## Questions and Answers session,

## with Answers provided by the representatives of the European Commission (COM).

### Q-1 on obligations for EU exporters; € 6000 threshold:

Regarding the REX NUMBER, it is common for an exporter to include its exporter reference number ("EXPORTER REFERENCE NO XXXXXXX") on the invoice when the exporter makes out a Statement on Origin on the invoices.

However, if the EU exporter has not obtained a REX NUMBER, Japan Customs has advised that it is acceptable to leave this number blank.

However, according to the presentation delivered by the European Commission February 2019 in the seminar on RoO Procedures under EU-Japan EPA, he introduced a definition of "exporter" stating that in the EU, if an exporter wants to make out a Statement on Origin, that exporter must be registered in the REX system for consignments with a value of **more than € 6000**. However, there is no need to register for shipments equivalent to **€ 6000 or less**. (See Footnote 2 in Annex 3-D Text of the Statement on Origin.)

Seminar secretariat's Reminder: **Does € 6000 shipment require REX Number?**

Commission website "REX – Registered Exporter system" states that "**below"** and "**above". This is the source of confusion.**

**(A-1 provided by COM)**

An EU exporter is only required to obtain a REX number if that exporter makes out a statement on origin for originating products with a value of more than €6000. See however, also the answer to Q-2-3.

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### Q-2 on obligations for EU exporters; REX Registration system and its exempted case for preferential export:

Q 2-1 How much is the ratio of REX number holders among exporters?

Q 2-2 Does the exporter need to specify the HS number of the eligible products applicable for EPA(GSP) when the exporter registers with the REX system?

Q 2-3. It is not required for an exporter to register with the REX system for a consignment valued **under 6000 Euro**. This means that any exporter needs to register with the REX system when it exports goods valued not less than 6000 Euro under the certain preferential regimes. May I understand from this fact that the goods is not originating in EU if the REX number is not placed in the statement on origin on the invoice for shipments of **6000 Euro or more?**

**(A-2 provided by COM)**

A 2-1 This information is not available. We can only provide the number REX holders in the EU (30083, (42643 when including UK))

A 2-2 The HS-code for eligible products needs to be provided in the request for the registration but only for indicative purposes. Once registered, the registration does not need to be updated if the exporter makes out a statement for products with a different HS code.

A 2-3 Although the EU's internal legislation refers to a total consignment value of €6000 (for originating products) which, if exceeded, requires the exporter to be registered before making out a statement on origin, no absolute conclusion can be drawn on the originating status of the products included in the statement on origin in case the exporter is not identified through its REX number.

The reason is that the value of the consignment can be expressed in many different ways dependent on incoterms used (e.g. ex-works, fob or cif), possible fluctuations in exchange rates where the value of the consignment is expressed in a different currency, or subsequent transactions in case the statement on origin is made out by a trading company.
As long as the exporter is clearly identified in the statement on origin, either by means of a REX number or otherwise (name, address, etc.) the statement on origin should be considered valid. The absence of a REX number may nevertheless be considered, in light of the value of the consignment, as an element for the risk assessment to be applied on the basis of Article 3.21(1) of the EU-Japan EPA.

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**Q-3 on the Statement on Origin for multiple shipments; reference to invoices:**

On page 7 of the EU-Japan EPA Guidance, "Statement on Origin", published by the European Commission on December 16, 2019, it states;

A Statement on Origin can be printed on a separate paper (e.g., a blank paper or a paper with a company letterhead), other than on an invoice or other commercial document, where:

- that invoice or any other commercial document makes a reference to that separate paper, or
- that separate paper makes a reference to the invoice or any other commercial document.

Q 3-1 If the shipper of the originating goods issues an invoice referring to the document number assigned to the statement on origin for multiple shipments made out by the producer of the originating goods, will this case be acceptable?

Q 3-2 Apart from the flow of goods in trade, the flow of documents reflects the actual business contracts. Thus, an invoice is often being replaced with the new one (reinvoiced). Relative to Sub-Question 1 of the Guidance, under the above-mentioned circumstances, will it be acceptable if the document number assigned to the statement on origin made out by the producer of the originating goods is properly referred to on the replaced invoice?

