

REASONS FOR THE EXISTENCE OF THE EXPORTER AUTHORIZED IN DECREE 390 OF 2016 AND IT'S APPLICATION IN INTERNATIONAL COLOMBIAN TRADE

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Abstract

Since March 2016, Decree 390 has been enforced in Colombia, which virtually repeals Decree 2685 of 1999, known as the Customs Statute.

With the new decree, there are behind the so-called "customs users", making reference from that moment on to new figures within which the "authorized exporter" draws attention, without referring in the same sense to some figure similar in the import process.

The authorized exporter is the person who as such endorses the Directorate of Taxes and National Customs, after fulfilling the requirements, to enjoy the special treatment provided in number 1 of article 35 of the same Decree.

These benefits include tariff preferences agreed in trade agreements with other countries, but it should be borne in mind that preferences in general are based on the origin of goods and for this it is necessary to prove this.

This is the case in Europe - related agreements, where authorized exporters are required to submit document EUR - 1, a document justifying the preferential origin granted by the European Union to those countries with which it has a Preferential Agreement, bearing in mind that the Certificate Of

origin is optional in the case of exports to the European Union as it does not replace the EUR-1 movement certificate for goods with preferential origin. In other words, in relation to the EU, the Certificate of Origin proves the origin of the goods, but does not produce the effects to qualify for a tariff benefit as if it does the EUR 1.

Keywords:

Free Trade Agreement with the European Union

Free Trade Agreement and United States EFTA (EFTA)

Certificate of Circulation EUR 1

Certificate of origin

Trade Facilitation

Introduction

Decree 390 of 2016, among other figures, establishes that of the authorized exporter, which as its name indicates only applies in export and not in the import regime, therefore, it is necessary to clarify the reasons for its incorporation into the national customs statute.

Although different names may be found, it can be ensured that the approved exporter is a simplified system of proof of origin in the case of exports established in most of the preferential agreements signed by the European Community. This system allows proof of origin to be an invoice declaration or another

commercial document instead of a certificate of origin that has to be sealed each time by Customs for each export operation.

That document is known as EUR - 1 and allows authorized exporters to enjoy tariff preferences.

Methodology

In essence three (3) methods are applied in this article, namely: Descriptive, deductive and analytical.

In this context, after a prior collection of information, especially normative, reference is made to the main concepts to be considered for understanding the article and the figure of "authorized exporter", for which, starting from the general The particular one is doing an analysis of the norms and thus to be able to find answer to the one raised from the own title and to issue some conclusions on the matter.

1. The new customs users in Decree 390 of 2016.

With the entry into force in March 2016 of Decree 390, Colombian international trade left behind among other denominations, that of the so-called "customs users", referring from that moment to the figure of importers, exporters, traders Foreign traders, authorized traders, reliable importers, reliable exporters, reliable foreign trade operators and a very particular "authorized exporter", without reference to a similar figure in the import process.

When referring to the responsibility, article 33 of Decree 390 of 2016 established like customs boundaries two categories:

- Direct: Importers, exporters, declarants of a customs regime and foreign trade operators;
- Indirect: Any person who in the course of his or her activity has intervened indirectly in the performance of any formality, procedure or customs operation.

When referring to the Directives, which can be understood as referring to those natural or legal persons permanently engaged in foreign trade, the statute provides that DIAN, based on the risk management system, will qualify importers, To exporters and foreign trade operators, as trust.

This qualification is achieved as long as Importers, Exporters and foreign trade operators are valued by the low risk customs authority, and if they also meet the following requirements:

- Importers and exporters: Have performed more than twelve (12) customs declarations of import and or export, semiannually, in the two (2) years immediately prior to the qualification.
- Foreign trade operators: Have performed at least twenty-four (24) foreign trade operations, every six months, during the two (2) years immediately preceding the qualification.

Obtaining the qualification of trust allows them to enjoy certain special treatments, such as issuing declarations of origin or invoice declarations, in accordance with the provisions of the corresponding commercial agreement, making the consolidated payment of import duties and taxes, penalties, Interest and value of the redemption, to the extent that, in the case of a declarant, a deferred payment of the duties and taxes to be incurred, in the case of a declarant, to reduce the guarantees to support the fulfillment of some of its Customs duties, in accordance with the provisions of the National Tax and Customs Office, to constitute a single global guarantee, where a person has obtained more than one Customs Register of foreign trade operator, in order to support compliance with the obligations that Purchase for each of them, among others.

