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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	21 October 2016
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

No. Cion doc.:	COM(2016) 672 final ANNEX 1
Subject:	ANNEX to the Proposal for a COUNCIL DECISION on the conclusion of an Agreement in the form of an Exchange of Letters between the European Union and the Swiss Confederation on the cumulation of origin between the European Union, the Swiss Confederation, Norway and Turkey in the framework of the Generalised System of Preferences of the European Union

Delegations will find attached document COM(2016) 672 final ANNEX 1.

Encl.: COM(2016) 672 final ANNEX 1



Brussels, 21.10.2016
COM(2016) 672 final

ANNEX 1

ANNEX

to the

Proposal for a COUNCIL DECISION

on the conclusion of an Agreement in the form of an Exchange of Letters between the European Union and the Swiss Confederation on the cumulation of origin between the European Union, the Swiss Confederation, Norway and Turkey in the framework of the Generalised System of Preferences of the European Union

Agreement in the form of an Exchange of Letters between the European Union and the Swiss Confederation on the cumulation of origin between the European Union, the Swiss Confederation, Norway and Turkey in the framework of the Generalised System of Preferences of the European Union

A. Letter from the Union

..., ...

[place and date]

Sir,

1. The European Union ("the Union") and the Swiss Confederation ("Switzerland") as the Parties to this Agreement acknowledge that, for the purposes of the Generalised System of Preferences ("GSP"), both Parties apply similar rules of origin with the following general principles:

- (a) definition of the concept of originating products based on the same criteria;
- (b) provisions for regional cumulation of origin;
- (c) provisions for applying cumulation to materials which originate, within the meaning of their GSP rules of origin, in the Union, Switzerland, Norway or Turkey;
- (d) provisions for a general tolerance for non-originating materials;
- (e) provisions for non-alteration of products from the beneficiary country;
- (f) provisions for issuing or making out replacement proofs of origin;
- (g) requirement for administrative cooperation with the competent authorities in the beneficiary countries on the matter of proofs of origin.

2. The Union and Switzerland shall recognise that materials originating, within the meaning of their respective GSP rules of origin, in the Union, in Switzerland, in Norway or in Turkey, acquire the origin of a beneficiary country of the GSP scheme of either Party if they undergo in that beneficiary country a working or processing going beyond the operations considered as insufficient working or processing to confer the status of originating products. This subparagraph shall apply to materials originating in Norway and Turkey, subject to the completion of the conditions laid down respectively in paragraphs 15 and 16.

The customs authorities of the Member States of the Union and of Switzerland shall provide each other with appropriate administrative cooperation particularly for the purpose of subsequent verification of the proofs of origin in respect of the materials referred to in the preceding subparagraph. The provisions concerning administrative cooperation laid down in Protocol No 3 to the Agreement of 22 July 1972 between the European Economic Community and the Swiss Confederation are to be applied.

The provisions of this paragraph shall not apply to products of Chapters 1 to 24 of the Harmonized Commodity Description and Coding System, adopted by the Organization set-up by the Convention establishing a Customs Co-operation Council, done at Brussels on 15 December 1950 ("Harmonized System").

3. The Union and Switzerland hereby undertake to accept replacement proofs of origin in the form of replacement certificates of origin Form A ("replacement certificates") issued by the customs authorities of the other Party and replacement statements on origin made out by re-consignors of the other Party, registered for that purpose.

Each Party may assess the eligibility for preferential treatment of products covered by replacement proofs of origin in accordance with its own legislation.

4. Each Party shall provide that the following conditions are respected before issuing or making out a replacement proof of origin:

- (a) replacement proofs of origin may only be issued or made out if the initial proofs of origin were issued or made out in accordance with the legislation applicable in the Union or Switzerland;
- (b) only where products have not been released for free circulation in a Party, a proof of origin or a replacement proof of origin may be replaced by one or more replacement proofs of origin for the purpose of sending all or some of the products covered by the initial proof of origin from that Party to the other Party;
- (c) the products shall have remained under customs supervision in the re-consigning Party and shall not have been altered, transformed in any way, or subjected to operations other than those necessary to preserve them in their condition ("principle of non-alteration").
- (h) where products have acquired originating status under a derogation to the rules of origin granted by a Party, replacement proofs of origin shall not be issued or made out if the products are re-consigned to the other Party;
- (i) Replacement proofs of origin may be issued by the customs authorities or made out by the re-consignors where the products to be re-consigned to the territory of the other Party have acquired originating status through regional cumulation;
- (j) Replacement proofs of origin may be issued by the customs authorities or made out by the re-consignors if the products to be re-consigned to the territory of the other Party are not granted preferential treatment by the re-consigning Party.

