in its possession at the time of the acceptance of the import declaration[76]. Where possible and applicable, the EU importer may still ask the registered exporter to issue a statement on origin after export and within the 2 year time limit after filing the import declaration[77].

Before importing the products, the EU importer will however need to perform, at least, the following checks via the REX public website[78]:

- Verify whether the exporter is registered in the REX database to make statements on origin;
- Verify that the statement on origin is made out in accordance with Annex 13d.

3.2.5. Replacement statements on origin

A statement on origin may be replaced by one or more replacement statements on origin, to be made out by the re-consignor of the products, provided:

- The re-consignor is registered for “REX”-purposes where the total value of originating products of the initial consignment to be split exceeds EUR6K;
- All or some of the products are sent elsewhere within the customs territory of the Union or to Norway, Switzerland or Turkey, once that country fulfils certain conditions[79];
- The products have not yet been released for free circulation; and
- The initial statement on origin was made out in accordance with Articles 95 and 96 CCIP and Annex 13d.

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[72] See article 97(1) CCIP
[73] See section 3.2.2. of the summary report of the 212th meeting held by the Customs Code Committee – Origin Section on June 30, 2014 and July 1, 2014.
[74] European Commission, DG TAXUD, Electronic Customs Multi-Annual Strategic Plan 2014 (revision version 2014 1.2).
[75] See for example sections 1.11 and 2.10 of the Annex II relating to the Electronic Customs Strategic Plan 2014 (revision version 2014 1.2).
[76] See article 253(1) CCIP
[77] See article 95 CCIP
[78] See article 97(3) CCIP
[79] See article 97d(1) CCIP

Re-consignors registered in the REX system may issue replacement statements on origin in the situation that originating products are sent to Norway or Switzerland (or Turkey, once that country fulfils certain conditions). This applies irrespective of the value of originating products contained in the initial consignment and regardless of whether the country is a beneficiary country under the EU GSP scheme.

Please note that re-consignors who are not registered shall also be allowed to make out replacement statements on origin where the total value of originating products of the initial consignment to be split exceeds EUR6K if they attach a copy of the initial statement on origin made out in the beneficiary country. This provision will probably lead in the future to a lot of debate, issues and/or confusion in practice. Especially in the situations where long supply chains exist with various (non-related) parties involved and where products may be splitted and sold into different parcels. In this respect, from a practical, commercial and/or legal point of view it may not be feasible for the re-consignor(s) to provide a copy of the original invoice or other commercially sensitive document mentioning the statement on origin to its (their) customer(s). Similarly, a buyer may also not accept a copy of a statement on origin in name of the registered exporter forwarded by a re-consignor which may not clearly indicate the particular products the buyer has purchased and ultimately wants to release into free circulation. Hence, it remains to be seen if in fact not all re-consignors in a (non-related) multi-party supply chain will eventually register for REX purposes for the sole purpose to either issue own replacement statements on origin, avoiding the situation to disclose commercial sensitive information to their customers or at the simple request from their direct buyers (which may be EU importers or not).

A replacement statement on origin shall be valid for 12 months from the date of making out the initial statement on origin[80]. Where a statement on origin is replaced, the re-consignor has to fulfil certain administrative tasks by adding further references on both the initial statement on origin as well as on the replacement statement[81]:

The following details needs to be added on the ***initial statement on origin***:

1. the particulars[82] of the replacement statement(s) on origin;
2. the name and address of the re-consignor;
3. the consignee or consignees in the Union or, where applicable, in Norway, Switzerland or Turkey, once that country fulfils certain conditions;
4. the initial statement on origin shall be marked with the word “Replaced”, “Remplacée” or “Sustituida”.

The following details needs to be added on the ***replacement statement on origin***:

1. all particulars of the re-consigned products;
2. the date on which the initial statement on origin was issued;
3. the information specified in Annex 13d;
4. the name and address of the re-consignor of the products in the Union and, where applicable, his number of registered exporter;
5. the name and address of the consignee in the Union or, where applicable, in Norway, Switzerland or Turkey, once that country fulfils certain conditions;
6. the date and place of the replacement;

[80] See article 97d(4) CCIP
[81] See article 97d(5) CCIP
[82] See article 95(3) CCIP jo. Annex 13d for the meaning of “particulars” of the (replacement) statement on origin and re-consigned products.