For its part, article 34 of Decree 390 of 2016 incorporates a figure that had already existed in Colombia since Decree 3568 of September 27, 2011 and in effect at an international level known as Authorized Economic Operator. The article quoted states that the National Tax and Customs Office, based on the risk management system, will authorize or qualify importers, exporters and foreign trade operators as Authorized Economic

Operator, to whom They would be granted special facilitation treatments, in exchange for adequate risk management.

On the other hand, article 43 of Decree 390 of 2016, when referring to the Foreign Trade Operator, states that it is the natural person, legal entity or branch of a foreign company that participates or intervenes, directly or indirectly, in destinations, Regimes, customs operations or in any customs formalities. In this group of people would come in consequence:

1. Customs agencies.
2. International Freight Agents.
3. Airport agents, shipping agents or land agents.
4. Industries of transformation and or assembly.
5. Official postal operator or postal concessionaire.
6. Express delivery or express delivery operator.
7. Multimodal transport operator.
8. Conveyors.
9. Users of the temporary admission regime for inward processing.
10. Deposits.
11. Entry and / or exit points for import and / or export by networks, pipelines or pipelines.

12. Control zones common to several ports or docks.

13. Verification zone for fast delivery or express courier shipments.

14. Primary areas of airports, ports or docks and border crossings.

According to this relation, it is observed that, by foreign trade operators, they must be understood as those natural or juridical persons, who support from the logistic and sometimes from the operation, the international trade management of importers and exporters.

As noted, according to Decree 390 of 2016, both the importer, the exporter and the foreign trade operator, that in accordance with the study done by DIAN on the assessment of risk management and compliance with certain requirements Related to the flow of merchandise, could be qualified as trustworthy, enjoying facilities in the exercise of their activities and, possibly, upon request and with a more rigorous risk management, could even be classified as Authorized Economic Operators (OAS), Also with facilitation prerogatives in their operations.

Contrary to the above, the figure of the authorized exporter is not clear in principle, given that as indicated before, has no similarity in import, therefore, it is necessary to clarify the reasons for its existence in the Customs Statute.

2. The approved exporter.

The approved exporter is defined as a simplified system of proof of origin in the case of exports established in most of the preferential agreements signed by the European Community. This system allows proof of origin to be an invoice declaration or another commercial document instead of a certificate of origin that has to be sealed each time by Customs for each export operation.

For DIAN, the Authorized Exporter is the one authorized by the competent authority to issue a Declaration on an invoice, delivery note or other commercial document describing the products in question in sufficient detail to enable their identification. (DIAN, s.f.)

Section 1.1 of article 34 of Decree 390 of 2016, when referring to the authorization and qualification of importers, exporters and foreign trade operators, establishes that, for the purposes of what is established in the commercial agreements in force for Colombia, it will be understood as exporter Authorized to the person who as such endorses the Directorate of Taxes and National Customs, after complying with the requirements indicated in number 2 of article 42. The authorized exporter shall enjoy the special treatment provided in number 1 of article 35 of the same Decree.

Among the requirements demanded by the customs authority to be considered as an authorized exporter are established by Decree 390 of 2016:

Submit an application for an approved exporter.

Express under oath, which is understood by the signing of the letter, that the products subject to export comply with the rules of origin and other requirements established in the trade agreement.

Have carried out operations exceeding four (4) definitive customs export declarations in the year immediately prior to the request.

Have the favorable concept issued based on the risk rating. The Customs Statute, Decree 390 of 2016, indicates as obligations of the authorized exporter, among others: Have in force the sworn statement of origin for each of the products contained in the declarations of origin or invoice declarations that you issue.

Comply with the rules of origin established in the respective trade agreement.

Issue declarations of origin or declarations in invoices only for those goods for which it has obtained authorization and that comply with the provisions of the chapter of origin of the respective commercial agreement. For this purpose, the declaration of origin or invoice declaration must indicate that it is an authorized exporter with the identification system established by the National Tax and Customs Office.

To keep records, documents and evidence demonstrating compliance with the rules of origin of the corresponding agreement, of each of the exported products for which it issues a declaration of origin or invoice declaration, for a term of five (5) years or As established in the respective commercial agreement, counted from the date of issue of the proof of

origin, and make it available to the competent authorities when they so require.

On the other hand, Resolution No. 072 of November 29, 2016 issued by the DIAN, stipulates in article 5 when referring to the authorized exporter, who can only opt for this quality, the producer of the goods to be exported, or an exporter Duly authorized by the producer through the current sworn declaration of origin and, among the conditions, the person authorized as authorized exporter may certify the origin of its merchandise by means of an invoice declaration or declaration of origin for the Commercial Agreements that contemplate this condition, Provided that the affidavit is in force at the time the proof of origin is issued. The authorized exporter must record in the invoice declaration and declaration of origin issued, the number of authorized exporter assigned by the National Tax and Customs Office.