**(A-3 provided by COM)**

A 3-1 There is a specific EU Guidance on "Statement on Origin for multiple shipments of identical products sets out the practical arrangement for products imported in the EU" in the context of the EU-Japan EPA. It states that:

"The procedure for claiming preferential tariff treatment shall be slightly different in respective of whether the claim is based on a statement on origin made out for a single shipment or for multiple shipments of identical products. The statement on origin for multiple shipments which is used at the start date shall indicate both the start and end date of its use. Any subsequent claim of preferential tariff treatment for identical products within the start and end date of the statement shall be based on this initial statement. For this purpose, a reference to the initial statement shall be included under Data Element 2/3 (Documents produced, certificates and authorisations, additional references), as an 'additional reference'. The code to be used both for the initial use of the statement and any following statements is "U111". In addition, the importer shall keep in its records commercial documents for the identical products for subsequent consignments within the validity period. The commercial documents for such subsequent consignments do not need to contain a statement on origin."

The Guidance can be found here:

https://ec.europa.eu/taxation_customs/sites/taxation/files/eu_japan_epa_guidance_statement_on_origin_for_multiple_shipments_of_identical_products_en.pdf

This means that, in accordance with the above Guidance, the invoice issued by the shipper (the trading company) does not need to contain a reference to the statement on origin made out by the producer.

A 3-2 The question is whether an invoice which is used for the statement on origin which itself is replaced by a new invoice (re-invoicing) can still be used. This question can be separated into 3 scenarios:

a) the re-invoicing takes place in the exporting Party: in that case the new invoice may include a reference to the original invoice containing the statement on origin: the original invoice needs to be annexed to the new invoice;

b) the re-invoicing takes place in a third country: this is not in accordance with common guidance on Statement on Origin, as the new invoice would not be made out in either Party;

c) the re-invoicing takes place in the territory of the importing Party: this is a matter for the importing Party to decide; in the EU this is possible under Article 69 of the UCC Implementing Regulation (Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015, which covers the replacement in the EU of documents on preferential origin issued or made out in exporting countries.

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**Q-4 on the Statement on Origin; exporter and person making out the commercial document not being the same person:**

In the third and fourth scenarios on page 6 of the EU-Japan EPA Guidance "Statement on Origin", one must indicate that the person having issued the commercial document is not

identical to the exporter making out the Statement on Origin. Is there any model text which meets the requirement in these scenarios?

(Related Articles and Pages of the Guidance)

EU-Japan EPA Guidance "Statement on Origin" "2. Guidance"(p.6)"The two last scenarios nevertheless imply that the exporter making out the Statement on Origin, and not being the person having issued the commercial document, is clearly identified on that document. In the case where an Exporter's Reference Number has not been assigned, i.e., the exporter cannot be identified, the exporter may indicate its full address under the part "Place and date"."

**(A-4 provided by COM)**

The Guidance does not require a specific text under the scenarios where the person issuing the commercial document is not the exporter who makes out the statement on origin. The text of the statement on origin is always the text as provided in Annex 3-D to Chapter 3 of the EU-Japan EPA and must assure that the exporter is identified.

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**Q-5 on data elements in import declaration:**

Japan Customs has made progress in simplifying NACCS [1] clearance system for EPA preferential imports if detailed explanation on the originating status cannot be submitted. The new process is to insert the code "Q" or "F" depending on who made out the Statement on Origin. What methods are used in the Statement on Origin process by the importing customs authorities of the EU member states, and what materials (explanations) are required for each EU member state, in addition to the text of the Statement on Origin?

**(A-5 provided by COM)**

Article 3.16(3) of the EU-Japan EPA provides that 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 EU Guidance on "Claim, verification and denial" provides that:

*"The common data requirements for customs declarations are laid down in Annex B, Title I of Commission Delegated Regulation 2015/2446 and their format and codes are laid down in Annex B of Commission Implementing Regulation 2015/2447".*

*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"*

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*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 a verification may be 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.*

*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."*

The Guidance can be found here:

https://ec.europa.eu/taxation_customs/sites/taxation/files/eu_japan_epa_guidance_claim_verification_denial_en.pdf

**Q-6 on the identification as the exporter or the producer:**

With regard to the code of identification claiming preferential origin used for the electronic import declaration under the NACCS system, the fixed statement text shall be used as provided in Annex 3-D (of the EU-Japan EPA). This means that the statement on origin shall start from "the exporter" even if the producer makes out the statement on origin. Under the circumstances, I always place the letter "E" (statement on origin by the exporter) at the third digit of the identification code. When the producer makes out a statement on origin, should I place the letter "P" (statement on origin by the producer) at the third digit of the identification code?