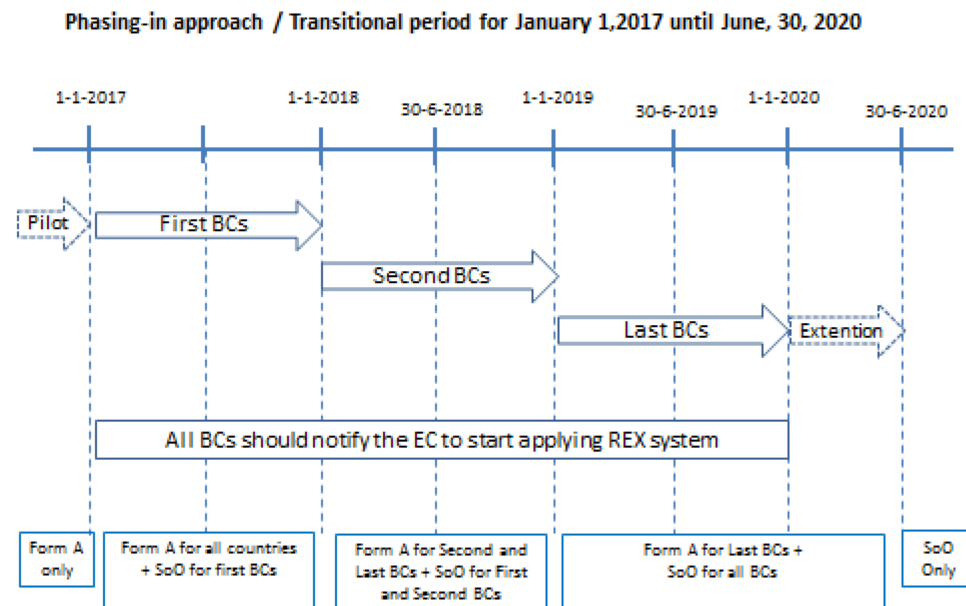
7. the replacement statement on origin shall be marked “Replacement statement”, “Attestation de remplacement” or “Comunicación de sustitución”.

3.2.6. Transitional periods for beneficiary countries

Beneficiary countries shall start to apply the REX scheme and the registration of exporters as of January 1, 2017.
Beneficiary countries, which will not be ready to apply the new system of self-certification on January 1, 2017 will have the possibility to notify the EC (at the latest on 1 July 2016) that they will apply it one or two years later (respectively as of January 1, 2018 or January 1, 2019)[83]. However, all beneficiary countries will have to apply the registered exporter system as of June 30, 2020 at the latest.

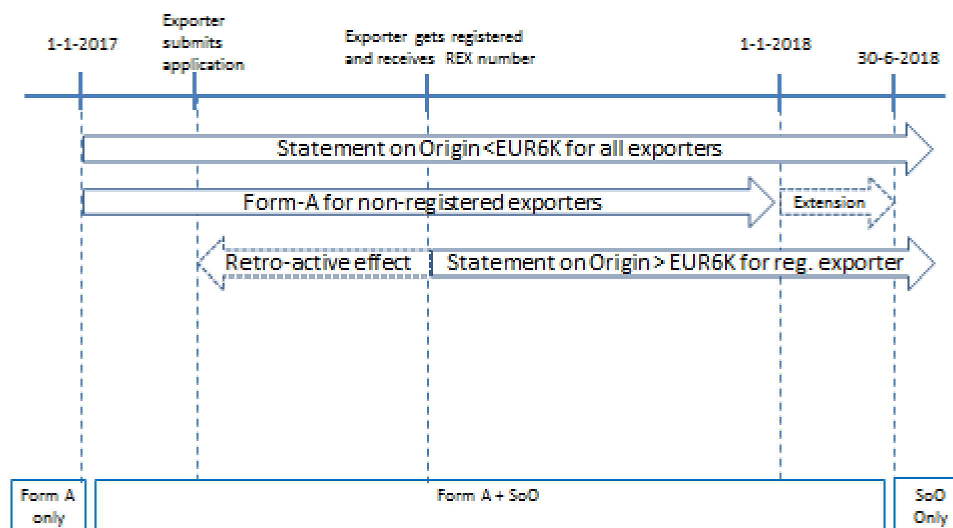
When a beneficiary country starts the application of the self-certification scheme under the REX system, the current system of certification of origin of products with certificates of origin Form A issued by competent authorities or invoice declarations made out by exporters will however continue to apply for a period of one year (possibly extended upon request to 18 months) to exporters who will not yet be registered[84]. At the same time beneficiary countries should cease issuing certificates of origin Form A for exporters who have been registered in the REX system.

