

# EU-Japan EPA Guidance

## Claim, Verification and Denial of Preference

### 1. Legal basis

#### **ARTICLE 1.2**

##### **General definitions**

- (f) "customs authority" means:
- (i) for the European Union, the services of the European Commission responsible for customs matters and the customs administrations and any other authorities empowered in the Member States of the European Union to apply and enforce customs legislation; and
  - (ii) for Japan, the Ministry of Finance;

### Chapter 3: Rules of Origin and Origin Procedures

#### **ARTICLE 3.1**

##### **Definitions**

For the purposes of this Chapter:

- (c) "exporter" means a person, located in a Party, who, in accordance with the requirements laid down in the laws and regulations of that Party, exports or produces the originating product and makes out a statement on origin;
- (d) "importer" means a person who imports the originating product and claims preferential tariff treatment for it;

#### **ARTICLE 3.16**

##### **Claim for preferential tariff treatment**

1. The importing Party shall, on importation, grant preferential tariff treatment to a product originating in the other Party on the basis of a claim by the importer for preferential tariff treatment. The importer shall be responsible for the correctness of the claim for preferential tariff treatment and compliance with the requirements provided for in this Chapter.
2. A claim for preferential tariff treatment shall be based on:
  - (a) a statement on origin that the product is originating made out by the exporter; or
  - (b) the importer's knowledge that the product is originating.
3. A claim for preferential tariff treatment and its basis as referred to in subparagraph 2(a) or (b) shall be included in the customs import declaration in accordance with the laws and regulations of the importing Party. The customs authority of the importing Party may request, to the extent that the importer can provide such explanation, the importer to provide an explanation, as part of the customs import declaration or accompanying it, that the product satisfies the requirements of this Chapter.

4. (...)

5. (...)

## **ARTICLE 3.21**

### **Verification**

1. For the purposes of verifying whether a product imported into a Party is originating in the other Party or whether the other requirements of this Chapter are satisfied, the customs authority of the importing Party may conduct a verification based on risk assessment methods, which may include random selection, by means of a request for information from the importer who made the claim referred to in Article 3.16. The customs authority of the importing Party may conduct a verification either at the time of the customs import declaration, before the release of products, or after the release of the products.
2. The information requested pursuant to paragraph 1 shall cover no more than the following elements:
  - (a) if a statement on origin was the basis of the claim referred to in subparagraph 2(a) of Article 3.16, that statement on origin;
  - (b) the tariff classification number of the product under the Harmonized System and origin criteria used;
  - (c) a brief description of the production process;
  - (d) if the origin criterion was based on a specific production process, a specific description of that process;
  - (e) if applicable, a description of the originating and non-originating materials used in the production process;
  - (f) if the origin criterion was "wholly obtained", the applicable category (such as harvesting, mining, fishing and place of production);
  - (g) if the origin criterion was based on a value method, the value of the product as well as the value of all the non-originating or, as appropriate to establish compliance with the value requirement, originating materials used in the production;
  - (h) if the origin criterion was based on weight, the weight of the product as well as the weight of the relevant non-originating or, as appropriate to establish compliance with the weight requirement, originating materials used in the product;
  - (i) if the origin criterion was based on a change in tariff classification, a list of all the non-originating materials including their tariff classification number under the Harmonized System (in two-, four- or six- digit format depending on the origin criteria); or
  - (j) the information relating to the compliance with the provision on non-alteration referred to in Article 3.10.
3. When providing the requested information, the importer may add any other information that it considers relevant for the purpose of verification.
4. If the claim for preferential tariff treatment was based on a statement on origin referred to in subparagraph 2(a) of Article 3.16, the importer shall inform the customs authority of the importing Party when the requested information may be provided in full or in relation to one or more data elements by the exporter directly.
5. If the claim for preferential tariff treatment was based on the importer's knowledge referred to in subparagraph 2(b) of Article 3.16, after having first requested information in accordance with paragraph 1 of this Article, the customs authority of the importing Party conducting the verification may request information from the importer if that customs authority considers that additional

information is necessary in order to verify the originating status of the product. The customs authority of the importing Party may request the importer for specific documentation and information, if appropriate.