It follows from the foregoing that the authorized exporter is a qualification awarded by the DIAN only - as its name implies - for exporters, related to the certification of origin and that it applies in the trade agreements that they contain are condition and, Their position, seek to obtain the tariff benefits contemplated in the respective agreement.

It is well known that according to international and national standards in foreign trade, there may be different documents to prove the origin of a good, only commonly referred to as certificate of origin when in fact it is possible to have other documents related issues.

For example, the certificate of origin, is issued by the customs authority or who does its times and must contain the

necessary elements for the identification of the goods, such as their nature, brands, packages, weights, among others. In short, it must enable the country of origin of the goods to be corroborated.

For its part, there is a particular document for Europe known as EUR-1, which is a document justifying the preferential origin granted by the European Union to those countries with which it has a Preferential Agreement.

In other words, in relation to the EU, the Certificate of Origin proves the origin of the goods, but does not produce the effects to qualify for a tariff benefit as if it does the EUR 1, being requested for those countries with which the ~~The~~ European Union maintains a preferential agreement, as in the case of Colombia, and must be filled by each shipment. (DIAN, s.f.)

It should be noted that in order to process the EUR 1, the authorization of an approved exporter must be obtained, following the procedure set out in article 7 of Resolution No. 072 of November 29, 2016 by DIAN, namely:

To formulate a written request addressed to the Coordination of the Service of Origin of the Subdirección of Technical Customs Management, or who makes its times, of the Directorate of Taxes and National Customs, that must contain:

1. List of the numbers of sworn origin declarations in force in the electronic system of origin of the DIAN, which cover the products to be exported under the Commercial Agreements that establish the invoice declaration or declaration of origin. Where the exporter is not the producer of

the goods, the list of sworn declarations must be presented for each producer.

2. Physical location or address of the plant or production plants of the products to be exported.

3. Certification of the natural person or legal representative of the juridical person in which he or she manifests under oath, which is understood with the signing of the declaration, that the goods to be exported comply with the rules of origin and other requirements established in the trade agreements For which it is intended to issue an invoice declaration or declaration of origin.

4. List of final export customs declarations for the last year, attesting at least four (4).

Once the application and the respective requirements have been submitted, the Customs Service Branch Office or Customs Administration Divisions of the Sectional Customs Directorates issuing certificates of origin may make visits to The producers and exporters in order to verify the existence of production and the fulfillment of the requirements and, after the visit, the Coordination of the Service of Origin of the Subdirección of Technical Customs Management, will be the competent one to decide the request of authorized exporter within Of the three (3) months following receipt of the request. (DIAN, s.f.)

In the face of trade agreements, notably with Europe, Colombia, there are agreements in force, one known as the Free Trade Agreement with EFTA countries, Switzerland,

Norway, Iceland and Liechtenstein, Free Trade Agreement with the European Union.

For the period 2007-2009, the Government's agenda included mainly the negotiation of Free Trade Agreements with the countries of the European Free Trade Association - EFTA, and with the European Union. In the case of EFTA this goal was met in November 2008.

The importance of this Treaty for Colombia stands out among other reasons for the expansion of markets, expansion and diversification of investments, strengthening and extension of integration ties with European countries. (Mincomercio, s.f.)

The Agreement with EFTA States includes a Multilateral Free Trade Agreement with the four EFTA countries and three bilateral Supplementary Agreements, individually negotiated and signed with Switzerland, Norway and Iceland. This Treaty has among its objectives to create a commercial space free of restrictions and to seek the growth and the continuous and integral economic development of the signatory countries. Likewise, the Agreement aims to stimulate the protection of the environment and the rights of workers, and overcoming poverty. In this context, the Agreement with the EFTA States extends the spectrum of integration of the purely economic to issues such as sustainable development and the collective well-being of the citizens of both nations. It also recognizes the differences in the levels of development and size of the economies of the EFTA States and Colombia and the importance of creating opportunities for economic development. (Mincomercio, s.f.)

In relation to the Rules of Origin, qualification criteria were agreed to ensure that only goods originating in EFTA (goods processed and processed in the countries subscribing to this agreement) benefit from preferential tariff treatment, particularly in the chemical, textile and clothing sectors , And footwear. (Mincomercio, s.f.)