5. For the purpose of sub-paragraph 4(c), the following shall apply:

Where there appear to be grounds for doubt as regards compliance with the principle of non-alteration, the customs authorities of the Party of final destination may request the declarant to provide evidence of compliance with that principle, which may be given by any means.

Upon request by the re-consignor, the customs authorities of the re-consigning Party shall certify that the products have remained under customs supervision during their stay in the territory of that Party and that no authorisation to alter, transform in any way, or subject them to operations other than those necessary to preserve them in their condition was granted by the customs authorities during their storage in the territory of the Party.

Where the replacement proof is a replacement certificate, the customs authorities of the Party of final destination shall not request a certificate of non-manipulation for the time the products were in the other Party.

6. Each Party shall ensure that:

- (a) where the replacement proofs of origin correspond to the initial proofs of origin issued or made out in a beneficiary country of the GSP scheme of the Union and of that of Switzerland, the customs authorities of the Member States of the Union and of Switzerland shall provide each other with appropriate administrative cooperation for the purpose of subsequent verification of these replacement proofs of origin. At the request of the Party of final destination, the customs authorities of the re-consigning Party shall launch and follow up the procedure of subsequent verification of the corresponding initial proofs of origin;
- (b) when the replacement proofs of origin correspond to the initial proofs of origin issued or made out in a country exclusively beneficiary of the GSP scheme of the Party of final destination, that Party shall carry out the procedure of subsequent verification of the initial proofs of origin in cooperation with the beneficiary country. The initial proofs of origin corresponding to the replacement proofs of origin under verification or, where appropriate, copies of the initial proofs of origin corresponding to the replacement proofs of origin under verification shall be provided by the customs authorities of the re-consigning Party to the customs authorities of the Party of final destination in order to allow them to carry out the procedure of subsequent verification.

7. Each Party shall ensure that:

- (a) the top right-hand box of each replacement certificate shall indicate the name of the intermediary country of re-consignment where it is issued;
- (b) box 4 shall contain the words 'replacement certificate' or 'certificat de remplacement', as well as the date of issue of the initial certificate of origin Form A and its serial number;
- (c) the name of the re-consignor shall be given in box 1;
- (d) the name of the final consignee may be given in box 2;
- (e) all particulars of the re-consigned products appearing on the initial certificate shall be transferred to boxes 3 to 9;
- (f) references to the re-consignor's invoice may be given in box 10;
- (g) the customs authority which issued the replacement certificate shall endorse box 11. The responsibility of the authority is confined to the issue of the replacement certificate. The particulars in box 12 concerning the country of origin and the country of final destination shall be taken from the initial certificate of origin Form A. The re-consignor shall sign the certificate of origin in Box 12. A re-consignor who signs box 12 in good faith shall not be held responsible for the accuracy of the particulars entered on the initial certificate of origin Form A;

- (h) the customs authority which is requested to issue the replacement certificate shall note on the initial certificate of origin Form A the weights, numbers and nature of the products forwarded and indicate thereon the serial numbers of each corresponding replacement certificate or certificates. It shall keep the request for the replacement certificate as well as the initial certificate of origin Form A for at least three years.
- (i) Replacement certificates of origin shall be established in English or French.

8. Each Party shall provide that:

- (a) the re-consignor shall indicate the following on each replacement statement on origin:
 - (1) all particulars of the re-consigned products taken from the initial proof of origin;
 - (2) the date on which the initial proof of origin was made out;
 - (3) the particulars of the initial proof of origin, including, where appropriate, information about cumulation applied to the goods covered by the statement on origin;
 - (4) the name, address and his registered exporter number;
 - (5) the name and address of the consignee in the Union or in Switzerland;
 - (6) the date and place of making out the statement on origin or issuing the certificate of origin;
- (b) each replacement statement on origin shall be marked 'Replacement statement', or 'Attestation de remplacement';
- (c) replacement statements on origin shall be made out by re-consignors registered in the electronic system of self-certification of the origin by exporters, called Registered Exporter (REX) System, irrespective of the value of the originating products contained in the initial consignment;
- (d) where a proof of origin is replaced, the re-consignor shall indicate the following on the initial proof of origin:
 - (1) the date of making out the replacement statement(s) on origin and the quantities of goods covered by the replacement statement(s) on origin;
 - (2) the name and address of the re-consignor;
 - (3) the name and address of the consignee or consignees in the Union or in Switzerland;
- (e) the initial statement on origin shall be marked with the word 'Replaced' or 'Remplacé';
- (f) a replacement statement on origin shall be valid for twelve months from the date of its making out.