6. If the customs authority of the importing Party decides to suspend the granting of preferential tariff treatment to the product concerned while awaiting the results of the verification, release of the product shall be offered to the importer subject to appropriate precautionary measures including guarantees. Any suspension of preferential tariff treatment shall be terminated as soon as possible after the originating status of the product concerned or the fulfilment of the other requirements of this Chapter has been ascertained by the customs authority of the importing Party.

## **ARTICLE 3.22**

### **Administrative cooperation**

1. In order to ensure the proper application of this Chapter, the Parties shall cooperate, through the customs authority of each Party, in verifying whether a product is originating and in compliance with the other requirements provided for in this Chapter.

2. If the claim for preferential tariff treatment was based on a statement on origin referred to in subparagraph 2(a) of Article 3.16, after having first requested information in accordance with paragraph 1 of Article 3.21, the customs authority of the importing Party conducting the verification may also request information from the customs authority of the exporting Party within a period of two years after the importation of the products if the customs authority of the importing Party conducting the verification considers that additional information is necessary in order to verify the originating status of the product. The request for information should include the following information:

- (a) the statement on origin;
- (b) the identity of the customs authority issuing the request;
- (c) the name of the exporter;
- (d) the subject and scope of the verification; and
- (e) if applicable, any relevant documentation.

In addition to this information, the customs authority of the importing Party may request the customs authority of the exporting Party for specific documentation and information, where appropriate.

3. The customs authority of the exporting Party may, in accordance with its laws and regulations, request documentation or examination by calling for any evidence or by visiting the premises of the exporter to review records and observe the facilities used in the production of the product.

4. Without prejudice to paragraph 5, the customs authority of the exporting Party receiving the request referred to in paragraph 2 shall provide the customs authority of the importing Party with the following information:

- (a) the requested documentation, where available;
- (b) an opinion on the originating status of the product;
- (c) the description of the product subject to examination and the tariff classification relevant to the application of this Chapter;
- (d) a description and explanation of the production process sufficient to support the originating status of the product;
- (e) information on the manner in which the examination was conducted; and
- (f) supporting documentation, if appropriate.

5. The customs authority of the exporting Party shall not provide the information referred to in paragraph 4 to the customs authority of the importing Party if that information is deemed confidential by the exporter.

6. Each Party shall notify the other Party of the contact details, including postal and email addresses, and telephone and facsimile numbers of the customs authorities and shall notify the other Party of any modification regarding such information within 30 days after the date of the modification.

## **ARTICLE 3.24**

### **Denial of preferential tariff treatment**

1. Without prejudice to paragraph 3, the customs authority of the importing Party may deny preferential tariff treatment, if:

(a) within three months after the date of the request for information pursuant to paragraph 1 of Article 3.21:

(i) no reply is provided; or

(ii) if the claim for preferential tariff treatment was based on the importer's knowledge as referred to in subparagraph 2(b) of Article 3.16, the information provided is inadequate to confirm that the product is originating;

(b) within three months after the date of the request for information pursuant to paragraph 5 of Article 3.21:

(i) no reply is provided; or

(ii) the information provided is inadequate to confirm that the product is originating;

(c) within 10 months after the date of the request for information pursuant to paragraph 2 of Article 3.22:

(i) no reply is provided; or

(ii) the information provided is inadequate to confirm that the product is originating;

or

(d) following a prior request for assistance pursuant to Article 3.23 and within a mutually agreed period, in respect of products which have been the subject of a claim as referred to in paragraph 1 of Article 3.16:

(i) the customs authority of the exporting Party fails to provide the assistance; or

(ii) the result of that assistance is inadequate to confirm that the product is originating.

2. The customs authority of the importing Party may deny preferential tariff treatment to a product for which an importer claims preferential tariff treatment where the importer fails to comply with requirements of this Chapter other than those relating to the originating status of the products.

3. If the customs authority of the importing Party has sufficient justification to deny preferential tariff treatment under paragraph 1, in cases where the customs authority of the exporting Party has provided an opinion pursuant to subparagraph 4(b) of Article 3.22 confirming the originating status of the products, the customs authority of the importing Party shall notify the customs authority of the exporting Party of its intention to deny the preferential tariff treatment within two months after the date of receipt of that opinion. If such notification is made, consultations shall be held on request of a Party, within three months after the date of

the notification. The period for consultation may be extended on a case by case basis by mutual agreement between the Parties. The consultation may take place in accordance with the procedure set out by the Committee on Rules of Origin and Customs-Related Matters established pursuant to Article 22.3. Upon the expiry of the period for consultation, the customs authority of the importing Party may deny the preferential tariff treatment solely on the basis of sufficient justification and after having granted the importer the right to be heard.