In such a case, should the statement text read "The manufacturer (or producer) of the products covered by this document ･･･ " instead of the fixed text under Annex 3-D?

***(A6 provided by Japan Customs) (uploaded as A-4 in the Q & A for Japan Customs)***

*Article 3.1(c) of the Japan-EU EPA provides that the "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. From this definition it is obvious that the exporter includes a person who produces the originating product. Therefore, the text of the Statement on Origin shall be made out by stating "The exporter ･･･" even though the producer possesses necessary document to prove the originating status of the product. In addition to it, the letter "P" should be inserted to process NACCS clearance system.*

**Q-6a:**

Do the Customs administrations in the EU administer the same way as the Japan Customs answered?

**(A-6a provided by COM)**

No, for the claim for preferential tariff treatment in the EU it is not relevant to identify whether the exporter as defined in Article 3.1(c) of the EU-Japan EPA, and making out the statement on origin, either produces or only exports the originating products.

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**Q-7 on the use of the Statement on Origin following storage in a customs warehouse:**

As stated in Article 3.29 of the EU/Japan EPA, for originating goods for which the application for approval of storing in the Customs warehouse is lodged prior to the entry into force of the Agreement to be granted preferential tariff treatment, a claim for the preferential tariff treatment shall be made along the import clearance procedure (including filing for the permit to withdraw cargoes from a customs warehouse) within 12 months of that date (i.e., to be undertaken by 31 January 2020).

Is it possible to interpret from this provision that any originating good for which the application for approval of storing in the Customs warehouse is lodged on and after the entry into force of the Agreement may be granted preferential tariff treatment if the good is stored in a customs warehouse before the statement on origin expires (one year from the date of making out)? The reason behind this argument is that the Customs law and regulations of Japan requires submission of the valid statement on origin at the time of storing the goods in the customs warehouse, but no provision is set out for the deadline for the import declaration of the originating goods.

***(A-7 provided by Japan Customs)***

*Article 3.17(4) provides that "A statement on origin shall be valid for 12 months from the date it was made out".*

*Concerning the originating products for which the application for approval of storing in the Customs warehouse is lodged on and after the entry into force of the Agreement, the Statement on Origin shall be submitted at the time of the application (Customs Law Article 43-3). Therefore, any Statement on Origin made out over 12 months ago at the time of the application is invalid.*

*However, when the Statement on Origin has already been submitted at the time of the application for approval of storing in the Customs warehouse, it is not necessary to resubmit the Statement on origin for the import/withdrawal declaration of the products. Thus even though more than 12 months has passed since the date of making out the Statement on Origin, preferential treatment is applicable at the time of import/withdrawal declaration of the products (Customs Law, Article 43-3). Having said that please note that the maximum period to store the products in the Customs warehouse is two years from the date of approval of storing (Customs Law, Article 43-2).*

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**Q-7a:**

Do the Customs administrations in the EU administer the same way as the Japan Customs answered?

**(A-7a provided by COM)**

Not exactly. The claim for preferential tariff treatment in the EU must be made within the validity period of 12 months of the statement on origin, which means the Statement on Origin must be valid e.g. when the goods are released from the Customs warehouse by the importer making a claim for preferential tariff treatment. The exporter, provided this person continues to fulfil the obligations under the EU-Japan EPA, would be able to make out a new statement on origin for products exported from the exporting Party, which may serve as the basis of the claim.

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**Q-8 on the possibility to omit the name of the exporter in the Statement on Origin:**

When an exporter (or a producer) makes out a statement on origin, the printed name of the exporter shall be placed in accordance with Annex 3-D.

Taking into account footnote 5 to Annex 3-D stating that the "place and date may be omitted if the information is contained on the document itself", could the requirement mentioned above be waived when the name of the exporter is clearly indicated on an invoice or other relevant commercial documents?

If the answer is negative, i.e., placing the name of the exporter being mandatory, will Japan Customs treat this statement on origin without the name of the exporter as the case of error or omission which does not affect the validity of the statement or will there be any possibility to invalidate the statement and thus deny the preferential tariff treatment for the goods in question?

