

Brussels, 10 July 2024

Ms Laurence van Nitsen
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Directorate-General for Trade
European Commission Rue de la Loi 170/Wetstraat 170
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Re: HS2022: the transposition of rules of origin for revised PEM convention

Following up on our meeting on March 15th, 2024 and thanking DG Trade for the opportunity to provide additional suggestions, Tobacco Europe¹ and ESTA² are writing to kindly request an update to the rules of origin (RoO) for products under HS heading ex 2403.

As highlighted in our letter dated 31 January 2024, with the implementation of the 7th edition of the Harmonized System nomenclature (HS 2022), products intended for inhalation through heated delivery or other means, without combustion, previously classified under HS code 2403, have been re-classified under the new heading HS 2404.

The new set of RoOs in the PEM Convention for HS heading 2403, which will take effect on January 1st, 2025, still refer to products that have now been re-classified under HS heading 2404. We understand that DG TRADE is currently working with PEM contracting parties to update the RoO to reflect the HS 2022 classifications. We would like to take this opportunity to stress the importance of expressing the new set of RoO in accordance with HS 2022, ideally before the entry into force date. This will ensure legal certainty for both economic operators and customs authorities.

In addition, we kindly invite DG TRADE to also consider the modernization of the current RoO for HS heading 2403 to allow products, classified under HS code 2403.19, 2403.91 and 2403.99 to benefit from preferential rules of origin, similar to the provisions in the UK-EU Trade and Cooperation Agreement (TCA).

If possible, we believe that even a more ambitious rule of origin than the EU-UK TCA can benefit the EU exporters.

Our proposed approach for determining the rules of origin for products classified under HS code 2403.19, 2403.91 and 2403.99 is outlined in Annex 1.

Aligning the PEM agreement with the TCA's provisions in regard to products classified under HS code 2403.19, 2403.91 and 2403.99, ensures consistency and predictability for businesses operating in both regions, simplifying compliance and fostering greater trade continuity.

The lack of sufficient supply of tobacco leaf grown in Europe makes it virtually impossible to meet the origin requirement for our exported products. It should be noted that tobacco leaf purchases are rarely determined by existing rules of origins, but almost exclusively by criteria such as availability, quality, and price. These rules of origins however, when difficult if not impossible to fulfill, can then disadvantage European companies compared to companies manufacturing outside the EU.

EU companies import relatively little volume of raw tobacco from countries that are Contracting Parties to the PEM (i.e. 7,3% of all imported 2401 products) but the importance of this volume is crucial. For example, 95,9% of all

¹ [Tobacco Europe AISBL](#) is a non-commercial association which represents the common views of three major European-based tobacco and nicotine products manufacturers (British American Tobacco, Imperial Brands and Japan Tobacco International). EU Transparency Register: [1496873833-97](#)

² [European Smoking Tobacco Association](#) (ESTA) represents companies manufacturing, distributing and selling fine-cut tobacco, pipe tobacco, traditional European nasal snuff and chewing tobacco

imported unstemmed or unstripped sun-cured tobacco in 2023 come from countries that are part of the PEM Convention³. These products can hardly be replaced by others or be sourced elsewhere, and EU manufacturing companies importing these would significantly benefit from revised RoOs. In turn, EU-manufactured tobacco products exported to these countries would also significantly benefit from a change of the rules of origin. In fact, in 2023, it is 27.184 tons of smoking tobacco products (2403.19) that were exported to countries of the PEM convention, or 54% of all EU exports in this category. ⁴

The scope of the PEM agreement should be as comprehensive and ambitious as possible in order to perpetuate the current trade relationship. In order to facilitate trade, the future agreement must allow flexible RoOs for tobacco products.

We would welcome the opportunity of a meeting at your convenience so that we can outline in more detail our proposed approach. Should you need any additional information or clarification in the meantime, please do not hesitate to contact Tobacco Europe’s Director, Nathalie Darge (nathalie@tobacco-europe.eu) and ESTA’s Secretary General, Peter van der Mark (peter.vandermark@esta.be).

Annex 1 – Proposed approach for determining rules of origin for FCT:

HS HEADING	DESCRIPTION	OPTION 1- “AMBITIOUS” RoO	OPTION 2 – RoO FULLY ALIGNED WITH EU-UK TCA
new 2403	Other manufactured tobacco and manufactured tobacco substitutes; “homogenized” or “reconstituted” tobacco; tobacco extracts and essences	CTSH*, in which at least 10% by weight of all materials of heading 24.01 used are wholly obtained	CTH**, in which at least 10 % by weight of all materials of heading 24.01 used are wholly obtained.

**CTSH - means production from non-originating materials of any subheading, except that of the product; this means that any non-originating material used in the production of the product must be classified under a subheading (6-digit level of the Harmonised System) other than that of the product (i.e. a change in subheading).*

***CTH - means production from non-originating materials of any heading, except that of the product; this means that any non-originating material used in the production of the product must be classified under a heading (4-digit level of the Harmonised System) other than that of the product (i.e. a change in heading)*

³ Eurostat, DS-059322 - EU trade since 2002 by HS2-4-6 and CN8, 2023 data.

⁴ Eurostat, [DS-059322 - EU trade since 2002 by HS2-4-6 and CN8](#)