## 2. Guidance

The claim for preferential tariff treatment, its verification and denial are part of the procedural rules for the application of preferential rules of origin.

*Introduction*

The importing Party grants on importation preferential tariff treatment for products originating in the exporting Party based on a claim by the importer. This claim is based on a statement on origin made out by the exporter, or on the importer's own knowledge.

The preferential treatment is granted upon importation in the importing Party when the customs import declaration is accepted without verification or, where a verification has been triggered as a result of risk assessment methods, once the particulars of the customs declaration have been verified.

The current EU position is that 'importation' is to be seen in a wider sense, as preferential tariff treatment may also be granted upon a request for repayment or remission of customs duties within the limits of the legislation of the EU. In the EU, a claim for preferential tariff treatment is generally made on a customs declaration for release for free circulation of the originating goods concerned.

Verification may be conducted before or after the release of the goods and may lead to a denial of preferential tariff treatment and the incurrance of customs debt (Article 3.21(1)).

'Verification' provisions determine which steps in this process can be taken by the importing customs authority to assure that the claim for preferential treatment is correct. Verification is triggered by risk assessment methods (which are not further addressed in this guidance) following a claim for preferential treatment by the importer.

The provision on 'denial' determines:

- that the decision on the denial of preferential tariff treatment (and hence the originating status of the imported products) is taken by the importing customs authority,
- in each situation, which steps must be undertaken before the importing customs authority may decide to deny preferential tariff treatment.

The common data requirements for customs declarations are laid down in Annex B, Title I of Commission Delegated Regulation 2015/2446<sup>1</sup> and

*How to claim;  
Basis of the  
claim; basis  
determines the  
way  
verification is  
conducted*

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<sup>1</sup> 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.

their format and codes are laid down in Annex B of Commission Implementing Regulation 2015/2447<sup>2</sup>.

In the EU, to claim preferential tariff treatment, the use of **Data Element 4/17** (Preference) is mandatory in customs declarations of release for free circulation of goods. The information to be provided under that Data Element, in all cases where a preferential tariff treatment is claimed on the basis of a preferential trade arrangement like the EU-Japan Economic Partnership Agreement, shall consist in a three-digit code whose first digit shall be “3” and the next two digits “00”<sup>3</sup>.

That information shall be supplemented by the indication of the appropriate code which is “JP” for Japan as country of origin of the goods in **Data Element 5/16** (Country of preferential origin code).

In addition, the following specific information shall be included under **Data Element 2/3** (Documents produced, certificates and authorisations, additional references):

- where the claim for preferential tariff treatment is based on a 'statement of origin for a single shipment, the code “U110”;
- where the claim for preferential tariff treatment is based on a 'statement of origin for multiple shipments of identical products, the code “U111”;
- where the claim for preferential tariff treatment is based on 'importer’s knowledge', the code “U112”.

The basis of the claim, i.e. by using either the statement on origin or importer’s knowledge, determines the way the verification is conducted.

Article 3.16 allows the importing customs authority to request additional ‘explanations’ from the importer as part of the claim if such information is available to him/her. This information may therefore be requested before the phase of verification.

*Request for explanations as part of the claim process*

However, in the EU, such additional ‘explanations’ are not requested as part of the assessment of the claim. Information is only requested as part of the verification process if the claim is selected for verification based on risk assessment criteria.

*in the EU*

On 17 July 2019, Japan Customs announced a simplified procedure for the request to provide ‘additional explanations’ on the originating status of a product concerning a statement on origin at the time of import declaration in cases where such information is not available to the importer.

*in Japan*

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<sup>2</sup> Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying detailed rules for implementing certain provisions of 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.

<sup>3</sup> Except in case of end-use, where the digits “40” are used.

During the claim process for imports into Japan, in cases where a statement on origin is the basis of a claim, the importer is not obliged to provide further information demonstrating that the products are originating if such information is not available to him/her.