***(A-8 provided by Japan Customs)***

*The Agreement does not provide that the name of the exporter is omitted, even if the name of the exporter is clearly identified with the referred commercial document, please print (or write down) the name of the exporter on the Statement on Origin.*

*When you are about to lodge the Customs import clearance and recognise that the name of the exporter is omitted on the Statement on Origin, please consult with the Customs office.*

**Q-8a:**

Do the Customs administrations in the EU administer the same way as the Japan Customs answered?

**(A-8a provided by COM)**

Yes

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**Q-9 on differences of implementation:**

Please let us know whether the Statement on Origin is treated in the same manner by every customs authority in the EU member states. With respect to the exports in which we are involved:

(1) In some of the EU member states, the commercial documents (e.g., invoices and packing lists) which contain Statements on Origin made out by Japanese producers have not been accepted;

(2) On the other hand, in several other countries, the documents have been accepted.

It is understood that the above-mentioned documents fall under the third of the four scenarios described on page 6 of the EU-Japan EPA Guidance "Statement on Origin". Has the issuance of this Guidance ensured uniformity of operation among EU customs authorities?

(Related Articles and Pages of the EU-Japan Guidance)

EU-Japan EPA Guidance "Statement on Origin" pp.3-7 "2. Guidance" (Especially p.6 is relevant.)

" … the producer acting as the "exporter", although not exporting the products, makes out a Statement on Origin on a document of the trading company."

**(A-9 provided by COM)**

Possible differences in the way to implement relevant provisions have been addressed by the EU Guidance document.

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**Q-10 on repayment/ remission of customs duties in the EU:**

Q 10-1: It is our understanding that if the FTA preferential claim is made retrospectively after the goods have gone through import clearance, importers have the right to apply within three years from the date of the customs clearance, under the EU Customs Code (UCC). Is this correct?

There are also cases where customs officers have instructed that retroactive applications should be filed within the validity period of the Statement on Origin (one year). Can importers file a "retroactive application" even after the validity period of the Statement on Origin has expired?

Q 10-2: How long will it take for an actual refund, after the refund decision has been made? We have heard that there is substantial variation in the refund period between the EU Member States.

Q 10-3: According to the EU-Japan EPA Guidance on the "Statement on Origin", it seems that in general, "the customs authority will make a decision on the refund and inform the applicant at the latest 120 days from the date of receipt of the application." Is this correct?

Also, if the importer does not receive a decision notice within 120 days, or if the importers are told that it will take several years for the actual refund, is there a contact point that the importers can use to discuss the situation?

Furthermore, if the operation varies from customs to customs, and if the importers are informed that the refund process will take a long time or they are told that it is impossible for the customs office to conduct the process, due to their capacity, can the importers apply to another customs office of another EU member state as an alternative choice?

**(A-10 provided by COM)**

A 10-1 Yes.

The claim for repayment/ remission must be based on a valid statement on origin. However, for the purpose of a retrospective claim for preferential treatment by the importer in the EU, the exporter in Japan, provided this person continues to fulfil the obligations under the EU-Japan EPA, would be able to make out a new statement on origin for products exported from the exporting Party, which may serve as the basis of this claim during its validity period.

The application for repayment or remission of the overcharged amount of duty must indeed, in normal circumstances, be submitted within three years of the date of the notification of the customs debt, meaning in such case the date of the customs import declaration releasing the products for free circulation in the EU (Articles 117 and 121(1)(a) of the UCC - Regulation EU) No 952/2013 of 9 October 2013).

A 10-2 The time period within which a decision must be taken by the customs authority upon an application for repayment or remission is indeed the standard period regulated in Article 22(3) of the Union Customs Code. It provides for a decision to be taken by the customs authority without delay and at the latest within 120 days of the date of the application. Extension of that time-limit is nevertheless possible under certain conditions.

A 10-3 The application for repayment or remission must be submitted to and the decision taken by the competent customs authority of the Member State where the customs debt was initially notified, and the overcharged amount of duty recovered.

