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Directorate-General for Trade  
Directorate G – Market access and Industry

Mr Philippe Jean  
European Commission  
Directorate Enterprise and Industry  
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20 June 2007

Dear Sirs,

### **Reform of preferential rules of origin**

Thank you for your letter of 11 June 2007 in which you are asking for our views with regard to the thresholds to be introduced in the new rules of origin in the Generalised System of Preferences and the adaptation of existing rules for ACP countries. Whilst Cefic welcomes the fact that the Commission is conducting an impact assessment regarding this matter, we consider that more time should have been given for the consultation of stakeholders. Trade associations really need more than one week time to give a constructive feedback on such a complex matter and we hope this can be avoided in the future.

As regards the relevance of the new rules, please note that for the chemical industry this issue is mainly relevant as regards the GSP countries as many emerging countries have an important chemical industry. The ACP countries do not have an important chemical industry and the impact of a change of the rules of origin for these countries is likely to have a negligible impact.

#### **1. New rules of origin for the Generalized System of Preferences**

Regarding the threshold of local content in the added value criterion (30 %, 45 %, or 55-60 %), please note that for us it is not a question of choosing between any of these thresholds: we categorically reject the principle of a single added-value method based on the ex-works price of a product.

The idea of a single added-value method is of concern to us for the following reasons:

- The distribution of responsibilities between operators and authorities is fundamentally changed; in particular, the proposal would discharge the authorities of exporting countries of all responsibilities and shift the burden of proof to the European importer. This requires recognition that the European importer is acting in good faith. We know, however, that in practice the European authorities do not rely on the good faith of

importers, as evidenced by the impossibility to apply Article 220 of the Community Customs Code.

- A single added-value method might work with certain processes, such as outward processing, but it is not suitable for the General System of Preferences as a whole, as the conditions differ considerably.
- The introduction of this single method will by no means simplify the conferring of preferential origin because it introduces a severe element of instability and insecurity into the establishment of the origin by increasing the weight of calculation factors, such as monetary fluctuations or raw materials prices.
- No control procedure of the added value is proposed, neither by the administrations of exporting countries nor by those of importing countries.

Therefore, we fear that your proposal will not provide an incentive for operators to make more use of preferential trade regimes.

Cefic does not believe in a single rule for the determination of the origin and insists that chemical companies need rules which are adapted to the nature of their products, to their processes of transformation and to their modes of production.

Since several years we are pleading for a regime to confer preferential GSP origin which is based on the change in the nature of the product from the transformation in a third country resulting in a different CAS number:

- This change in the nature of the product results from the change of chemical name and CAS number (Chemical Abstract Service number). For chemicals, a substantial transformation can be identified by a change of CAS number. The CAS number is a unique identifier of each chemical and a change of CAS number implies a change in the molecule and should therefore be regarded as substantial change. This rule to determine origin is simple and offers little potential for protectionist abuse and trade distortion.

This is demonstrated by the following example: The esterification of acetic acid to n-butylacetate is origin conferring due to the change of HS subheading 2915.21 to 2915.33. However, the same chemical process of esterification of propionic acid 2915.50 is not changing the HS subheading. It remains 2915.50 and therefore the esterification is in this case not origin conferring. However, when using the change of CAS number it would in both cases confer origin. Moreover, the use of a chemical reaction to determine the origin is also foreseen in the rules of origin of the WTO. The change of CAS number is easy to identify and as shown above more accurate.

- Please note that the CAS registration number is officially used by the European Commission in the ECICS database.
- The change of CAS number would cover all the intermediate stages of the manufacturing process so that there would be no need to take other inputs into

account which are used in the transformation process which confers a new CAS number,

- It would facilitate the status of preferential origin for the production of chemical preparations; indeed, so far it often happens that the manufacture of a product from other products does not change the customs classification; neither does the alternative rule of the % expressed in value apply because of the high cost of certain components.
- In cases where it is not possible to resort to this simple method based on the CAS number (e.g. with preparations, mixtures, etc.) the percentages mentioned in the proposal of the European Commission could be expressed either in volume or value terms, to the choice of the operator. We would like to introduce a special rule for the chemical sector to confer origin for transformation processes which at present are considered insufficient to confer preferential origin (e.g. simple grinding, sifting, sieving, sorting, simple mixture etc. which are far from being simple operations for the chemical industry).

In the bilateral agreements negotiated between the EU and other states, the responsibility of the allocation of the preferential origin should be with the governments. Therefore, we recommend:

- that the authorities of "benefiting" third countries are responsible for the attribution of certificates of origin;
- that the authorities of the exporting country can be held responsible in case of problems and bear the financial liability;
- that importers are only liable in cases of fraud, the burden of proof falling on the authority which disputes the certificate of origin;
- training of the administrations of countries which are considered as non-reliable by the Commission;
- the systematic appeal to the clause of withdrawal of the preferences in case of repeated neglect by the authorities of the exporting country.

## 2. Modification of the ACP agreement, called COTONOU +

The temporary agreement proposed by the European Commission modifies the current preferential rules of origin considerably. The proposed changes are more directed to the rule of change of tariff heading, modify the alternative rule of 40 % and modify the percentage of products of third origin taken under the same tariff position (up to 65%).

These new measures thus take as criterion the change of tariff heading, which is perfectly suitable for the chemical industry. Again, the relevance of these changes is minor for the chemical industry as ACP countries are not major chemical producers.

## **Conclusion**

The GSP was conceived to facilitate trade with developing countries. However, the newly proposed rules are likely to complicate business, considering the fact that the benefits resulting from the elimination or the reduction of customs duties risk being annulled by the costs resulting from customs disputes regarding the proof of preferential origin.

We furthermore insist on the elaboration of rules by sector which would facilitate the task of the operators and would match the specificities of their products.

Cefic also would like to point out that the new system would increase legal uncertainty considerably because the rules of origin are not only used to determine the responsibility for the payment of customs duties, but also for the traceability of products within the framework of the safety/security of trade and their adherence to standards.

Finally, we fear that the proposed reforms will have a negative impact on the bilateral agreements which the European Union intends to negotiate.

We hope our comments will be taken into account and would be pleased to discuss this matter further with you.

Yours sincerely

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(*original signed, sent electronically*)