The transitional periods and their implications can be clarified in the below schedules:



[83] See article 91(1) CCIP
[84] See article 91(2) CCIP

Phasing-in approach / Beneficiary country applies new REX scheme as of January 1,2017



With the above mentioned transitional periods and their various implications I would not be surprised if somehow difficulties and/or confusion may occur at the level of the customs authorities of the EU MS when having to accept two types of proofs within a year from some beneficiary countries and, at the same time, accepting only certificates of origin Form A from some other beneficiary countries in 2017 up to 2020. It would perhaps be advised if the EC also either provide periodical guidance on this for the customs authorities of the EU MS or develop another web-based tool to help the EU MS to recognise what kind of proof should apply from time to time for the various different imports of products originating from the beneficiary countries.

3.2.7. Collaboration with Norway and Switzerland

Norway and Switzerland, which apply the same GSP rules of origin as the EU, should also move to a system of self-certification of origin of products on January 1, 2017. The rules defined for the transition period and the possibility for the beneficiary countries to defer the application date of the system in these two countries are also identical to the ones applicable in the 28 EU MS. In consequence, it has been agreed between the EU, Norway and Switzerland that the REX system implemented by the EC will also be used by the beneficiary countries of the GSP schemes of Norway and Switzerland[85][86].

The above is a logical but necessary change in order to facilitate the exports from the beneficiary countries and to make the lives of exporters in the beneficiary countries easier. As a consequence, these exporters will now have to register only once for the three GSP schemes and only obtain one REX registration number to be used for all three GSP schemes.

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[85] Council Decision 2001/101/EC of 5 December 2000 concerning the approval of an Agreement in the form of an Exchange of Letters between the Community and each of the EFTA countries that grants tariff preferences under the Generalised System of Preferences (Norway and Switzerland), providing that goods with content of Norwegian or Swiss origin shall be treated on their arrival on the customs territory of the Community as goods with content of Community origin (reciprocal agreement).
[86] Article 69(b)(4), 85 and 97(g) CCIP

4. EU importers further at risk?

"*I find your lack of faith disturbing.*" – Darth Vader

In this chapter 4 I will first discuss the good faith principles under EU Customs law as well as the launched action plan the EC has communicated for the better monitoring the functioning of the EU GSP scheme. After that I will discuss the implications of the good faith principles for EU importers in relation to the new REX system.

4.1. Good faith under EU Customs law

An EU importer can currently benefit from the preferences mentioned in the EU GSP scheme when products are imported into the EU together with a Form A issued by the competent authorities of the country of export. However, the use of an invalid Form A at the time of importation can result in substantial customs claims for the EU importer[87]. This liability remains regardless of any contractual agreements in place or legal recourse the EU importer may exercise against the exporter. These claims relating to the incorrect use of the GSP preferences may arise despite the EU importer's best due diligence and compliance efforts relating to the exporter (or supplier) as well as the purchased products. These claims usually materialise after importation as a result of an audit or review by customs authorities of an EU Member State[88]. In these cases the EU importer, can, under certain conditions, invoke the good faith principles[89]. Under these good faith principles, the EU importer should prove that:

1. the incorrect import declaration was the result of an error on the part of the competent authorities[90][91]; or
2. that there was a case of special circumstances which justifies the repaying or remittance of import duties[92][93].

