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Galella, Patricio*: The Approved Exporter Authorization in the EU

Abstract

Currently, there are approximately 300 preferential agreements in force, establishing reduction or elimination of customs duties for originating products. In order for a product to get the mentioned benefits, it must be accompanied by a proof of origin. Within the European Union, the EUR.1 certificate of origin is famous but it coexists with other proofs of origin such as the declaration of origin on an invoice or any commercial document issued by an Approved Exporter. This declaration is a self-certification system issued by those operators who have been authorized by the customs authority. In this paper, we affirm that this system of self-certification of origin by the exporter has tangible benefits for the authorized operator both in terms of time and costs. But this system also poses obligations on the operator because he needs to analyse and confirm that his products comply with the rules of origin established in the European Union preferential agreements. Otherwise, the improper use might lead to the withdrawal of the authorization.

Keywords: *Approved Exporter, declaration of origin, self-certification of origin*

Magyar cím: Az elfogadott exportőr engedély az EU-ban

Absztrakt

Jelenleg körülbelül 300 preferenciális vámügyi megállapodás van hatályban, amelyek a származó termékekre vonatkozó vámok csökkentését vagy eltörlését írják elő. Ahhoz, hogy egy termék az említett kedvezményekben részesülhessen, származási igazolással kell rendelkeznie. Az Európai Unión belül az EUR.1 származási bizonyítványt használnak, de léteznek más származási igazolás típusok is, mint például a számlán szereplő származási nyilatkozat vagy az elfogadott exportőr által kiállított kereskedelmi okmány. A számlanyilatkozat egy önigazolási rendszer, amely során keletkező dokumentumot a vámhatóság által engedélyezett gazdasági szereplők állítanak ki. Ebben az iratban megerősítjük, hogy az exportőr által kiadott önigazolás tényleges előnyökkel jár az engedélyezett gazdálkodó számára mind a vámeljárásokra fordított idő, mind pedig a költségek tekintetében. A rendszer azonban kötelezettségeket is ró a gazdasági szereplőkre, mivel elemezniük és igazolniuk kell, hogy termékeik megfelelnek az Európai Unió preferenciális megállapodásaiban meghatározott származási szabályoknak. Az engedély visszavonásához vezet, ha az ellenőrzést nem végzik el, vagy nem megfelelően alkalmazzák a szabályokat.

Kulcsszavak: *engedélyezett exportőr, származási nyilatkozat, származási igazolás*

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Introduction

International trade consists in the exchange of goods, products and services between two or more countries or economic regions. In order to increase these exchanges and eliminate barriers

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to trade, countries or groups of countries have concluded preferential agreements establishing a reduction or elimination of tariff duties, thus promoting commercial exchanges.

The proliferation of preferential agreements is not a new phenomenon although its rapid escalation began some two decades ago. Currently, there are approximately 300 preferential agreements in force. This proliferation cannot be explained by a single reason, but several of them that affect this phenomenon, the most common being that States or group of States resort to preferential agreements to increase their exports as a consequence of a decrease in customs duties[115].

This reduction or elimination of customs duties is granted to products originating in the countries or regions parties to the agreement. The rules of preferential origin are designed precisely to ensure that goods originating in the countries participating in the agreement enjoy the preferences[116]. Within the European Union, the EUR.1 certificate of origin is famous, and consists in a standardized certificate that must be completed by the exporter and endorsed by the customs authority. This certificate of origin constitutes a proof of origin, allows a more favourable tariff treatment and constitutes the most widely used mean of certification. However, this certificate also coexists with another proof of origin, which is the declaration of origin on an invoice or another commercial document issued by an Approved Exporter. This declaration is a self-certification system that is not new, but the European Union is actively promoting its use in the various free trade agreements it has concluded. This is part of the European Union's position of establishing procedures that facilitate the process of issuing proofs of origin in the European Union.