In case the claim is based on a statement on origin made out by the exporter in the exporting Party, verification potentially covers the following two steps:

*Verification  
(Statement on  
Origin)  
Two steps  
verification*

Step 1: The importing customs authority requests from the importer no more information than provided in the list of data elements of Article 3.21(2). Except the statement on origin, which the importing customs authority would need to possibly move to Step 2a, the importer is not obliged to provide that information and can leave it to the exporter to do it directly (Article 3.21(4)) or through administrative cooperation (Article 3.22).

Step 2a: In case the importing customs authority needs, in addition to the statement on origin, the information requested under Step 1 to verify the originating status of the product, but the information provided by the importer or the exporter is not sufficient, the importing customs authority may request administrative cooperation from the exporting customs authority (Article 3.22(2)).

In case the claim is based on importer's knowledge, verification potentially covers the following two steps:

*Verification  
(Importer's  
knowledge)  
Two steps  
verification*

Step 1: The importing customs authority requests from the importer no more information than provided in the list of data elements of Article 3.21(2).

Step 2b: In case the importing customs authority needs more information to determine the originating status of the product and following step 1, the importing Party may request the importer to provide additional details (Article 3.21(5)). The importing customs authority cannot request administrative cooperation from the exporting customs authority (Article 3.22(2)) as no exporter in the exporting Party is identified.

The importing customs authority shall not employ any verification activity in the exporting Party other than through a request to the exporting customs authority and only if the claim is based on a statement on origin. Direct requests for information from the importing customs authority to the exporter or participation in visits to the premises of the exporter are not possible as part of the verification process.

*No direct  
relationship  
between the  
importing  
customs  
authority and  
the exporter*

The reason for introducing a first step in the verification process are the following:

*Reasons for  
Step 1*

- a) assures equal treatment of importers by both Parties as it aligns the approach the customs authority of the importing Party may take in



respect of the importer following a claim for preferential tariff treatment;

- b) assures that no more information is requested from the importer than strictly needed for the determination of the originating status of the products; and
- c) reflects the new link between the importer and the exporter where the importer using a statement on origin made out by the exporter relies on the commercial relationship to obtain further supporting information to substantiate the claim for preferential treatment. As for other elements of a commercial transaction, the relationship between the importer (buyer) and the exporter (seller) is based on trust, which is now extended to the element of the originating status of the goods covered by the statement on origin.

The importer who is requested to submit information may provide this information to the importing customs authority. However, apart from contractual obligations between the importer (buyer) and the exporter (seller), Chapter 3 does not contain any obligation for the exporter to provide information to the importer, even where the importer is requested by the importing customs authority to provide that information (but is not obliged to do it) under verification Step 1.

*(Statement on Origin)  
No obligation for the exporter to provide information to the importer*

Nonetheless, if the exporter, confronted with a request from the importer prefers to provide information at this stage of the verification process, he/she can choose to do so, either by providing the requested information (in full or in relation to one or more data elements) to the importer or to the importing customs authority directly. Providing information following the request during Step 1 of the verification process avoids that the information will be requested by his/her own (exporting) customs authority following a request for administrative cooperation by the importing customs authority as part of Step 2a.

At least, the importer should provide the importing customs authority with the statement on origin on which the claim for preferential tariff treatment is based, unless this statement is already provided by the importer as part of the claim process (Article 3.16(4)).

In case of ‘importer’s knowledge’, the importer shall be able to demonstrate that the product is originating and satisfies the requirements of Chapter 3. This does not necessarily mean that all information at the time the claim is made shall be readily available in the records of the importer. Based on the request for information pursuant to Article 3.21(1), the importer should be able to compile the necessary information within the time limit of three months for the denial (see Article 3.24(1)(a)).

*(Importer’s knowledge)  
Obligation by the importer to provide information to the importing customs authority during Step 1*

As all information demonstrating that the product is originating and satisfies the requirements provided for in Chapter 3 should be available, the importer is under the obligation to provide the requested information to the importing customs authority. Non-compliance will result in a

denial of preferential tariff treatment and as appropriate administrative measures or sanctions.

As mentioned before, the importing customs authority shall not employ any verification activity in the exporting Party. Verification in the exporting Party is only possible through administrative cooperation between the customs authorities.

