

DECISIONS

COUNCIL DECISION (EU) 2023/909

of 25 April 2023

on the position to be taken on behalf of the European Union within the Trade Committee established under the Free Trade Agreement between the European Union and the Socialist Republic of Viet Nam, as regards the amendment of Protocol 1 concerning the definition of the concept of ‘originating products’ and methods of administrative cooperation

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207(4), first subparagraph, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Free Trade Agreement between the European Union and the Socialist Republic of Viet Nam ⁽¹⁾ (‘the Agreement’) was concluded by the Union by Council Decision (EU) 2020/753 ⁽²⁾ and entered into force on 1 August 2020.
- (2) Pursuant to Article 36 of Protocol 1 to the Agreement (‘Protocol 1’), the Committee on Customs may review the provisions of Protocol 1 and submit a proposal for a decision to be adopted by the Trade Committee.
- (3) Pursuant to Article 17.1 of the Agreement, the Trade Committee is to evaluate and adopt decisions, where provided for in the Agreement, regarding any subject matter referred to it by the Committee on Customs.
- (4) The Trade Committee is to adopt a Decision amending Annex II to Protocol 1.
- (5) Amendments were introduced on 1 January 2017 and on 1 January 2022 in relation to the nomenclature governed by the Convention on the Harmonized Commodity Description and Coding System (‘HS’). This Decision is necessary in order to update Protocol 1 and its annexes so as to reflect the latest version of the HS.
- (6) There is no condition in Annex II to Protocol 1 for considering knitted or crocheted products of Heading 6212 to be sufficiently worked or processed. The rule of Chapter 62 in Annex II to Protocol 1 cannot be applied to those products, since it is limited to products not knitted or crocheted. Therefore, a specific rule should be added for the knitted or crocheted products of Heading 6212.
- (7) The required working or processing of products classified in Chapter 41 in Annex II to Protocol 1 is to be added to the relevant column in that Annex.
- (8) The word ‘individual’ in the third and fourth conditions of the required working or processing of products classified in Chapter 19 in Annex II to Protocol 1 could be interpreted in different ways as regards the content of materials of Chapter 4 and the content of sugar. To clarify the rule, the word ‘individual’ is to be deleted in both instances.
- (9) For textile products classified in Chapter 62 in Annex II to Protocol 1, reference to the tolerances should be inserted in the various alternative rules of the required working or processing column.

⁽¹⁾ OJ L 186, 12.6.2020, p. 3.

⁽²⁾ Council Decision (EU) 2020/753 of 30 March 2020 on the conclusion of the Free Trade Agreement between the European Union and the Socialist Republic of Viet Nam (OJ L 186, 12.6.2020, p. 1).

- (10) It is appropriate to establish the position to be taken on the Union's behalf in the Committee on Customs and in the Trade Committee, as the Decision of the Trade Committee will be binding on the Union.
- (11) The position of the Union within the Committee on Customs and within the Trade Committee should therefore be based on the attached draft Decision,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf within the Committee on Customs and within the Trade Committee shall be based on the draft Decision of the Trade Committee attached to this Decision.

Minor technical corrections to the draft Decision may be agreed by the representatives of the Union within the Committee on Customs and within the Trade Committee without any further decision of the Council.

Article 2

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

Done at Luxembourg, 25 April 2023.

For the Council
The President
P. KULLGREN

DRAFT

DECISION No .../... OF THE TRADE COMMITTEE

of ...