With respect to the first point, the EU importer has to prove that there was an error on the part of the customs authorities, which could not reasonably have been detected by the EU importer *and* the EU importer acted in good faith and complied with all the relevant provisions relating to the import declaration.

[87] See article 201(3) CCC the importer (as declarant) will be liable for the customs duties in case the Form A is invalidated.
[88] All imports performed in the EU in the previous 3 years can be reviewed in accordance with article 221(3) CCC. This three-year period may even be extended in case of criminal acts.
[89] As mentioned in the summary report of the 173rd meeting of the Customs Code Committee – Origin Section, the EC considered it essential to tackle what has become the excessive application of the good faith provisions. By giving this statement it seems that the EC does not carefully take into account the possible justification of the use of good faith principles by EU importers in those cases where EU importers need protection and cannot or should not be held responsible for invalid or invalidated proofs of origin.
[90] See article 220(2)(b) CCC
[91] See also corresponding article 119(1) UCC which has in my view similar meaning as article 220 (2)(b) CCC and mentions "*an amount of import or export duty shall be repaid or remitted where, as a result of an error on the part of the competent authorities, the amount corresponding to the customs debt, initially notified was lower than the amount payable, provided the following conditions are met: (i) the debtor could not reasonably have detected that error; and (ii) the debtor was acting in good faith*".
[92] See article 239 CCC
[93] See also corresponding article 120 UCC which again has similar meaning as article 239 CCC and mentions "*an amount of import or export duty shall be repaid in the interest of equity where a customs debt is incurred under special circumstances in which no deception or obvious negligence may be attributed to the debtor. The special circumstances shall be deemed to exist where it is clear from the circumstances of the case that the debtor is in an exceptional situation as compared with other operators engaged in the same business, and that, in the absence of such circumstances, he or she would not have suffered disadvantage by the collection of the amount of import or export duty.*"

Furthermore, the issuing of incorrect certificates of origin by competent authorities will be considered to be an error, except when the exporter submitted an incorrect account of the facts which can be proven by the competent authorities. However, if the EU importer can proof, on his part, that the competent authorities were aware or should have been aware that the products did not satisfy the conditions for preferential treatment, then the EU importer can invoke the good faith principles[94].

With respect to the second point, a case of a special situation where import duties may be repaid or remitted in situations "*resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned*"[95].

Furthermore, also the ruling of the ECJ in the C.A.S. SpA-case[96] is of high importance, where it ruled the following:

93. Although the Commission has some discretion as regards the application of Article 239 of the CCC, it cannot disregard its duty to balance, on the one hand, the Community interest in full compliance with the provisions of customs legislation, whether that be Community legislation or other legislation binding on the Community, and, on the other hand, the interest of an importer acting in good faith not to suffer harm which goes beyond the normal commercial risk.

95 In that regard, it must be pointed out that it follows from Article 211 EC that the Commission, as guardian of the EC Treaty and of the agreements concluded under it, must ensure the correct implementation by a third country of the obligations it has assumed under an agreement concluded with the Community, using the means provided for by the agreement or by the decisions taken pursuant thereto.

99 The Commission also has significant rights and powers available to it in connection with its obligation of supervising and monitoring the proper implementation of the Association Agreement.

104 Consequently, the Commission cannot reasonably claim, as it did at the hearing, that it is in the same position as the appellant as regards the checking of events which occurred in a third country, namely in Turkey. On the contrary, it is for the Commission to make full use of the rights and powers which it has under the provisions of the Association Agreement and the decisions adopted in respect of its implementation so as to fulfil its obligation of supervising and monitoring the proper implementation of the Association Agreement.

In essence the ECJ ruled that the failure by the EC (to fulfil its obligations) to monitor the correct implementation of the association agreement with Turkey may constitute a special situation for the purpose of article 239 CCC.

From the above I derive that the EU importer may be able to claim the existence of a special situation, as per article 239 CCC, when the issuing of the incorrect certificate of (or statement on) origin is the result of the competent authorities in the beneficiary country as well as the EC's failings to comply with their obligations of supervising and monitoring the rules of origin under the EU GSP scheme, especially where these failings ("errors") contribute to irregularities for which the EU importer should not be held liable.