*(Statement on origin)*

*Step 2a:  
Request for administrative cooperation*

A request for administrative cooperation by the importing customs authority to the exporting customs authority is only possible following a request for information to the importer (Step 1) and if it considers that additional information is necessary to verify the originating status of the product.

Under the REX System in the EU, the exporting customs authority may also be requested to verify the legal entitlement of the exporter making out the statement on origin. A request for administrative cooperation is only possible in case the claim for preferential tariff treatment is based on a statement on origin.

The request by the importing customs authority to the exporting customs authority may only be made within the period of two years following the importation of the product.

*Step 2a:  
Request for administrative cooperation within 2 years*

The requested exporting customs authority may request the exporter who made out a statement on origin to provide documentation and provide evidence of the originating status for the products included in the statement on origin. It may also visit the premises to review records maintained in respect of the originating products and observe production facilities where the originating products were produced.

*Step 2a:  
Rights and obligations of the exporter vis-à-vis the exporting customs authority*

The requested exporter is obliged to cooperate with the exporting customs authority in the verification but has the right to review all information which the exporting customs authority intends to provide to the importing customs authority in reply to the request for information. The exporter may subsequently decide that any information deemed confidential, may not be submitted to the importing customs authority.

Information deemed confidential by the exporter, may still be used by the exporting customs authority for the opinion provided for under Article 3.22(4)(b). In that case, the exporting customs authority may state in the opinion that following the verification (review of documents, visit, etc.), it considers that the products concerned can (or cannot) be considered as originating in a Party and fulfil the other requirements of Chapter 3. As part of the opinion, it can present the findings and facts of the verification, but only those allowed by the exporter. (see Guidance on confidentiality)

*Use of confidential information for the opinion by the exporting customs authority*

Where the exporting customs authority has provided an opinion confirming the originating status of the products, in case the importing

customs authority has sufficient justification to deny preferential tariff treatment, the importing customs authority shall notify the exporting customs authority of its intention to deny the preferential tariff treatment. If such notification is made, consultations shall be held on request of either the exporting or importing Party.

A request for additional information by the importing customs authority to the importer is only possible following a request for information to the importer (Step 1) and if it considers that this additional information is necessary to verify the originating status of the product.

*Request for additional information (importer's knowledge) Step 2b*

The EU-Japan EPA provides precise time limits and conditions following which the importing customs authority may deny preferential tariff treatment. The provisions on denial (in Article 3.24) mirror the steps taken by the importing authority in the verification process by defining for each step the cases providing legal grounds to deny preferential tariff treatment.

*Denial of preference under the EU-Japan EPA*

Denial of preferential tariff treatment by the importing customs authority is possible if following a request for information no reply is provided or when the claim for preferential treatment was based on the importer's knowledge and the information provided is 'inadequate' to confirm the originating status of the product. The term 'inadequate' is not further defined but must be considered as meaning (reasonably) insufficient as to be further determined by the importing customs authority. The term 'adequate' is used in a similar scenario in Article 107(2)(c)(ii) of the UCC-IA<sup>4</sup> related to the refusal to grant tariff preference.

*What is 'inadequate'?*

The importing customs authority shall not deny preferential tariff treatment, when the importer, following a request for information subsequent to Article 3.21(2) does not provide any other information than the statement on origin. In this case, considering additional information is necessary, the verification may continue<sup>5</sup> with a request for administrative cooperation from the importing customs authority to the exporting customs authority.

*Reply by the importer following a request for information Step 1 (Statement on origin)*

The time limits after which the importing customs authority may deny preferential tariff treatment are:

*Time limits*

Step 1: three months from the time the request for information was made to the importer;

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<sup>4</sup> 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

<sup>5</sup> The importing customs authority may also decide to grant the preferential treatment, even when the reply provides inadequate information, e.g. in case when the selection for verification was made on a random basis.

Step 2a: ten months from the time the request was made to provide administrative cooperation to the exporting customs authority, unless the exporting customs authority has provided an opinion confirming the originating status of the products pursuant to Article 3.22(4)(b);

Step 2b: if the claim for preferential tariff treatment was based on the importer's knowledge, three months from the time the request for additional information was made to the importer.