Details on the process of applications and decisions for repayment or remission can be found in Articles 92-97 of the UCC Delegated Act (Commission Delegated Regulation (EU) 2015/2446) and 172-180 of the UCC Implementing Act (Commission Implementing Regulation (EU) 2015/244), as well in dedicated Commission Guidance: https://ec.europa.eu/taxation_customs/sites/taxation/files/rem-rep-guidance-en.pdf

https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/customs/customs_code/guidance_rem_rec_en.pdf

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**Q-11 on Binding Information:**

With regard to the Advance Ruling System (BTI, BOI), we have heard from some companies that non-EU companies which do not have a branch in the EU, and are unable to obtain an EORI number, are de facto held back from obtaining BTI/BOI. The bottleneck for Japanese companies when using the BTI/BOI system is that they cannot de facto use such system without the cooperation of the importer. We hope that you will consider improving the system so that it can be used by exporters alone.

https://ec.europa.eu/taxation_customs/business/calculation-customs-duties/what-is-common-customs-tariff/binding-tariff-information-bti_en

https://trade.ec.europa.eu/tradehelp/binding-origin-information-boi

According to the WTO Report below, the majority of BOI issuances are concentrated in one EU member state. We understand that this one EU member state is the UK, where applications in English are easily made. We are concerned that the use of the Advance Ruling System will decrease drastically after Brexit. How has the EU been addressing this issue? We are hoping that the EU will consider improving the system so that it can be easily used in English as well, even after Brexit.

World Trade Organization, "TRADE POLICY REVIEW, Report by the Secretariat The European Union WT/TPR/S/357" (17 May 2017)

http://trade.ec.europa.eu/doclib/docs/2017/july/tradoc_155733.pdf

**(A-11 provided by COM)**

It is not required to be established in the EU (however an EORI number is necessary) to apply for and obtain a decision relating to binding information on origin - BOIs or tariff classification – BTI, insofar as there is an intended use of that decision by the applicant. It is true that the customs declaration by which a preferential tariff treatment is claimed must be lodged by a declarant (being the person in whose name the declaration is lodged) established in the EU. However, that established declarant could be an indirect representative, declaring the products and claiming the preference in his own name but on behalf of the holder of the binding information. The Commission is currently reviewing with Member States the use of decisions relating to binding information by non-established holders of those decisions.

Regarding the second part of the question your understanding that UK issues the majority of BOI in the EU does not reflect the reality. It is however foreseen that, after the end of the transition period, BOIs issued in the UK will be valid only there, while BOIs issued in EU27 will no longer be valid in the UK. The Commission does not see this as an issue to be addressed. You can refer to point 2.3 of the Commission Guidance Note of 22.11.2019 on "Withdrawal of the UK and customs related matters in case of no deal", which may be considered still relevant, *mutatis mutandis*, in the perspective of the end of the transition period established by the Withdrawal Agreement:

*https://ec.europa.eu/info/sites/info/files/file_import/guidance-customs-procedures_en_0.pdf*

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**Q-12 on verification:**

(1) Please provide examples of cases in which the customs authority of the exporting country (EU Member State) conducted the verification against the exporter in writing or by site visits, and eventually denied preferential tariff treatment. In addition, please let us know what practical selection criteria the verification is based on.

**(A-12 provided by COM)**

This information is considered confidential.

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**Q 13 on denial of Preferential Tariff Treatment:**

If there is any case where preferential tariff treatment was denied after the verification was conducted, please let us know the details of the case, along with the reason of the denial, to the extent possible.

(Related Articles and Pages of the EU-Japan Guidance Guidelines)

EU-Japan EPA Guidance, "Statement on Origin" p. 7, pp. 9-10

**(A 13 provided by COM)**

This information is considered confidential.

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**Q-14 on providing explanations in the EU:**

Please provide us with the current ratio of import declarations where exporters or producers are unable to provide information on the origin of the exported goods (i.e., where there is only the text of the Statement on Origin) on import declarations with detailed explanations [that the product satisfies the origin criteria].

**(A-14 provided by COM)**

See A-5 provided by COM. In the EU, additional 'explanations' are not requested as part of the assessment of the claim.

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**Q-15 on verification:**

This question concerns improving the use of the EU-Japan EPA.

Please inform us of the current status (e.g., numbers and content) of the verification conducted or denials of preferential tariff treatment made by the customs administrations of EU member states with regards to the FTAs, including the EU-Japan EPA.

If each customs authority of the EU member states deals with the verification or denials of preferential tariff treatment, and the European Commission is not in a position to know the situation, we hope that the European Commission will take measures to improve the situation, such as by requesting the customs authorities of each EU member state to disclose and disseminate information in English.

**(A-15 provided by COM)**

This information is considered confidential.

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