I will discuss this last point in further detail in the next section 4.2 in the context of the EC's Communication on February 26, 2014 on the Action Plan for monitoring the functioning of EU GSP scheme.

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[94] See ECJ case C-293/04, Beemsterboer Coldstore Services BV vs Inspecteur der Belastingdienst Arnhem
[95] See also ECJ joined-cases T-186/97, T-187/97, T-190/97, T-192/97, T-210/97, T-211/97, T-217/97, T-218/97, T-279/97, T-280/97, T-293/97 and T-147/99, Kaufring AG
[96] See ECJ case C-204/07, C.A.S. SpA vs Commission

4.2. Action Plan for monitoring the functioning of EU GSP scheme

In addition to the above, the EC issued a Communication[97] on February 26, 2014 where it set out an action plan for monitoring the functioning of preferential trade arrangements, including the EU GSP scheme.

In this Communication the EC made some interesting remarks which are the following:

Chapter 1: "The Commission has significant rights and powers available to it in connection with its obligation to supervise and monitor the proper implementation of rules or origin and when examining applications for repayment or remission of import duties. Insufficient monitoring may have serious consequences, such as allowing a 'special situation' to be established under Article 239 of the Customs Code. Monitoring thus helps to protect the EU's financial interests and makes for fair trade between the EU and its trade partners."

Chapter 2.2.: "It is the Commission which must ensure that preferential trade arrangements are implemented correctly."

Chapter 3.3.3.: "In cases of reasonable doubt as to the origin of goods imported under preferential tariff arrangements, the Commission may publish notices to importers in the Official Journal. Persons liable for customs debts in cases of incorrect proofs of origin cannot plead good faith if the Commission has published a notice signaling grounds for doubt as to the proper application of the arrangements by the country concerned".

Furthermore, the EC made it very clear that the current monitoring activities relating to the preferential trade arrangements do not sufficiently ensure compliance with the GSP origin rules and that there are quite a significant number of weaknesses to be remedied. As a result, a series of actions have been formulated to enhance collection of data, setting up and improving controls on origin by all parties involved, identifying failures in implementation and taking various other corrective measures. It appears that the action plan is taken very seriously by the EC, but it seems that the action plan is still very much in its initial stage.

As a result of the above, the EC has confirmed in this Communication that it has a responsibility to ensure the correct application of the preferential trade arrangements, including the EU GSP scheme. This responsibility has also been confirmed by the ECJ in the C.A.S. SpA-case as mentioned in the previous section.

What seems important form the above is that EU importers should carefully review whether there is evidence (i.e. reports from EU institutions, European or local case law, notifications from EC, etc.) that the EC is incorrectly monitoring or has incorrectly monitored the EU GSP scheme in certain situation (e.g. specific (group of) exporter(s), specific (group of) countr(y)(ies), and/or specific industry or sectors), or whether there is evidence of it having carried out any monitoring at all. I realise that it may be difficult to obtain detailed information on this by EU importers in practice, however, there are regular updates/reports from EU institutions[98] which may provide some ammunition for the EU importers.

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[97] EC's Communication, COM (2014) 105 final, February 26, 2014, Action plan for monitoring the functioning of preferential trade arrangements.

[98] See in this respect the special report of May 22, 2014 from the EU Court of Auditors with the title "Are preferential trade arrangements appropriately managed?" In this respect, The Court concluded in the detailed report the following: "(a) the EC has not appropriately assessed all the economic effects of preferential trade agreements ("PTAs"); however, the use of the impact assessment tool has increased and there has been progress in the quality of the analysis conducted; (b) the interim evaluation of the generalised system of preferences (GSP) shows that the policy has not yet fully delivered its intended benefits; (c) there are weaknesses in customs controls applied by the authorities of the selected Member States;
(d) there are weaknesses in the Commission's supervision of Member States and beneficiary/partner

At the same time, the EC should also, as part of its overall responsibilities, keep EU importers (more) up to date on what kind of measures, issues and/or problems may have been identified during its general or specific monitoring and audit activities. In that case, EU importers can verify whether the monitoring is being carried out correctly, and, if that is not the case, to draw the necessary conclusions whether or not they should claim any preferences at all under the EU GSP scheme and/or claim good faith in certain situations.

