

EU-Japan EPA Guidance

Confidentiality of information

1. Legal basis

Chapter 3: Rules of Origin and Origin Procedures

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 customs authorities 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 customs authorities 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 customs authorities when the requested information may be provided in full or in relation to one or more data elements by the exporter directly.

5. (...)

6. (...)

ARTICLE 3.22

Administrative cooperation

1. (...)

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 customs authorities conducting the verification may also request information from the customs authority of the exporting customs authorities within a period of two years after the importation of the products if the customs authority of the importing customs authorities 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 customs authorities may request the customs authority of the exporting customs authorities for specific documentation and information, where appropriate.

3. The customs authority of the exporting customs authorities 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 customs authorities receiving the request referred to in paragraph 2 shall provide the customs authority of the importing customs authorities 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 customs authorities shall not provide the information referred to in paragraph 4 to the customs authority of the importing customs authorities if that information is deemed confidential by the exporter.

6. (...)

ARTICLE 3.25

Confidentiality

1. Each Party shall maintain, in accordance with its laws and regulations, the confidentiality of any information provided to it by the other Party pursuant to this Chapter, and shall protect that information from disclosure.

2. Information obtained by the authorities of the importing Party pursuant to this Chapter may only be used by those authorities for the purposes of this Chapter.

3. Confidential business information obtained from the exporter by the customs authority of the exporting Party or of the importing Party through the application of Articles 3.21 and 3.22 shall not be disclosed, unless otherwise provided for in this Chapter.

4. Information obtained by the customs authority of the importing Party pursuant to this Chapter shall not be used by the importing Party in any criminal proceedings carried out by a court or a judge, unless permission to use such information is granted by the exporting Party in accordance with its laws and regulations.

2. Guidance

Ascertaining the origin of a product requires knowledge of the particular production process, the classification, weight or value of non-originating materials or any other element used to confer originating status to the final product.

Introduction

This knowledge often includes information, which may be confidential as any disclosure of such information could harm the commercial interests of the exporter¹ in question. In any case, before the importing customs authority decides to grant or deny preferential tariff treatment, it must be able to obtain adequate information to confirm that the product is originating. This makes ‘business confidentiality’ such an important aspect of applying preferential tariff treatment on the basis of the origin of a product. In this respect, a distinction must be made between disclosing information from the exporter to the importer as well as from the exporter or the importer to the customs authorities. The way the exporter informs the importer of the originating status of the product has an impact on the verification process, in particular for the question how this verification is conducted by the customs authorities.

Except from possible contractual obligations it is up to the exporter to determine how information relating to the production of the originating product is shared with the importer:

**Relationship
exporter and
importer**

- where a claim is based on **a statement on origin** (Article 3.16(2)(b)), the exporter who made out the statement, in subsequent phases of verification by the importing customs authority establishes which information is shared with the importer. The exporter may decide:
 - not to share any information at all, or
 - to share one or more of the information elements included in the Article 3.21(2);
 - in case the exporter decides that the information is of a confidential nature vis-a-vis the importer, to share one or more of the information elements included in the Article 3.21(2) with the importing customs authority directly as foreseen in Article 3.21(4);
- where a claim is based on **importer’s knowledge** (Article 3.16(2)(b)) the exporter has already agreed to share all information with the importer as this information must be available at the time when the claim is made.

Conclusion: the exporter is free to determine which, if any, information pertaining to the originating status of the products is shared with the importer. The importing customs authority cannot deny preferential tariff treatment at this stage, unless the importer, upon request by the importing customs authority does not provide the statement on origin which was used as the basis for the claim of preferential tariff treatment;

¹ The terms ‘exporter’ or ‘importer’ in this Guidance are understood as defined in Article 3.1 of the EU-Japan EPA

The information sharing from the exporter to the importer determines the conduct of the verification process:

**Relationship
exporter and
the
importing
customs
authority**

- where a claim is based on a **statement on origin** and the exporter decides not to share any information with the importer or with the importing customs authority directly, then all information needed by the importing customs authority following the initial request for information by that authority to the importer on the basis of Article 3.21(2) must be obtained via the exporting customs authority through administrative cooperation;
- where a claim is based on a **statement on origin** and the exporter shares one or more of the information elements included in the Article 3.21(2) through the importer or directly to the importing customs authority, this may allow the importing customs authority to confirm the originating status of the product, or in any case limit the amount of information which would need to be obtained through administrative cooperation;
- where the claim for preferential tariff treatment is based on **importer's knowledge**, verification by the importing customs authority is exclusively focussed on the importer and shall not in any way involve the exporter and verification by means of a request for administrative cooperation between the customs authorities is not possible.

If the importing customs authority request information from the exporting customs authority through the procedure of Article 3.22 (administrative cooperation), it is for the exporter to decide, in accordance with Article 3.22(5), whether the information it provides to the exporting customs authority may be forwarded by that authority to the importing customs authority.

**Interaction
between the
exporter and
the customs
authorities**

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. However, such visits are possible under the provisions of Article 3.23 in case of a suspected breach of the provisions of the Rules of Origin Chapter, in accordance with the CMAA².

Conclusion: With the exception to the procedures under the CMAA, the exporter is free to determine which, if any, information is shared with the importing customs authority.

Article 3.25 contains a number of specific provisions primarily directed at the competent authorities of each Party to protect confidential information obtained by exporting or importing customs authorities under the Rules of Origin Chapter from disclosure and restrict their use to the purposes of this Chapter. Non-compliance to these provisions, for each Party within the

**Rights and
obligations
for the
authorities of
the Parties**

² Agreement between the European Community and the Government of Japan on Co-operation and Mutual Administrative Assistance in Customs Matters, done at Brussels on 30 January 2008

boundaries of their own data protection laws³ constitutes a breach of obligations under the Agreement.

Paragraph 1 provides for a general obligation for each Party to maintain confidentiality and protection from disclosure of information obtained from the other Party. This particularly applies to business confidential information, such as the description and explanation of the production process sufficient to support the originating status of the product as provided by the exporting Party to the importing Party following a request for administrative cooperation.

Paragraph 2 provides for a so called ‘purpose limitation clause’ meaning that any information obtained by the importing Party from either the importer, the exporter or the exporting Party may be used **for no other purpose** than to establish the originating status of a product for which preferential tariff treatment is claimed. As a result, the customs authorities of the importing Party are prohibited from sharing information with other governmental agencies including those of the importing Party, such as tax authorities. However, use of information by the importing Party collected pursuant to Chapter 3 in an administrative, judicial, or quasi-judicial proceedings for the purpose to establish the originating status of a product for which preferential tariff treatment is claimed is permitted.

Paragraph 3 complements in particular Article 3.22(5) by prohibiting the disclosure of information by the exporting or importing Party without the consent of the exporter.

The use of information obtained through the application of Section B of Chapter 3 in any criminal proceedings carried out by a court or a judge is allowed provided it is permitted by the exporting Party in accordance with its laws and regulations. The framework for this judicial cooperation is provided by the ‘Agreement between the European Union and Japan on mutual legal assistance in criminal matters’⁴. The use of information in a proceeding before a quasi-judicial body (e.g. an arbitrator) is not subject to a permission from the exporting Party.

³ For Japan the Act on the Protection of Personal Information (Act No. 57 of 2003) (the “APPI”) provides for equivalent treatment of personal data as the EU Data Protection Directive (GDPR)

⁴ OJ L 039 , 12/02/2010 P. 20 - 35