In this manuscript, the authorization of Approved Exporter will be explained as conceived in the different preferential agreements the European Union has concluded with third States. This is relevant because in terms of origin, the European Union has been progressively moving towards a system of self-certification of origin by the exporter. Thus, in this manuscript, we will analyse the relevance of rightly determining the origin of a product, as well as the benefits of the authorization and the obligations for the operator once the authorization has been received. Finally, a comparison will be made with the Registered Exporter system.

Origin of goods

From the point of view of customs law, the origin of a good is related to the country in which the product has been wholly obtained or has been sufficiently transformed. The European Union has concluded preferential agreements with certain countries or groups of countries, recognizing tariff preferences for products originating from the parties to the agreement. Therefore, determining the origin of the product is essential in order to obtain preferential treatment.

A simple way to define the origin of a product is to understand it as the nationality of the it[117]. The preferential agreements establish the necessary working or processing to be carried out on non-originating materials to determine whether or not a certain product is originating of a particular country. Usually, the working or processing can be summarized as follows:

- Manufacture from materials of a different HS heading than the final product;
- Manufacture from materials of an HS chapter other than the final product;
- Manufacture in which the value of all the materials used does not exceed 40 % or 50% of the ex-works price of the product;

[115] Johnston, A. & Trebilcock, M. (2013), 249.
[116] Wulf, L. & Sokol, J. (2005).
[117] de Anda del Corte, C.M. (2011).

- Manufacture from materials wholly obtained in the country;
- Manufacture from certain raw materials.

The rules mentioned can be required as a single condition or even combined with each other. Each treaty establishes which rule/s is/are applicable based on the product's tariff heading (HS code). That is to say, it could be the case that for a product to be considered as originating in the European Union, two conditions must be met *jointly* or one *or* the other. The nuance is not minor, because it will allow (or not) to get preferential treatment.

Let's look at an example. An Italian company manufactures medicines of heading 30049000 and wants to export them to Mexico by issuing an EUR.1 certificate. As a first step, the Italian company will need to determine whether its product can be considered as originating in Italy. To do this, the company must analyze what the rule of origin of the preferential agreement between the European Union and Mexico establishes for tariff heading 30049000. In this case, the rules are:

a) *Manufacture in which: all the materials used are classified in a heading different from that of the product. However, the materials of heading 3003 or 3004 may be used provided that their value, taken together, do not exceed 20% of the ex-works price of the product*; **and**, b) *the value of all the materials used shall not exceed 50% of the ex-works price of the product.*

It is important to note that when the rules refer to materials, they always mean the non-originating materials and the working or processing on them required in order for the product manufactured to obtain originating status.

Continuing with the example, for the product to be considered originating in Italy, conditions a) and b) must necessarily be met together. On the other hand, it is not enough that the value of non-originating materials does not exceed 50% of the ex-works price of the product (rule b); in this case, rule a) must also be met. If both conditions are not complied with jointly, the product will not be considered originating in Italy and therefore the proof of origin that allows favorable tariff treatment cannot be issued.

Just as the preferential agreements establish the transformations considered sufficient to confer the preferential origin of the goods, they also determine what are those manipulations that are not sufficient to confer the said origin. Among them, we can mention conservation operations to guarantee that the products remain in good condition during transport and storage, division and grouping of packages, washing, cleaning, removal of dust, rust, oil, paint or other coatings, simple painting and polishing operations, placement or printing of marks, labels, logos and other distinctive signs, simple assembly of parts of articles to form a complete article or the disassembly of products into pieces.

Once the origin of the merchandise has been clarified and in order for the preference provided in the agreements to take place, the exporter must provide proof that the product originates from the country for which the benefit is recognized. This proof is called proof of origin. In the treaties the European Union has concluded with third countries or groups of countries, the proof of origin is usually:

a) a certificate of origin (normally the EUR.1 certificate); or
b) a declaration of origin (usually on the invoice or another commercial document) issued by an Approved Exporter.