4.3. Good faith under REX system

The good faith principles should, in my view, remain applicable even when the origin of the products received by the EU importer has been self-certified by a registered exporter under the REX system. In principle, the good faith principles can be pleaded due to the fact that the competent authorities (still) play an important role when granting the status of "registered exporter" and they need to follow and implement various processes and obligations which apply before the REX registration can be granted. These obligations will also continue to apply during the time that the exporter has the relevant status of a registered exporter.

The above is already confirmed by article 68 CCIP where it is stated that the beneficiary countries need to put in place and maintain the administrative structures and systems required for the proper implementation and management of the EU GSP scheme. Furthermore, each beneficiary country should also undertake that its competent authorities will cooperate with the EC and the customs authorities of the EU MS on:

1) providing all necessary support requested by the EC for the monitoring of the proper management of the scheme in their country, including verification visits on the spot by the EC or the customs authorities of the EU MS; *and*
2) verifying the originating status of products and the compliance with the other conditions relating to the EU GSP rules of origin, including visits on the spot, if requested by the EC or the customs authorities of the EU MS as part of origin investigations.

Furthermore, the competent authorities are also clearly obliged under the REX system to revoke the registration in case the exporter no longer exists, no longer intends to export products under the EU GSP scheme or no longer meet the conditions for exporting products under the EU GSP scheme[99]. Finally, the authorities also need to carry out regular checks and audits on registered exporters at their own initiative, in addition to the verifications made at the request of the EU MS[100].

As a result, should the competent authorities fail to comply with the above mentioned obligations, then they would commit an error as mentioned in article 220(2)(b) CCC. Furthermore, when the issuing of incorrect statements on origin by the registered exporters constitutes an "error", the incorrectly granting of REX registration to the registered exporters should then also constitute an "error". Also, for cases where the competent authorities knew or should have known that an exporter should not have been registered, or its registration should have been revoked and this was not done, the competent authorities would have also committed an error as mentioned by article 220(2)(b) CCC.

In addition to the above, there is also the possibility to invoke article 239 CCC which will remain applicable where the competent authorities of the country of export, EC and/or the

countries in respect of PTAs; and (e) the legal provisions of the PTAs do not contain sufficient safeguards to protect the financial interests of the EU."

[99] Article 93(2) CCIP

[100] Article 97(g) CCIP

customs authorities of the EU MS failed to comply with their specific and general monitoring obligations of the EU GSP scheme.

Hence, in view of the above, due to all of the clear, strict and far-reaching obligations imposed on the competent authorities of the country of export, EC and/or the customs authorities of the EU MS, the good faith principles by EU importers may still be invoked. These good faith principles will also remain relevant and applicable when the REX system becomes operational. The non-compliance with or the incorrectly carrying out of its duties with respect to the above mentioned obligations placed on the competent authorities in the beneficiary countries, EC and/or the customs authorities of the EU MS may establish or help in proving the existence of an "*error*" or "*special circumstances*".

5. Conclusion

"The Force will be with you, always." **– Ben Obi-Wan Kenobi**

Registered exporters will, as of January 1, 2017, self-certify the origin of their products through a “statement on origin” which they need to issue to their customers. The statement on origin does not need to be endorsed by a competent authority in the exporting country. However, the competent authorities in beneficiary countries, the EC as well as the customs authorities in the EU MS will (remain to) play an important role relating to the review, processing and control of data in the new REX system. Next to this, the competent authorities, together with the EC and the customs authorities of the EU MS, should also develop and maintain effective post export controls ensuring compliance with the rules under the new REX system. In case of any incompliance, infringements and/or abuse of the rules on origin by the exporters, the REX registration of exporters may be revoked.

At the beginning of this thesis I asked the following question:

Will the new REX system be a better-balanced system which protects both the interests of the EU as well as those of the EU importers?