(g) Replacement statements on origin shall be established in English or French.

9. The initial proofs of origin and copies of the replacement proofs of origin shall be kept by the re-consignor for at least three years from the end of the calendar year in which the replacement proofs of origin were issued or made out.

10. The Parties agree to share the costs of the REX system in accordance with the modalities of cooperation to be laid down between the competent authorities of the Parties.

11. Any differences between the Parties arising from the interpretation or application of this Agreement shall be settled solely by bilateral negotiation between the Parties. If the differences may affect the interests of Norway and/or Turkey, they shall be consulted.

12. The Parties may amend this Agreement by mutual agreement in written form at any time. Both Parties shall enter into consultation with respect to possible amendments to this Agreement at the request of one of the Parties. If the amendments may affect the interests of Norway and/or Turkey, they shall be consulted. Such amendments shall enter into force on a mutually agreed date, once both Parties have notified each other of the completion of their respective internal requirements.

13. In the event of serious misgivings as to the proper functioning of this Agreement, either Party may suspend its application provided that the other Party has been notified in writing three months in advance.

14. This Agreement may be terminated by either Party provided that the other Party has been notified in writing three months in advance.

15. The first sub-paragraph of paragraph 2 shall apply to materials originating in Norway only if the Parties have concluded a similar agreement with Norway and have notified each other of the completion of this condition.

16. The first sub-paragraph of paragraph 2 shall apply to materials originating in Turkey¹ only if the Parties have concluded a similar agreement with Turkey and have notified each other of the completion of this condition.

17. As from the entry into force of the Agreement between Switzerland and Turkey according to the first sub-paragraph of paragraph 2 of this Agreement, and subject to reciprocity by Turkey, each party may provide that replacement proofs of origin for products incorporating materials originating in Turkey which have been processed under bilateral cumulation in GSP beneficiary countries may be issued or made out in the Parties.

18. This Agreement shall enter into force on a mutually agreed date, once the Union and Switzerland have notified each other of the completion of the internal adoption procedures required. From that date, it shall replace the Agreement in the form of an Exchange of Letters signed on 14 December 2000².

¹ The Union completed this condition through the publication of the notice from the Commission pursuant to Article 85 of Regulation (EEC) No 2454/93, implementing the provisions of the Community Customs Code extending to Turkey the bilateral cumulation system established by that Article; OJ C134, 15.4.2016, p.1

² OJ L 38, 8.2.2001, p. 24.

I would be obliged if you would confirm that your Government is in agreement with the above.

I have the honour to propose that, if the above is acceptable to your Government, this letter and your confirmation shall together constitute an Agreement between the European Union and the Swiss Confederation.

Please accept, Sir, the assurance of my highest consideration.

For the European Union,

B. Letter from Switzerland

Sir,

I have the honour to acknowledge receipt of your letter which reads as follows:

1. The European Union ("Union") and the Swiss Confederation ("Switzerland") as the Parties to this Agreement acknowledge that, for the purposes of the Generalised System of Preferences ("GSP"), both Parties apply similar rules of origin with the following general principles:

- (a) definition of the concept of originating products based on the same criteria;
- (b) provisions for regional cumulation of origin;
- (c) provisions for applying cumulation to materials which originate, within the meaning of their GSP rules of origin, in the Union, Switzerland, Norway or Turkey;
- (d) provisions for a general tolerance for non-originating materials;
- (e) provisions for non-alteration of products from the beneficiary country;
- (f) provisions for issuing or making out replacement proofs of origin;
- (g) requirement for administrative cooperation with the competent authorities in the beneficiary countries on the matter of proofs of origin.

2. The Union and Switzerland shall recognise that materials originating, within the meaning of their respective GSP rules of origin, in the Union, in Switzerland, in Norway or in Turkey, acquire the origin of a beneficiary country of the GSP scheme of either Party if they undergo in that beneficiary country a working or processing going beyond the operations considered as insufficient working or processing to confer the status of originating products. This subparagraph shall apply to materials originating in Norway and Turkey, subject to the completion of the conditions laid down respectively in paragraphs 15 and 16.

The customs authorities of the Member States of the Union and of Switzerland shall provide each other with appropriate administrative cooperation particularly for the purpose of subsequent verification of the proofs of origin in respect of the materials referred to in the preceding subparagraph. The provisions concerning administrative cooperation laid down in Protocol No 3 to the Agreement of 22 July 1972 between the European Economic Community and the Swiss Confederation are to be applied.