Approved Exporter authorization in the European Union

An Approved Exporter is an operator established in the European Union, who makes frequent shipments of products originating in the Union and has been authorized by the competent customs authorities to issue declarations of origin in commercial invoices or in another

commercial document. In order to become an Approved Exporter, the operator needs to request the relevant authorization from the competent customs authorities and submit an important number of documents.

The authorization of Approved Exporter allows the economic operator to certify himself the origin of the products to be exported by issuing origin declarations, with the consequent reduction or exemption of customs duties in the country of destination, provided that there is a preferential agreement with that country. The authorization is regulated in Article 67 of Implementing Regulation 2015/2447, by establishing that when the European Union maintains a preferential regime with a third country that establishes that the proof of origin will take the form of a declaration of origin issued by an exporter authorized on an invoice or other commercial document, exporters established in the customs territory of the Union may apply for an authorization as an Approved Exporter.

Currently, the European Union has concluded preferential agreements with third countries, including Mexico, Costa Rica, Colombia, Peru, Morocco, Algeria, Tunisia, South Africa, Israel, Switzerland, etc. All these agreements, except the EU-Syria, Canada and Japan agreement, include the Approved Exporter possibility together with the issuance of EUR.1 certificates. Therefore, two systems (or even three in some agreements) of certification of origin coexist in free trade agreements: certificates of origin and declaration of origin in commercial invoice. Although this is the general rule, it should also be noted that, for now, there is a preferential agreement in which the only proof of origin to obtain the preferential benefit is to be an Approved Exporter. This is the case of the agreement with South Korea. In this agreement, there is no possibility of issuing an EUR.1 certificate of origin. If we look at Articles 15, 16 and 17 of the Protocol on the definition of originating products and methods of administrative cooperation between the European Union and South Korea, only an Approved Exporter can make a declaration of origin. In the case of the agreements with Canada and Japan, as will be seen later, the only proof of origin consists of registration in the Registered Exporter System (REX) and thus obtain the status of Registered Exporter, which is different from the Approved Exporter, as it will be seen below.

The Approved Exporter authorization can be requested both by manufacturers and *traders* established in the territory of the European Union. Customs representatives, on the other hand, cannot request it. In this article, we understand the concept of traders, as those operators who, not being manufacturers, sell products that are originating and acquired from suppliers in the European Union who provide the required form duly signed. This difference between manufacturers and traders has a logical impact on the documentation that the applicant for the Approved Exporter authorization must provide. The big difference between a manufacturer and a trader is that the manufacturer must provide detailed information and explanation of the manufacturing process of his products as well as an explanation of how his products comply with the rules of origin established in the preferential agreements. As explained above, each preferential agreement establishes what transformation must take place in non-originating materials for a product to be considered originating and, therefore, to be able to benefit from preferential tariff treatment. These rules vary according to the preferential agreement and mainly depending on the tariff heading of the product to be exported[118]. Thus, knowing these rules is key.

[118] A tariff heading allows the international identification of a product and determines the type of duties and other taxes applicable to imports and exports, any applicable protection measures (for example, anti-dumping), foreign trade statistics and import and export formalities and other non-tariff requirements. More information on tariff classification can be found here https://ec.europa.eu/taxation_customs/business/calculation-customs-duties/customs-tariff/classification-goods_en

In the case of a manufacturing company, it must determine that its products comply with the rules of origin. To that end, it is necessary to submit a detailed manufacturing process of the products, the materials used, percentage of the ex-works price, etc. that allow the origin to be justified. ON the other hand, in the case of a trader, it will be necessary to obtain a declaration from the supplier stating that the product or material is of European Union origin. These declarations are regulated in Annexes 21-15 (Supplier declaration for products having preferential origin) or 21-16 (Long-term supplier declaration for products having preferential origin) of Implementing Regulation 2015/2447.