The new REX system should generally facilitate businesses from both export and import point of view and increase efficiency, transparency, availability and control of information for all parties involved, which should ultimately result in lower trading costs when exporting (and/or importing) products from beneficiary countries to the EU. However, there are, despite the further clarifications and amendments mentioned by Commission Regulation (EU) 2015/428 relating to the REX system, still some important points which need to be further clarified and/or tackled in the near future. In my view these points mainly include, assuming the EC as well as all beneficiary countries will have their own IT and administrative systems up and running when applying the new REX system, the access and publication of (more) relevant information relating to the “registered exporters” for the benefit and better protection of EU importers, the splitting of consignments below EUR6K value in relation to mandatory REX registration, the splitting of consignments by registered exporters and/or other (non-related) parties involved in a multi-party supply chain, the issuing of replacement statements on origin by (non-related) parties in a multi-party supply chain as well as the required guidance from the EC relating to the various transitional periods from January 1, 2017 until June 30, 2020 to be used by EU MS, EU importers as well as other economic operators to deal with the possible different proofs of origin which may apply at the same time.

It is also clear from all of the above that the introduction of the REX system mostly or better protects the EU’s interests above those of the EU importers. There is also a clear shift in responsibilities and liabilities from the competent authorities in the beneficiary countries to the registered exporters and from the registered exporters to the EU importers. The REX system will increase the risks for EU importers where EU importers have to rely on the statements on origin issued by the registered exporters, especially where the competent authorities may not or only partially comply with or fulfil their obligations under the REX system. Furthermore, it is also clear that that with the new REX system (in combination with the EC’s action plan for monitoring the functioning of preferential trade arrangements, including EU GSP scheme) EU exporters, and therefore also EU importers, will be facing more and more reviews and audits from the respective customs authorities in the future.

The above mentioned developments will reinforce the need to improve due diligence by and compliance efforts from EU importers when claiming tariff preferences under the EU GSP scheme[101]. However, there are and will always be limits to what an EU importer can do in this

[101] As mentioned in section 1.11 of the Annex II relating to the Electronic Customs Strategic Plan 2014 (revision version 2014 1.2) it is also expected that the REX system will probably also cover, as of January 1, 2017, the self-

respect (e.g. improve client acceptance procedures, improve trade compliance procedures, verifying correctness of statements on origin, checking validity of REX numbers, imposing contractual indemnifications, etc) and therefore the EU importer should not be liable for risks which go beyond normal commercial risk management. The good faith principles aim at striking a balance between these two opposing principles and should remain in force.

The new REX system as well as the well-intended improvements being made by the EC via its Action Plan should in my view not considerably weaken the position of EU importers as the good faith principles should, under the applicable circumstances, still be invoked by EU importers. The good faith principles should remain available where the EU importer has, next to his due diligence and compliance efforts, relied on the registered exporter to certify, under the control and monitoring of the competent authorities, the origin of the exported products.

Furthermore, the obligations and responsibilities of the competent authorities in the beneficiary countries, together with the obligations and responsibilities of the EC and/or the customs authorities of the EU MS, to monitor the correct application of the REX system will be equally or even more rigorous when the new REX system will be used for the self-certification by the registered exporters.

As a result, invoking the good faith principles based on article 220(2)(b) and/or article 239 CCC (as well as in the future based on article 119 and/or 120 UCC) will remain possible where the competent authorities have failed to correctly carry out their obligations or failed to monitor the correct use of the REX system as well as the exporters registered under the REX system.

In view of the above I expect that the precise scope and limits of the REX system as well as the good faith principles will still be subject to further change and that the ECJ will be asked for more clarifications, probably not long after the introduction of the REX system. However, until then, the EC seems to have a clear message for all EU importers claiming GSP preferences:

“Good faith? -- You get good faith in the next world. In this one you will have the REX system.”[102]

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certification by exporters on origin in relation to the EU’s Overseas Countries and Territories Association Agreement . Hence, the REX system will gain more importance.

[102] Original quote from William Gaddis from his novel “A Frolic of his Own”: “Justice? -- You get justice in the next world. In this one you have the law”.

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