The provisions of this paragraph shall not apply to products of Chapters 1 to 24 of the Harmonized Commodity Description and Coding System, adopted by the Organization set-up by the Convention establishing a Customs Co-operation Council, done at Brussels on 15 December 1950 ("Harmonized System").

3. The Union and Switzerland hereby undertake to accept replacement proofs of origin in the form of replacement certificates of origin Form A ("replacement certificates") issued by the

customs authorities of the other Party and replacement statements on origin made out by re-consignors of the other Party, registered for that purpose.

Each Party may assess the eligibility for preferential treatment of products covered by replacement proofs of origin in accordance with its own legislation.

4. Each Party shall provide that the following conditions are respected before issuing or making out a replacement proof of origin:

- (a) replacement proofs of origin may only be issued or made out if the initial proofs of origin were issued or made out in accordance with the legislation applicable in the Union or Switzerland;
- (b) only where products have not been released for free circulation in a Party, a proof of origin or a replacement proof of origin may be replaced by one or more replacement proofs of origin for the purpose of sending all or some of the products covered by the initial proof of origin from that Party to the other Party;
- (c) the products shall have remained under customs supervision in the re-consigning Party and shall not have been altered, transformed in any way, or subjected to operations other than those necessary to preserve them in their condition ("principle of non-alteration").
- (h) where products have acquired originating status under a derogation to the rules of origin granted by a Party, replacement proofs of origin shall not be issued or made out if the products are re-consigned to the other Party;
- (i) Replacement proofs of origin may be issued by the customs authorities or made out by the re-consignors where the products to be re-consigned to the territory of the other Party have acquired originating status through regional cumulation;
- (j) Replacement proofs of origin may be issued by the customs authorities or made out by the re-consignors if the products to be re-consigned to the territory of the other Party are not granted preferential treatment by the re-consigning Party.

5. For the purpose of sub-paragraph 4(c), the following shall apply:

Where there appear to be grounds for doubt as regards compliance with the principle of non-alteration, the customs authorities of the Party of final destination may request the declarant to provide evidence of compliance with that principle, which may be given by any means.

Upon request by the re-consignor, the customs authorities of the re-consigning Party shall certify that the products have remained under customs supervision during their stay in the territory of that Party and that no authorisation to alter, transform in any way, or subject them to operations other than those necessary to preserve them in their condition was granted by the customs authorities during their storage in the territory of the Party.

Where the replacement proof is a replacement certificate, the customs authorities of the Party of final destination shall not request a certificate of non-manipulation for the time the products were in the other Party.

6. Each Party shall ensure that:

- (a) where the replacement proofs of origin correspond to the initial proofs of origin issued or made out in a beneficiary country of the GSP scheme of the Union and of that of Switzerland, the customs authorities of the Member States of the Union and of Switzerland shall provide each other with appropriate administrative cooperation for the purpose of subsequent verification of these replacement proofs of origin. At the request of the Party of final destination, the customs authorities of the re-consigning Party shall launch and follow up the procedure of subsequent verification of the corresponding initial proofs of origin;
- (b) when the replacement proofs of origin correspond to the initial proofs of origin issued or made out in a country exclusively beneficiary of the GSP scheme of the Party of final destination, that Party shall carry out the procedure of subsequent verification of the initial proofs of origin in cooperation with the beneficiary country. The initial proofs of origin corresponding to the replacement proofs of origin under verification or, where appropriate, copies of the initial proofs of origin corresponding to the replacement proofs of origin under verification shall be provided by the customs authorities of the re-consigning Party to the customs authorities of the Party of final destination in order to allow them to carry out the procedure of subsequent verification.

7. Each Party shall ensure that:

- (a) the top right-hand box of each replacement certificate shall indicate the name of the intermediary country of re-consignment where it is issued;
- (b) box 4 shall contain the words 'replacement certificate' or 'certificat de remplacement', as well as the date of issue of the initial certificate of origin Form A and its serial number;
- (c) the name of the re-consignor shall be given in box 1;
- (d) the name of the final consignee may be given in box 2;
- (e) all particulars of the re-consigned products appearing on the initial certificate shall be transferred to boxes 3 to 9;
- (f) references to the re-consignor's invoice may be given in box 10;
- (g) the customs authority which issued the replacement certificate shall endorse box 11. The responsibility of the authority is confined to the issue of the replacement certificate. The particulars in box 12 concerning the country of origin and the country of final destination shall be taken from the initial certificate of origin Form A. The re-consignor shall sign the certificate of origin in Box 12. A re-consignor who signs box 12 in good faith shall not be held responsible for the accuracy of the particulars entered on the initial certificate of origin Form A;
- (h) the customs authority which is requested to issue the replacement certificate shall note on the initial certificate of origin Form A the weights, numbers and nature of the products forwarded and indicate thereon the serial numbers of each corresponding

replacement certificate or certificates. It shall keep the request for the replacement certificate as well as the initial certificate of origin Form A for at least three years.