One of the key aspects in the supplier declarations is that the merchandise supplied to the applicant should be described in detail and with its corresponding references. If so, customs authorities, when analyzing the documentation submitted in the application, will be able to verify that the product exported is the one purchased from the supplier (and that appear on the purchase invoices), ensuring traceability.

Supplier declarations can be of two types: 1) for each particular shipment, or 2) for several shipments made over a long term. If a declaration is chosen for each shipment, the supplier must provide the model in annex 21-15, while if he chooses to cover a longer period, he must provide the one in annex 21-16. One of the differences between the models is that in the second, shipments that the supplier makes for a maximum period of 24 months can be covered. That is, if the declaration begins its validity period on May 15, 2019, its maximum extension will be until May 14, 2021. Therefore, all purchases from the supplier containing products listed in the declaration during this period of time can be covered. It is important to note that the validity date is directly linked to the date of issuance and that the declaration can also be issued retroactively, but up to a maximum of one year prior to the date of issuance of the declaration.

Therefore, before making an application for authorization of Approved Exporter of origin, it is essential for the exporter to carry out a thorough analysis of its products, manufacturing process, tariff classification and rules of origins indicated in preferential agreements. The operator must also demonstrate that its products and software used allow the identification of the materials purchased, their tariff heading, value, etc., in order to ensure traceability. Thus, as rightly expressed by Díaz Gravier & Verhaeghe, it cannot be said that the authorization of Approved Exporter is a mere formality or an instantaneous procedure[119].

Last but not least, it is important to note that for shipments or exports for an amount less than 6,000 Euros, every exporter, even without being an Approved Exporter, can issue a declaration of origin and obtain preferential treatment.

Procedure to request the authorization

The authorization of Approved Exporter allows the exporter to issue declaration of origin and not have to manage, for each shipment, the EUR.1 certificate of origin. It is a system of self-certification of origin. If the operator decides to apply for the authorization of Approved Exporter, he should do it before the competent authorities where he has his central headquarters or a permanent business establishment and provide the following documentation (among others):

a) the company's articles of incorporation and appointment of its administrators;
b) descriptive report of the activities of the company;
c) explanation of compliance with the rules of origin that allows the merchandise to be considered as originating;
d) explanation of electronic traceability;

[119] Díaz Gravier, P. & Verhaeghe (2012), 315.

e) summary of the rules of origin for the countries to which it is exported and for which preferential agreements have been signed;
f) volume of exports for the last three years.

As established in Article 22 (1) of the European Union Customs Code, the competent customs authority will be the one where the applicant's main accounts are kept or accessible for customs purposes. Once the application has been submitted, customs authorities must check, no later than 30 days from receipt of the application, whether the conditions for acceptance of the application are satisfied. Decisions will be made no later than 120 days from the date of acceptance of the request; this period can be extended for 30 days. However, customs authorities may extend the deadline to take a decision when the applicant requests an extension to ensure compliance with the conditions.

Before granting the authorization, the competent customs authorities must carry out an audit of the applicant, including an analysis of its accounting system, organization, structure and compliance with the rules of origin, among others. In the indicated audit, they will be able to control whether the applicant is qualified to use the authorization.

If customs authorities consider that the conditions are met, they will grant the Approved Exporter authorization number. This number must appear in the declarations of origin made on an invoice or any other commercial document. The customs authorization number must be preceded by the ISO 3166-1-alpha-2 country code of the Member State issuing the authorization. From a practical point of view, in the export SAD the code N864 must be declared in box 44, unlike if it were an EUR.1 certificate, in which the code is N954. In the case of CETA, the code is U088. And in the case of Japan U110.

Usually, the Approved Exporter authorization is granted without a time limit, although a limited duration may also be established. Regarding its scope, authorizations are normally granted broadly, without specifying a particular tariff heading, trusting in the fair use by the operator. However, customs authorities shall monitor the use of the authorization by the approved exporter and may withdraw it at any time[120]. The authorization is valid throughout the European Union, regardless of the customs authority of the country of the European Union that granted it.

