COUNCIL DECISION (EU) 2018/1486

of 28 September 2018

on the position to be taken on behalf of the European Union within the Customs Sub-Committee established by the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part, as regards the replacement of Protocol I to that Agreement, concerning the definition of the concept of 'originating products' and methods of administrative cooperation, by a new protocol which refers to the Regional Convention on pan-Euro-Mediterranean preferential rules of origin

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part [1] ('the Agreement') was signed by the Union in accordance with Council Decision 2014/668/EU [2] and entered into force on 1 September 2017.

(2) Pursuant to paragraph 1 of Article 39 of Protocol I to the Agreement ('Protocol I'), the Customs Sub-Committee established under Article 83 of Chapter 5 of Title IV of the Agreement ('the Customs Sub-Committee') may adopt amendments to the provisions of that Protocol.

(3) Pursuant to paragraph 2 of Article 39 of Protocol I, the Customs Sub-Committee may also decide, following the accession of Ukraine to the Regional Convention on pan-Euro-Mediterranean preferential rules of origin [3] ('the Convention'), to replace the rules of origin set out in that Protocol by those appended to the Convention.

(4) The Convention lays down provisions on the origin of goods traded under relevant agreements concluded between the Contracting Parties and entered into force in relation to the Union on 1 May 2012 and in relation to Ukraine on 1 February 2018.

(5) The Customs Sub-Committee is to adopt a Decision on the replacement of Protocol I, concerning the definition of the concept of 'originating products' and methods of administrative cooperation, by a new protocol which refers to the Convention.

(6) It is appropriate to establish the position to be taken on the Union's behalf in the Customs Sub-Committee as the Decision of the Customs Sub-Committee will be binding on the Union.

(7) Article 6 of the Convention provides that each Contracting Party is to take appropriate measures to ensure that the Convention is effectively applied. To that effect, Protocol I should be replaced by a new protocol which, with regard to the rules of origin, refers to the Convention.

(8) The position to be taken on the Union's behalf within the Customs Sub-Committee should therefore be based on the draft Decision attached to this Decision.

(9) As the Decision of the Customs Sub-Committee is to amend Protocol I, it should be published in the *Official Journal of the European Union*.

(10) Within the Customs Sub-Committee, the Union is to be represented by the Commission in accordance with paragraph 1 of Article 17 of the Treaty on European Union,

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[1] OJ L 161, 29.5.2014, p. 3.

[2] Council Decision 2014/668/EU of 23 June 2014 on the signing, on behalf of the European Union, and provisional application of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part, as regards Title III (with the exception of the provisions relating to the treatment of third-country nationals legally employed as workers in the territory of the other Party) and Titles IV, V, VI and VII thereof, as well as the related Annexes and Protocols (OJ L 278, 20.9.2014, p. 1).

[3] OJ L 54, 26.2.2013, p. 4.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf within the Customs Sub-Committee established under Article 83 of the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part ('the Customs Sub-Committee') shall be based on the draft Decision attached to this Decision.

Article 2

Minor technical corrections to the draft Decision referred to in Article 1 may be agreed to by the representatives of the Union in the Customs Sub-Committee without a further decision of the Council.

Article 3

This Decision is addressed to the Commission.

Done at Brussels, 28 September 2018.

For the Council
The President
M. SCHRAMBÖCK

DRAFT

DECISION No …/2018 OF THE EU-UKRAINE CUSTOMS SUB-COMMITTEE

of …

replacing Protocol I to the EU-Ukraine Association Agreement, concerning the definition of the concept of 'originating products' and methods of administrative cooperation

THE EU-UKRAINE CUSTOMS SUB-COMMITTEE,

Having regard to the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part ([1]), and in particular Article 26(2) thereof,

Having regard to Protocol I to the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part, concerning the definition of the concept of 'originating products' and methods of administrative cooperation,

Whereas:

(1) Article 26(2) of the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part ('the Agreement') refers to Protocol I to the Agreement ('Protocol I') for the rules of origin.

(2) The Agreement entered into force on 1 September 2017.

(3) Article 39 of Protocol I provides that the Customs Sub-Committee established under Article 83 of Chapter 5 of Title IV of the Agreement may decide to amend the provisions of that Protocol and replace the rules of origin set out in that Protocol.

