

# Technical guidance

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## Introduction

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1. These technical guidance notes aim to provide a detailed explanation of the definition of the term "agricultural products" within the context of European Union legislation.

2. It is important to understand this definition as the Food Processing, Marketing and Co-operation (FPMC) Grant Scheme can only provide support for activities covered by relevant regulations. These are detailed in Annex I of the Treaty of the Functioning of the European Union.

A copy of this annex can be found in the List of eligible agricultural products section

[List of eligible agricultural products](#)

3. The phrase

- "products covered by Annex I to the Treaty"

means

- "agricultural products"

as listed in:

- article 38 and Annex I of the Consolidated Version of the Treaty on the Functioning of the European Union of 17 December, 2012

This does not cover fishery and aquaculture products covered by Council Regulation (EC) No 104/2000:

- products falling under Combined Nomenclature (CN) codes 4502, 4503 and 4504 (cork products)
- products intended to imitate or substitute milk and milk products, as referred to in Article 3(2) of Council Regulation (EEC) No 1898/87

4. The term "processing of agricultural products" comes from European regulations and means:

- "any operation on an agricultural product resulting in a product which is also an agricultural product, except on farm activities necessary for preparing an animal or plant product for first sale."

See Article 2 – Definitions of Commission Regulation (EC) No 1857/2006 under related content for more information.

5. Because agricultural products are defined by the European Commission as being those products which are listed in Annex I of the Consolidated Version of the Treaty on the Functioning of the European Union, the terms "agricultural product" and "Annex I product" are often used to mean the same thing.

6. References in regulations and Commission guidelines to "Annex I activity" refer to activities resulting in the production of Annex I products, so this covers most farming and horticultural activities, but not all. Fish farming and other forms of aquaculture are also Annex I activities.

7. These definitions have to be interpreted and understood in the wider context of European Union regulations because some agricultural products are not defined within the Annex I list and so fall outside the scope of a number of support schemes.

Wool, for example, is most certainly an agricultural product but it is not an Annex I product, so wool processing cannot be supported by this scheme.

8. To determine what is, or is not, an Annex I agricultural product cannot be done by simply looking it up in a definitive list. These guidance notes explain why this is the case, and how it can be done.

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## Annex I of the Consolidated Treaties

9. Article 38 (Agriculture and Fisheries) of the Consolidated Version of the Treaty on the Functioning of the European Union states that:

1. the Union shall define and implement a common agriculture and fisheries policy. The internal market shall extend to agriculture, fisheries and trade in agricultural products. 'Agricultural products' means the products of the soil, of stock farming and of fisheries and products of first-stage processing directly related to these products. References to the Common Agricultural Policy or to agriculture, and the use of the term 'agricultural', shall be understood as also referring to fisheries, having regard to the specific characteristics of this sector
2. save as otherwise provided in Articles 39 to 44, the rules laid down for the establishment and functioning of the internal market shall apply to agricultural products
3. the products subject to the provisions of Articles 39 to 44 are listed in Annex I
4. the operation and development of the internal market for agricultural products must be accompanied by the establishment of a common agricultural policy

This article defines what an agricultural product is for the purposes of the control of the Single Common Market of the European Union.

10. No services are listed in Annex I – it is a list of physical goods only. For example, landscaping or gardening may be thought of as agricultural, but these are not defined as being Annex I products.

11. The Annex I list is a list of products, listed by the chapter heading or sub-chapter headings of the Common Customs Tariff Nomenclature (EU Regulation No 1101/2014), referred to as Combined Nomenclature. Also listed is a reference to the coding system used by that Regulation and a brief description of the product categories.

## Combined Nomenclature

12. Council Regulation (EEC) 2658/1987 (the Brussels Common Custom Tariff Regulation and the annexes attached to it) contains the rates of custom duties and the codes used for the statistical analysis of the products and their customs duties.

The annexes to that regulation are updated annually. For example, Commission Implementing Regulation (EU) 1101/2014 of 16 October, 2014 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff.

These updates to the original Tariff Regulation are referred to as the Combined Nomenclature.

13. The Combined Nomenclature comprises a series of chapters. Each of these chapters describes a comprehensive list of products that are either Annex I or non-Annex I products. The Combined Nomenclature does not define an Annex I agricultural product – this can only be done by referencing the Annex I list.

14. Groups or categories of products have a Combined Nomenclature Code Reference Number (CN Code). Some individual products have CN Codes, but not every product that falls within the scope of Annex I is uniquely identified.

15. The reference to "ex" where it appears before the CN Code does not mean "excluding", it is an identification for custom purposes whereby the scope of the additional duties to be paid is determined by both the scope of CN Code and that of the description of the product and the corresponding period of application (see Commission Regulation 453/2002).