Finally, if customs authorities decide to deny the Approved Exporter authorization, their decision must be justified, explaining the reasons or motives on which they rely on. Once the decision has been made, the applicant has 30 days to exercise their right to be heard (as established in Articles 22 (6) of the Union Customs Code, Article 8 of Delegated Regulation 2446/2015). This right to be heard also applies in the event of any decision by the customs authorities in relation to the modification or revocation of the Approved Exporter authorization.

Benefits of being an Approved Exporter

The most obvious benefit for the Approved Exporter is that he does not need to request the EUR.1 certificates of origin[121] because they are replaced by a self-declaration of origin on an invoice or in another commercial document. This declaration issued by an Approved Exporter has the same value as the EUR.1 certificate. This results in greater agility and reduction of time and costs, because there is no necessity to go to Customs for the expedition of the certificate. Besides, it also plays a preventive measure. This is so because sometimes local or destination

[120] Article 77, Implementing Regulation 2447/2015.
[121] Guidance on Approved Exporters (2020).

authorities require EUR.1 certificates to be completed in a certain way, often leading to rectification of certificates, with the consequent loss of time and costs. With the self-declaration, rectifications will not happen because the text of the declaration of origin is standardized and established in the preferential agreement.

In a study carried out by the UK Trade Policy Observatory, in which the researchers conducted interviews with Approved Exporters in the United Kingdom, those interviewed were unanimous in describing the savings derived from being an Approved Exporter in terms of time and costs associated in comparison with issuing certificates of origin. The interviewees agreed that a time saving of between 20 and 30 minutes per shipment is the equivalent of two hours of work for two employees per day, in addition to the costs of courier as well as the cost of the certificate itself[122].

In the case of the AT.R with Turkey, it should be noted that the Approved Exporter authorization does not allow its replacement by the declaration of origin on the invoice, since the existing Customs Union with Turkey does not recognize this possibility. However, it does authorize the use of the simplified procedure. In accordance with article 11.5 of Decision No. 1/2006 of the EC-Turkey Customs Cooperation Committee, to use the simplified procedure in the issuance of ATR movement certificates it will be necessary "a special stamp stamped by an Approved Exporter, admitted by the customs authorities of the State of export, and said stamp may be printed on the forms". For the purposes of its recognition, an impression of the aforementioned seal shall be submitted to the Regional Customs Office corresponding to the tax domicile of the interested party.

Obligations of the Approved Exporter

Every Approved Exporter has the obligation to correctly use the authorization granted. In the European Union, this means the Approved Exporter can only issue invoice declarations for goods that are actually originating from the European Union, either because it has manufactured them and the manufacturing process complies with the rules of origin established in preferential agreements, or, if it is a trader, because it has obtained a declaration from the supplier in this regard, following the mentioned Annexes 22-15 and 22-16.

From the formal point of view, the Approved Exporter must, in the invoice or another commercial document, include a standardized text. It is in this text where the authorization number granted by the competent authorities must be indicated. In the event that the Approved Exporter sells originating and non-originating products in a single invoice, the Exporter must clearly indicate which products are non-originating, and therefore, not likely to be included in the declaration or the preferential benefit. One way to distinguish originating and non-originating products is to indicate the country of origin in parentheses on each product line. Another way is to include two headers on the invoice, one for originating products and one for non-originating products. Another way could also be to list each of the lines of the invoice and at the end of the invoice indicate which of these numbers correspond to originating products and which to non-originating ones[123].