(4) The Regional Convention on pan-Euro-Mediterranean preferential rules of origin ([2]) ('the Convention') aims to replace the protocols on rules of origin currently in force in the countries of the pan-Euro-Mediterranean area with a single legal act.

(5) The European Union signed the Convention on 15 June 2011. On 16 May 2017, the Joint Committee established under Article 3(1) of the Convention decided that Ukraine should be invited to accede to the Convention ([3]).

(6) The European Union deposited its instrument of acceptance with the depositary of the Convention on 26 March 2012. Ukraine deposited its instrument of acceptance with the depositary of the Convention on 19 December 2017. As a consequence, in application of Article 10(2) and (3) thereof, the Convention entered into force in relation to the Union on 1 May 2012 and in relation to Ukraine on 1 February 2018.

(7) Protocol I should therefore be replaced by a new protocol which refers to the Convention,

HAS ADOPTED THIS DECISION:

Article 1

Protocol I to the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part, concerning the definition of the concept of 'originating products' and methods of administrative cooperation shall be replaced by the text set out in the Annex to this Decision.

Article 2

This Decision shall be published in the *Official Journal of the European Union*.

([1]) OJ L 161, 29.5.2014, p. 3.
([2]) OJ L 54, 26.2.2013, p. 4.
([3]) Decision No 1/2017 of the Joint Committee of the Regional Convention on pan-Euro-Mediterranean preferential rules of origin of 16 May 2017 as regards the request of Ukraine to become a Contracting Party to the Regional Convention on pan-Euro-Mediterranean preferential rules of origin [2017/1367] (OJ L 191, 22.7.2017, p. 11).

Article 3

This Decision shall enter into force on the date of its adoption.

It shall apply from …

Done at …,

For the EU-Ukraine Customs Sub-Committee
The Chairman

ANNEX

Protocol I

concerning the definition of the concept of 'originating products' and methods of administrative cooperation

Article 1

Applicable rules of origin

1. For the purpose of implementing this Agreement, Appendix I and the relevant provisions of Appendix II to the Regional Convention on pan-Euro-Mediterranean preferential rules of origin [1] ('the Convention') shall apply.

2. All references to the 'relevant Agreement' in Appendix I and in the relevant provisions of Appendix II to the Convention shall be construed as referring to this Agreement.

Article 2

Dispute settlement

1. Where disputes arise in relation to the verification procedures of Article 32 of Appendix I to the Convention that cannot be settled between the customs authorities requesting the verification and the customs authorities responsible for carrying out that verification, they shall be submitted to the Customs Sub-Committee. The provisions on the dispute settlement mechanism in Chapter 14 (Dispute Settlement) of Title IV (Trade and Trade-related Matters) of this Agreement shall not apply.

2. In all cases the settlement of disputes between the importer and the customs authorities of the importing country shall take place under the legislation of that country.

Article 3

Amendments to the Protocol

The Customs Sub-Committee may decide to amend the provisions of this Protocol.

Article 4

Withdrawal from the Convention

1. Should either the European Union or Ukraine give notice in writing to the depositary of the Convention of their intention to withdraw from the Convention in accordance with Article 9 thereof, the European Union and Ukraine shall immediately enter into negotiations on rules of origin for the purpose of implementing this Agreement.

2. Until the entry into force of such newly negotiated rules of origin, the rules of origin contained in Appendix I and, where appropriate, the relevant provisions of Appendix II to the Convention, applicable at the moment of withdrawal, shall continue to apply to this Agreement. However, as of the moment of withdrawal, the rules of origin contained in Appendix I and, where appropriate, the relevant provisions of Appendix II to the Convention shall be construed as allowing bilateral cumulation between the European Union and Ukraine only.

Article 5

Transitional provisions – cumulation

Notwithstanding Articles 16(5) and 21(3) of Appendix I to the Convention, where cumulation involves only EFTA States, the Faroe Islands, the European Union, Turkey, the participants in the Stabilisation and Association Process, the Republic of Moldova, Georgia and Ukraine, the proof of origin may be a movement certificate EUR.1 or an origin declaration.

[1] OJ L 54, 26.2.2013, p. 4.