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## Single Common Market Organisation Regulation

16. The Single Common Market Organisation Regulation (EC) No 1308/2013 of 17 December, 2013 establishes a common organisation of the markets in agricultural products (single CMO regulation).

17. This regulation governs products of the following sectors, as provided in Annex I of the single CMO regulation, which covers all of the agricultural products for which there is common organised market.

This means that the listings given in Annex I to the single CMO regulation can be used in defining if a particular product is an "agricultural product" or not.

## How to determine an agricultural product

18. Three documents have to be used to help in the determination of agricultural product. The Annex I list, the Combined Nomenclature and the single CMO regulation (Annex I of that Regulation). The Annex I list is the definitive reference source and it is this which determines whether a given product is an "agricultural product" or not.

19. Examples:

- the most straightforward example situation is where the Annex I list refers to a whole chapter of the Combined Nomenclature. For example, chapter 2 – Meat and edible meat offal

All of the products listed under chapter 2 of the Combined Nomenclature are therefore agricultural products (Annex I products). This means that everything from CN Code 0201 – Meat of bovine animals, fresh or chilled through to CN Code 0210 99 90 – Edible flours and meals of meat or meat offal are Annex I products

- the next straightforward example is where there is no reference in the Annex I list to a chapter in the Combined Nomenclature, for example, chapter 19 – preparations of cereals, flour, starch or milk; pastry cooks' products

None of the products listed in chapter 19 are agricultural products (Annex I products) because this chapter of the Combined Nomenclature is not on the Annex I List, and this applies even if the product is listed in the single CMO regulation.

For example, "CN Code 1902 20 30 – stuffed pasta, whether cooked or otherwise prepared, containing more than 20 per cent by weight of sausages and the like, of meat and meat offal of any kind, including fats of any kind of origin" is not an Annex I, product even though it is mentioned in the section headed Pigeon in the single CMO regulation.

There are a limited number of examples of products that are listed on the single CMO Regulation that are not Annex I products, so it is necessary to check the Annex I list to confirm Annex I status.

20. Some forms of processing will result in new products that are still classified as Annex I products, such as smoking of food. Meat in its raw form, for example pork, (chapter 2 - meat and edible meat offal) and cured meat, for example smoked ham, (chapter 16 – preparations of meat, of fish, of crustaceans or molluscs) are both Annex I products. In this example, the process involved in the manufacture of the ham (salting, curing or smoking of the raw pork meat) produces a separate but different Annex I product.

21. The product descriptions within the Combined Nomenclature can take the form of definition of composition or content as well as regional identification, for example, a group of cheeses with a fat content between 47 per cent and 72 per cent. 0406 90 81 – Cantal, Cheshire, Wensleydale, Lancashire, Double Gloucester, Blarney, Colby, Monterey. All cheeses in chapter 4 are defined as Annex I products.

22. Certain types of what appear to be the same product can be either Annex I or not, depending on what they are made from and the form of the final product.

A good example of this is potato crisps because, without referring to the detailed description in the Combined Nomenclature, it is very difficult to make the distinction between a product that is defined as Annex I (traditionally produced crisps) and varieties of such a product that are not Annex I (such as potato snacks).

It would be easy to assume that all potato based products would be Annex I.

The major distinction lies in the composition of the input to the processing activity because potato crisps are seen as an example of 'preparation of vegetables' (chapter 20) and are clearly defined in the Combined Nomenclature as:

- 2005 20 – Potatoes – other
- 2005 20 20 – Thin slices, fried or baked, whether or not salted or flavoured, in airtight packing, suitable for immediate consumption

If the crisps are made from reformed potato starch, as opposed to slices of potato (e.g. Hula Hoops, Discos), these are non-Annex I and they are described under chapter 19 – preparations of cereals, flour, starch or milk; pastrycooks' products as:

- 1905 90 55 – extruded or expanded products, savoury or salted

23. There are a number of products that are defined as Annex I products that at first instance seem not to fit with the general principles of being either primary products being direct from the farm or being first stage processed. For example, dog and cat food put up for retail sale (chapter 23, CN Code 2309 10) is defined as Annex I, so it is necessary to check carefully rather than make assumptions on the Annex I status.

24. A few examples of non-Annex I products which are often mistaken for Annex I products are:

- soya sauce
- tomato ketchup and other tomato sauces
- soups and broths
- ice cream and other edible ice, whether or not containing cocoa

25. There is a particular group of products where the inputs are agricultural products, but the Outputs are **not** Annex I products. Examples of these are detailed below

- chapter 22 of the Combined Nomenclature – beverages, spirits and vinegar
- CN Code 2201 – mineral and other waters
- CN Code 2203 – beer
- CN Code 2208 20 to CN Code 2208 90 99 – a wide range of spirits such as whisky, brandy, vodka, gin, cognac, tequila and so on

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