Regarding the obligations about records and documentation, the Approved Exporter must:

a) keep the appropriate commercial accounting records in relation to the production and supply of goods eligible for preferential treatment;
b) keep available all the evidence related to the materials used in the manufacture and send them to the customs authorities if requested;
c) keep all customs documentation related to the materials used in manufacturing;

[122] Holmes P. & Jacob N. (2018).
[123] Guidance on Approved Exporters (2020).

d) keep for a minimum period of three years, starting from the end of the calendar year in which the communication on origin was issued, or for a longer period if required by national legislation;
e) keep records of the communications on origin extended;
f) keep records of the originating and non-originating materials used, as well as their production and inventory records.
g) only issue the declaration of origin on the invoice if it can demonstrate that his products are originating.
h) to keep the suppliers' declarations up to date, verifying that they are not expired and establishing alerts that allow to know in advance when a declaration is about to expire. The supplier has the duty to inform his client regarding any modification that may affect his declaration.

These records and communications on the origin may be kept in electronic format, although they must allow the traceability of the materials used in the manufacture of the exported products and confirm the originating nature of the latter.

As explained before, customs authorities monitor the use of the authorization by the approved exporter and may withdraw it at any time if the exporter does not fulfil anymore the conditions, does not offer guarantees of his originating products or makes an improper use of the authorization.

Registered Exporter (REX) vs Approved Exporter

Along with the authorization of Approved Exporter, the registration in the Registered Exporter System (REX) has appeared on the international scene. This registration implies another system of self-certification of the preferential origin of the goods originally introduced by the European Union aimed to the countries of the autonomous Generalized Systems of Preferences regime (GSP). Progressively, the REX system has begun to be applied in other preferential agreements concluded by the European Union, for example, those with Canada, Japan and Vietnam. The novelty of the agreements with Canada and Japan is that the only proof of the origin of the products is a declaration issued by a Registered Exporter. In other words, being an Approved Exporter is not enough, nor is the issuance of certificates of origin with EUR.1 accepted. On the contrary, Article 15 of the Protocol of Origin of the Free Trade Agreement between the European Union and Vietnam establishes that products originating in the European Union may benefit from preferential treatment when imported into Vietnam upon submission of a declaration of origin made by registered exporters (REX) in an electronic database in accordance with the relevant Union legislation. However, in this agreement, other proofs of origin such as invoice declaration made by an Approved Exporter and the issuance of a EUR.1 are also recognized.

Registered Exporter registration should not be confused with Approved Exporter authorization, although it is true that both are self-certification systems of origin and in both cases operators must always keep the documents justifying the origin of the goods. As for the differences, they imply different authorization numbers and registration procedures. Besides, the text of the declarations of origin on the invoice or commercial document differs.

To become a Registered Exporter, the operator must necessarily register in the REX so that his products enjoy the preferential benefit at destination. Once registered, the operator becomes a Registered Exporter, obtaining a registration number that must be used in invoices or other commercial documents. Any exporter, manufacturer or trader of originating goods, established in the territory of the European Union can be registered in the REX. On the other hand, customs representatives cannot request to become a Registered Exporter.

The operator should keep at all times the documentation proving the origin of the goods that he exports, since his records are subject to controls by the customs authorities. And just as important as the above is the need of the operator, before registering in the REX, to perform a detailed analysis of whether his products comply with the rules of origin established in the preferential agreements and that allows the product to be considered as originating.

Conclusions

The European Union has been progressively moving towards a system of self-certification of origin by the exporter and this system has arrived to stay. The Approved Exporter authorization is one of them and allows the operator to make declarations of origin on an invoice or any other commercial document instead of asking the traditional EUR.1 certificates of origin, with the subsequent agility and reduction of time and costs for the operator. However, the Approved Exporter has the obligation to correctly use the authorization granted by customs authorities and issue declarations of origin only if he has analysed and confirmed that his products comply with the rules of origin established in the European Union preferential agreements. Otherwise, the customs authorities will withdraw the authorization. Therefore, it is essential for the exporter to carry out a thorough analysis of his products, manufacturing process, tariff classification and rules of origins indicated in preferential agreements.

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