With regard to the Trade Agreement between Colombia and Peru, of the one part, and the European Union and its Member States, of the other part, was signed in Brussels on 26 June 2012. The Economic Partnership Agreement With the European Union, according to Procolombia (sf), defines clear and predictable rules of the game in the matter of trade in goods and services and in respect of investment flows. The process of consolidation of the agreement covered the negotiation of a total of 14 chapters, the most important of which is Market Access, which involves the tariff reduction for agricultural goods as well as industrial goods. Also on the table were the chapters on Technical Assistance and Strengthening of Trade Capacities; Dispute Resolution; Institutional Affairs; Trade and Sustainable Development; Intellectual property; Trade in Services, Establishment and Electronic Commerce; Competition, Public Procurement; Customs and Trade Facilitation, Trade Defense; Sanitary and phytosanitary measures; Technical Barriers to Trade; And Rules of Origin. (Mincomercio, s.f.)

It is important to note that tariff preferences already existed before the European Union, but these preferences would be in force until 31 December 2013, are unilateral and temporary;

And, therefore, could be finished at any time. Instead, with a commercial agreement, it is for an indefinite term.

It should be noted, as the Ministry of Commerce, Industry and Tourism itself points out, that this Agreement is of the utmost importance for Colombia, since, according to the World Trade Organization (WTO), it is the world's largest importer and exporter Of goods, with estimated amounts of US \$ 2,132,888 million and US \$ 2,394,849 million, respectively.

The Ministry of Commerce, Industry and Tourism (s.f.) also notes that the EU ranks first in the world in the purchase and sale of services, commercial in the amount of US \$ 784,286 million and US \$ 644,360 million. Notes that since 2012, the countries of the European Union that increased their purchases of Colombian products were Bulgaria (213.2%); Slovenia (188%); Spain (70.9%); Malta (68.7%); Czech Republic (55.2%); Hungary (17.8%) and Portugal (4.8%).

Mincomercio (s.f.) adds that, from Colombia, the products sold to the European Union market with the greatest growth since 2012 were Paper and its manufactures (38.6%); Electrical machinery (30.5%); Fuels (9.7%) and smelting, iron and steel (0.9%).

Regarding Colombian imports originating in the European Union, these grew by 2.8% since 2012. The main suppliers of Colombia in this market were: Romania with a growth of 87.9% of imports, Greece with ~~75~~75, 9.2%, Luxembourg with 69.2%, Belgium with 34.1%, Malta with 28.6%, Cyprus with 28.2% and Spain with 26.4%. (Mincomercio, s.f.)

3. Procedure of EUR 1.

For proof of origin, which obviously allows an approved exporter to benefit from tariff preferences, both EFTA and the Treaty on European Union, Colombia and Peru require: A EUR. 1, or in some cases a "declaration of origin"; An invoice, a delivery note or any other commercial document describing the products in question with sufficient detail to enable their identification.

The Directorate of Taxes and National Customs and in particular through Resolution 072 of 2016 establishes a procedure on the certification EUR -1, but also the European Union that indicates a step by step for the expedition and presentation of the same, in this respect Notes:

The issue of Circulation Certificates EUR. 1 obviously and as indicated above shall be issued by the competent authority of the exporting party at the written request of the exporter or under the responsibility of the exporter or his authorized representative, EUR.1 as the application form. The EUR.1 movement certificate shall be issued in English or Spanish.

Once the EUR 1 certificate has been issued, the issuing competent authority shall take the necessary measures to verify the originating status of the products and the fulfillment of the other requirements. For this purpose, it shall have the right to require any type of proof and to inspect the accounts of the exporter or to carry out any other checks deemed necessary. The issuing competent authority shall also ensure that the forms are duly completed. In particular, it shall verify that the box reserved for the description of the products has

been completed in such a way as to exclude any possibility of fraudulent additions. The marks and numbers and the quantity and type of packaging shall be indicated in the appropriate box and the date of issue of the movement certificate EUR.1.

3. Conclusions.

With the entry into force in March 2016 of Decree 390, among the new figures that operate in international trade, the "authorized exporter" appears.

Both the DIAN and the European Union recognize the approved exporter as a simplified system of proof of origin in the case of exports established in most of the preferential agreements signed by the European Community.

In accordance with the Free Trade Agreement between Colombia and Peru with the European Union, proof of origin is presented through EUR-1, a document justifying the preferential origin granted by the European Union to the countries with the United States.

To process the EUR 1 must obtain the authorization of authorized exporter, completing with the procedure set by the DIAN.

In summary, in accordance with Decree 390 of 2016 to benefit from the preferential agreements in Europe ~~The~~the qualification of exporter must be obtained and prove the origin in document EUR -1.

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