**amending Annex II to Protocol 1, concerning the definition of the concept of ‘originating products’
and methods of administrative cooperation**

THE TRADE COMMITTEE,

Having regard to the Free Trade Agreement between the European Union and the Socialist Republic of Viet Nam, and in particular Article 36(1) of Protocol 1 thereto, and Article 17.1(3), point (c), thereof,

Whereas:

- (1) Article 36(1) of Protocol 1 to the Free Trade Agreement between the European Union and the Socialist Republic of Viet Nam (‘the Agreement’) provides that the Committee on Customs may review the provisions of Protocol 1 and is to submit a proposal for a decision to amend Protocol 1, which is to be adopted by the Trade Committee.
- (2) Article 17.4(1) of the Agreement provides that the Trade Committee may adopt binding decisions where provided for in the Agreement.
- (3) Amendments were introduced on 1 January 2017 and on 1 January 2022 in relation to the nomenclature governed by the Convention on the Harmonized Commodity Description and Coding System (‘HS’). The Parties to the Agreement have agreed to amend Annex II to Protocol 1 containing the list of required working or processing in order to reflect the amendments to HS.
- (4) There is no condition in Annex II to Protocol 1 for considering knitted or crocheted products of Heading 6212 to be sufficiently worked or processed. The rule of Chapter 62 in Annex II to Protocol 1 cannot be applied to those products, since it is limited to products not knitted or crocheted. Therefore, a specific rule should be added for the knitted or crocheted products of Heading 6212.
- (5) The required working or processing of products classified in Chapter 41 in Annex II to Protocol 1 is to be added to the relevant column in that Annex.
- (6) The word ‘individual’ in the third and fourth conditions of the required working or processing of products classified in Chapter 19 in Annex II to Protocol 1 could be interpreted differently as regards the content of materials of Chapter 4 and the content of sugar. To clarify the rule, the word ‘individual’ is to be deleted in both instances.
- (7) For textile products classified in Chapter 62 in Annex II to Protocol 1, reference to the tolerances should be inserted in the various alternative rules of the required working or processing column.
- (8) Annex II to Protocol 1 to the Agreement should therefore be amended,

HAS ADOPTED THIS DECISION:

Article 1

Annex II to Protocol 1 to the Agreement is amended as set out in the Annex to this Decision.

Article 2

This Decision shall enter into force on 1 January 2024.

Done in duplicate in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish, Swedish and Vietnamese languages, each text being equally authentic.

Done at Brussels and Hanoi,

For the Trade Committee
The Co-Chairs

ANNEX

Annex II to Protocol 1 is amended as follows:

- (1) in the row related to heading '0305', the text in the column 'Description of the good' is replaced by the following:

'fish, dried, salted or in brine; smoked fish, whether or not cooked before or during the smoking process;';

- (2) in the row related to heading 'ex 0306', the text in the column 'Description of the good' is replaced by the following:

'crustaceans, whether in shell or not, dried, salted or in brine; smoked crustaceans, whether in shell or not, whether or not cooked before or during the smoking process; crustaceans, in shell, cooked by steaming or by boiling in water, whether or not chilled, frozen, dried, salted or in brine;';

- (3) in the row related to heading 'ex 0307', the text in the column 'Description of the good' is replaced by the following:

'molluscs, whether in shell or not, dried, salted or in brine; smoked molluscs, whether in shell or not, whether or not cooked before or during the smoking process;';

- (4) in the row related to heading 'ex 0308', the text in the column 'Description of the good' is replaced by the following:

'aquatic invertebrates other than crustaceans and molluscs, dried, salted or in brine; smoked aquatic invertebrates other than crustaceans and molluscs, whether or not cooked before or during the smoking process; and';

- (5) between the row related to heading 'ex 0308' and the row related to 'ex Chapter 4', the following row is inserted:

'0309	flours, meals and pellets of fish, crustaceans, molluscs and other aquatic invertebrates, fit for human consumption	Manufacture in which all the materials of Chapter 3 used are wholly obtained.;
-------	---	--

- (6) in the row related to heading 'ex Chapter 15', the text in the column 'Description of the good' is replaced by the following:

'Animal, vegetable or microbial fats and oils and their cleavage products; prepared edible fats; animal or vegetable waxes; except for;';

- (7) in the row related to heading '1516 and 1517', the text in the column 'Description of the good' is replaced by the following:

'animal, vegetable or microbial fats and oils and their fractions, partly or wholly hydrogenated, inter-esterified, re-esterified or elaidinised, whether or not refined, but not further prepared;

margarine; edible mixtures or preparations of animal, vegetable or microbial fats or oils or of fractions of different fats or oils of this Chapter, other than edible fats and oils or their fractions of heading 1516; and';

- (8) in the row related to heading 'Chapter 16', the text in the column 'Description of the good' is replaced by the following:

'Preparations of meat, of fish, of crustaceans, molluscs or other aquatic invertebrates, or of insects.;

- (9) in the row related to heading 'Chapter 19', the text in the column 'Required working or Processing' is replaced by the following:

'Manufacture from materials of any heading, except that of the product, in which:

— the weight of the materials of Chapters 2, 3 and 16 used does not exceed 20 % of the weight of the final product;

- the weight of the materials of headings 1006 and 1101 to 1108 used does not exceed 20 % of the weight of the final product;
- the weight of the materials of Chapter 4 used does not exceed 20 % of the weight of the final product;
- the weight of sugar used does not exceed 40 % of the weight of the final products; and
- the total combined weight of sugar and the materials of Chapter 4 used does not exceed 50 % of the weight of the final product.;

(10) in the row related to heading 'ex Chapter 24', the text in the column 'Description of the good ' is replaced by the following:

'Tobacco and manufactured tobacco substitutes; products, whether or not containing nicotine, intended for inhalation without combustion; other nicotine containing products intended for the intake of nicotine into the human body; except for:;

(11) in the row related to heading '2401', the text in the column 'Description of the good' is replaced by the following:

'unmanufactured tobacco; tobacco refuse;';

(12) between the row related to heading 'ex 2402' and the row related to heading 'ex Chapter 25', the following rows are inserted:

'2404 12	products intended for inhalation without combustion, not containing tobacco or reconstituted tobacco, and containing nicotine;	Manufacture from materials of any heading, except that of the product. However, materials of the same heading as the product may be used, provided that their total value does not exceed 20 % of the ex-works price of the product; or manufacture in which the value of all the materials used does not exceed 50 % of the ex-works price of the product.
ex 2404 19	cartridges and refills, filled for electronic cigarettes;	Manufacture from materials of any heading, except that of the product. However, materials of the same heading as the product may be used, provided that their total value does not exceed 20 % of the ex-works price of the product; or manufacture in which the value of all the materials used does not exceed 50 % of the ex-works price of the product.
2404 91	other products than products intended for inhalation without combustion, for oral application; and	Manufacture from materials of any heading, except that of the product, in which: — the individual weight of the materials of Chapter 4 used does not exceed 20 % of the weight of the final product; — the individual weight of sugar used does not exceed 40 % of the weight of the final product; and — the total combined weight of sugar and the materials of Chapter 4 used does not exceed 50 % of the weight of final product.

2404 92, 2404 99	other products than products intended for inhalation without combustion, for transdermal application and for other than oral application.	Manufacture from materials of any heading, except that of the product. However, materials of the same heading as the product may be used, provided that their total value does not exceed 20 % of the ex-works price of the product; or manufacture in which the value of all the materials used does not exceed 50 % of the ex-works price of the product.’;
---------------------	---	---

- (13) between the row related to heading ‘ex Chapter 38’ and the row related to heading ‘3824 60’, the following rows are inserted:

‘ex 3816	dolomite ramming mix	Manufacture from materials of any heading, except that of the product; or manufacture in which the value of all the materials used does not exceed 70 % of the ex-works price of the product.
ex 3822	malaria diagnostic test kits immunological products, unmixed, not put up in measured doses or in forms or packings for retail sale immunological products, mixed, not put up in measured doses or in forms or packings for retail sale immunological products, put up in measured doses or in forms or packings for retail sale blood-grouping reagents	Manufacture from materials of any heading.’;

- (14) in the row related to heading ‘ex Chapter 41’, in the column ‘Required Working or Processing’ the following text is inserted:

‘Manufacture from materials of any heading, except that of the product’;

- (15) in the row related to heading ‘ex Chapter 62’, the text in the column ‘Required Working or Processing’ is replaced by the following:

‘Weaving accompanied by making- up (including cutting) ^{(3), (5)}; or

making-up preceded by printing accompanied by at least two preparatory or finishing operations (such as scouring, bleaching, mercerising, heat setting, raising, calendering, shrink resistance processing, permanent finishing, decatizing, impregnating, mending and burling), provided that the value of the unprinted fabric used does not exceed 47,5% of the ex-works price of the product ^{(3), (5)};

- (16) between the row related to headings ‘ ex 6202, ex 6204, ex 6206, ex 6209 and ex 6211’ and the row related to headings ‘ ex 6210 and ex 6216’, the following rows are inserted:

‘ex 6212	Brassieres, girdles, corsets, braces, suspenders, garters and similar articles and parts thereof, knitted or crocheted	
----------	--	--

	— Obtained by sewing together or otherwise assembling, two or more pieces of knitted or crocheted fabric which have been either cut to form or obtained directly to form	Knitting and making-up (including cutting). ⁽⁷⁾⁽¹⁰⁾
	— Other	Spinning of natural and/or man-made staple fibres or extrusion of man-made filament yarn, in each case accompanied by knitting (knitted to shape products) or Dyeing of yarn of natural fibres accompanied by knitting (knitted to shape products). ^{(10)*}

(17) in the row related to heading '6306', the text in the column 'Description of the good' is replaced by the following:

'Tarpaulins, awnings and sunblinds; tents (including temporary canopies and similar articles); sails for boats, sailboards or landcraft; camping goods';

(18) in the row related to heading '7019', the text in the column 'Description of the good' is replaced by the following:

'glass fibres (including glass wool) and articles thereof (for example, yarn, rovings, woven fabrics).';

(19) in the row related to heading '8539', the text in the column 'Description of the good' is replaced by the following:

'electric filament or discharge lamps, including sealed beam lamp units and ultraviolet or infra-red lamps; arc-lamps; light-emitting diode (LED) light sources';

(20) in the row related to heading '8547', the text in the column 'Description of the good' is replaced by the following:

'insulating fittings for electrical machines, appliances or equipment, being fittings wholly of insulating materials apart from any minor components of metal (for example, threaded sockets) incorporated during moulding solely for purposes of assembly, other than insulators of heading 8546; electrical conduit tubing and joints therefor, of base metal lined with insulating material';

(21) in the row related to heading '8548', the text in the column 'Description of the good' is replaced by the following:

'electrical parts of machinery or apparatus, not specified or included elsewhere in this Chapter; and';

(22) between the row related to heading '8548' and the row related to 'Chapter 86', the following row is inserted:

'8549	electrical and electronic waste and scrap.	Manufacture from materials of any heading, except that of the product; or manufacture in which the value of all the materials used does not exceed 50% of the ex-works price of the product.;
-------	--	---

(23) between the row related to heading '9002' and the row related to heading 'Chapter 91', the following row is inserted:

'ex 9021	Materials for orthopedic or fracture appliances and for dental fitting: — Nails, tacks, drawing pins, corrugated nails, staples (other than those of heading 8305) and similar articles, of iron or steel, whether or not with heads of other material, but excluding such articles with heads of copper — Threaded articles and non-threaded articles of iron or steel, excluding coach screws, wood screws, screw hooks and screw rings, spring washers and other lock washers, rivets	Manufacture from materials of any heading, except that of the product.
	— Titanium and articles thereof, including waste and scrap	Manufacture from materials of any heading.;

and

(24) in the row related to heading 'Chapter 94', the text in the column 'Description of the good' is replaced by the following:

'Furniture; bedding, mattresses, mattress supports, cushions and similar stuffed furnishings; luminaires and lighting fittings, not elsewhere specified or included; illuminated signs, illuminated name-plates and the like; prefabricated buildings'.