- (i) Replacement certificates of origin shall be established in English or French.

8. Each Party shall provide that:

- (a) the re-consignor shall indicate the following on each replacement statement on origin:
 - (1) all particulars of the re-consigned products taken from the initial proof of origin;
 - (2) the date on which the initial proof of origin was made out;
 - (3) the particulars of the initial proof of origin, including, where appropriate, information about cumulation applied to the goods covered by the statement on origin;
 - (4) the name, address and his registered exporter number;
 - (5) the name and address of the consignee in the Union or in Switzerland;
 - (6) the date and place of making out the statement on origin or issuing the certificate of origin;
- (b) each replacement statement on origin shall be marked 'Replacement statement', or 'Attestation de remplacement';
- (c) replacement statements on origin shall be made out by re-consignors registered in the electronic system of self-certification of the origin by exporters, called Registered Exporter (REX) System, irrespective of the value of the originating products contained in the initial consignment;
- (d) where a proof of origin is replaced, the re-consignor shall indicate the following on the initial proof of origin:
 - (a) the date of making out the replacement statement(s) on origin and the quantities of goods covered by the replacement statement(s) on origin;
 - (2) the name and address of the re-consignor;
 - (3) the name and address of the consignee or consignees in the Union or in Switzerland;
- (e) the initial statement on origin shall be marked with the word 'Replaced' or 'Remplacé';
- (f) a replacement statement on origin shall be valid for twelve months from the date of its making out.
- (g) Replacement statements on origin shall be established in English or French.

9. The initial proofs of origin and copies of the replacement proofs of origin shall be kept by the re-consignor for at least three years from the end of the calendar year in which the replacement proofs of origin were issued or made out.

10. The Parties agree to share the costs of the REX system in accordance with the modalities of cooperation to be laid down between the competent authorities of the Parties.

11. Any differences between the Parties arising from the interpretation or application of this Agreement shall be settled solely by bilateral negotiation between the Parties. If the differences may affect the interests of Norway and/or Turkey, they shall be consulted.

12. The Parties may amend this Agreement by mutual agreement in written form at any time. Both Parties shall enter into consultation with respect to possible amendments to this Agreement at the request of one of the Parties. If the amendments may affect the interests of Norway and/or Turkey, they shall be consulted. Such amendments shall enter into force on a mutually agreed date, once both Parties have notified each other of the completion of their respective internal requirements.

13. In the event of serious misgivings as to the proper functioning of this Agreement, either Party may suspend its application provided that the other Party has been notified in writing three months in advance.

14. This Agreement may be terminated by either Party provided that the other Party has been notified in writing three months in advance.

15. The first sub-paragraph of paragraph 2 shall apply to materials originating in Norway only if the Parties have concluded a similar agreement with Norway and have notified each other of the completion of this condition.

16. The first sub-paragraph of paragraph 2 shall apply to materials originating in Turkey³ only if the Parties have concluded a similar agreement with Turkey and have notified each other of the completion of this condition.

17. As from the entry into force of the Agreement between Switzerland and Turkey according to the first sub-paragraph of paragraph 2 of this Agreement, and subject to reciprocity by Turkey, each party may provide that replacement proofs of origin for products incorporating materials originating in Turkey which have been processed under bilateral cumulation in GSP beneficiary countries may be issued or made out in the Parties.

18. This Agreement shall enter into force on a mutually agreed date, once the Union and Switzerland have notified each other of the completion of the internal adoption procedures required. From that date, it shall replace the Agreement in the form of an Exchange of Letters signed on 14 December 2000⁴.

I have the honour to confirm the Agreement of my government to the above.

³ The Union completed this condition through the publication of the notice from the Commission pursuant to Article 85 of Regulation (EEC) No 2454/93, implementing the provisions of the Community Customs Code extending to Turkey the bilateral cumulation system established by that Article; OJ C134, 15.4.2016, p.1

⁴ OJ L 38, 8.2.2001, p. 24.