COMMISSION IMPLEMENTING DECISION (EU) 2021/563

of 31 March 2021

on the validity of certain decisions relating to binding origin information

(notified under document C(2021) 2072)

(Only the French and Dutch texts are authentic)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (hereinafter 'the Code') ([1]), and in particular Article 34(11) and point (a) of the first subparagraph of Article 37(2) thereof,

After consulting the Customs Code Committee,

Whereas:

(1) Article 33(1) of the Code provides for that the customs authorities shall, upon application, take decisions relating to binding origin information (BOI decisions). Article 19(1) of Commission Implementing Regulation (EU) 2015/2447 ([2]) stipulates that the customs authorities shall transmit to the Commission the relevant details of the BOI decisions taken, on a quarterly basis.

(2) The BOI decisions referred to in the Annex contain a determination of the non-preferential origin of goods, incompatible with Article 60(2) of the Code. In particular, those BOI decisions are incompatible with the rules on the acquisition of origin laid down in that Article, as the processing or working operations carried out in the last country of production are not economically justified within the meaning of Article 33 of Commission Delegated Regulation (EU) 2015/2446 ([3]).

(3) Article 60(2) of the Code stipulates that goods the production of which involves more than one country or territory shall be deemed to originate in the country or territory where they underwent their last, substantial, economically-justified processing or working, in an undertaking equipped for that purpose, resulting in the manufacture of a new product or representing an important stage of manufacture.

(4) Article 33 of Delegated Regulation (EU) 2015/2446 stipulates that any processing or working operation carried out in another country or territory shall be deemed not to be economically justified if it is established on the basis of the available facts that the purpose of that operation was to avoid the application of the measures referred to in Article 59 of the Code.

(5) Commission Implementing Regulation (EU) 2018/886 ([4]) introduced certain commercial policy measures concerning certain products originating in the United States of America. The products to which these commercial policy measures apply are listed in Annex I to that Regulation. Motorcycles with reciprocating internal combustion piston engine of a cylinder capacity exceeding 800 cm3 falling under CN code 8711 50 00 are among the products listed in that Annex. The measures set up by Regulation (EU) 2018/886 are measures referred to in Article 59 of the Code.

([1]) OJ L 269, 10.10.2013, p. 1.

([2]) Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 343, 29.12.2015, p. 558).

([3]) Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code (OJ L 343, 29.12.2015, p. 1).

([4]) Commission Implementing Regulation (EU) 2018/886 of 20 June 2018 on certain commercial policy measures concerning certain products originating in the United States of America and amending Implementing Regulation (EU) 2018/724 (OJ L 158, 21.6.2018, p. 5).

(6) Subsequent to the publication of the European Union's commercial policy measures, the producer of the motorcycles falling under CN code 8711 50 00 and covered by the BOI decisions referred to in the Annex, reported with a Form 8-K ([5]) current report submitted to the United States Securities and Exchange Commission on 25 June 2018 its plan to shift production of certain motorcycles destined to the European Union's market from the United States of America to its international facilities in another country to avoid the European Union's commercial policy measures.

(7) Even if the avoidance of the commercial policy measures may not necessarily be the only purpose of the shift of production, the conditions mentioned in the first paragraph of Article 33 of Delegated Regulation (EU) 2015/2446 are met based on the available facts. The processing or working operations carried out in the last country of production shall therefore be deemed not to be economically justified. As a result, the determination of the non-preferential origin of the motorcycles is to be based on the third paragraph of the same Article 33.

(8) According to this provision, where the last working or processing is deemed not to be economically justified, the goods shall be considered to have undergone their last substantial, economically justified processing or working, resulting in the manufacture of a new product or representing an important stage of manufacture, in the country or territory where the major portion of the materials originated, as determined on the basis of the value of the materials.

(9) Since the determination of the non-preferential origin of the motorcycles covered by the BOI decisions referred to in the Annex is not based on the rule laid down in the third paragraph of Article 33 of Delegated Regulation (EU) 2015/2446, the Commission deems this determination of non-preferential origin to be incompatible with Article 60(2) of the Code, in conjunction with Article 33 of Delegated Regulation (EU) 2015/2446.

(10) According to Article 23(3) of the Code, the customs authorities, which took a decision, may at any time annul, amend or revoke it where it does not conform to the customs legislation. However, the customs authorities, which took the BOI decisions referred to in the Annex, did not revoke them.

(11) Therefore, to ensure a correct and uniform determination of the non-preferential origin of goods, the BOI decisions concerned should be revoked. The customs authority which took the BOI decisions should therefore revoke them as soon as possible following the notification of this Decision and notify the Commission to that effect,

HAS ADOPTED THIS DECISION:

Article 1

1. The BOI decisions referred to in column 1 of the table set out in the Annex taken by the customs authority specified in column 2 of that table for the product specified in column 3 of that table shall be revoked in accordance with paragraph 2.

2. The customs authority specified in column 2 of the table set out in the Annex shall revoke the BOI decisions referred to in column 1 of that table and notify the holder thereof at the earliest possible date and in any case not later than 10 days from the notification of this Decision.

3. When the customs authority revokes the BOI decisions and makes the notification pursuant to paragraph 2, it shall notify the Commission thereof.

Article 2

This Decision is addressed to the Kingdom of Belgium.

([5]) https://sec.report/Document/0000793952-18-000038

Done at Brussels, 31 March 2021.

For the Commission
Paolo GENTILONI
Member of the Commission

ANNEX

Binding origin information — reference no	Customs authority	CN code of the product
1	2	3
BE-20192406001	Direction générale Analyses Economiques et Economie internationale Service Commerce et Investissements internationaux bâtiment Atrium C Rue du Progrès 50 1210 Bruxelles Belgique Federale Overheidsdienst Economie, KMO, Middenstand en Energie Algemene Directie Economische Analyses en Internationale Economie Dienst internationale handel en investeringen City Atrium C Vooruitgangsstraat 50 1210 Brussel België	8711 50 00
BE-20192406002	Direction générale Analyses Economiques et Economie internationale Service Commerce et Investissements internationaux bâtiment Atrium C Rue du Progrès 50 1210 Bruxelles Belgique Federale Overheidsdienst Economie, KMO, Middenstand en Energie Algemene Directie Economische Analyses en Internationale Economie Dienst internationale handel en investeringen City Atrium C Vooruitgangsstraat 50 1210 Brussel België	8711 50 00