

Questions and Answers

Made at the EU/Japan EPA Seminar on Preferential Rules of Origin
In commemoration of the First Anniversary of the EU/Japan EPA
【Questions Addressed to Japan Customs and Its Corresponding Answers】

This is to share the information exchanged with the officials of the Ministry of Finance, Japan during the “Questions and Answers Session” at the EU/Japan EPA Seminar on preferential Rules of Origin in commemoration of the First Anniversary of the EU/Japan EPA held on 4th and 6th of February 2020 in Tokyo and Osaka, respectively.

1. Possibility of utilising a REX number for the NACCS clearance system

(Q 1: Invoices referring to a REX number)

In anticipation of the exporter being registered on an HS code basis under the REX system in the EU, would it be considered in the NACCS system that a new shipper code be replaced with the REX number to reflect immediately the HS code number as well as the applicable EU EPA rate of duty on the import declaration monitor/screen at the importer’s computer? This method may be used to automatically check an unregistered exporter if the HS code declared at the time of importation does not match with the registered number.

(A 1)

We understand that the REX system is not operated in such a way.

2. Interpretation of the EU Guidance Paper: Cases when the person who makes out the statement on origin is different from the person who lodges a Customs export declaration

EU-Japan EPA Guidance: Statement on Origin newly issued on 16 December 2019 provides for the following:

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 2-1: SOO number to be referred to on the multiple shipments)

If the shipper of the originating goods, who makes an export declaration to the Customs, issues an invoice referring to the document number assigned to the statement on origin (hereinafter referred to as “SOO”) for multiple shipments made out by the producer of the originating goods, will this case be acceptable?

(A 2-1)

You understand correctly (see page 37 (slides 21 and 22) of the seminar PowerPoint presentations by the Ministry of Finance, Japan, entitled “Current State of Play in Japan-EU EPA”). However, please describe on the SOO that the “exporter” who makes it out is different from the person who issues the invoice.

(Q 2-2: SOO number to be referred on the replaced invoice)

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 (re invoiced). In relation to Sub-Question 1 of the Guidance, under the above-mentioned circumstances, will it be acceptable if the document number assigned to the SOO made out by the producer of the originating goods is properly referred to on the replaced invoice?

(A 2-2)

There are two cases to be considered. One is that when an invoice is being replaced with the new one in the exporting Party, reference to the document number of the SOO is sufficient. However, the other case where the invoice is being replaced outside the exporting Party, referencing on that replaced invoice (i.e. the third-party invoice) is not supposed to be done. Therefore, in such a case, any commercial document issued in the exporting Party should be used to refer to the document number assigned to the SOO.

(Q 2-3: Model text to be used when the “exporter” who makes out the SOO and the shipper who makes a Customs declaration are different)

Japan Customs guideline for origin declaration and verification provides for “The two last scenarios (among four 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.” Is there a model text for this case?

(A 2-3)

An example was provided on pages 37 and 38 (slides 21 through 24) in the PowerPoint presentations of the Ministry of Finance, Japan, as far as the case imported to Japan.

(Note of the seminar secretariat: This Q & A paper has been sent to the European Commission for confirmation. However, due to the circumstances encountered, the secretariat was informed that the confirmation by the Commission will arrive in due course.)

3. Possibility of unifying a format for different EPAs

(Q 3: Unified format for the claim for preferential tariff treatment in Japan)

Is there any intention to make a unified format for the claim for preferential tariff treatment, which is, as part of the import clearance procedures, to be submitted with the invoice or any other shipping documents? Wishing Japan Customs to make a unified format for that claim to be used for EPAs with Australia, CPTPP and EU, and the Japan/US Trade Agreement.

(A 3)

In the case of Japan-EU EPA, when the exporter makes out a SOO, the text on the SOO as described in Annex 3-D must be included in an commercial document. Apart from it, a document for claiming preferential tariff treatment for the purposes of import declaration does not need to be a fixed format, as long as the prescribed minimum data requirements are contained in the document. If your company wishes to establish a new unified format for this purpose, it is possible to do so. However, please be reminded that each EPA stipulates different data requirements.

4. Codes of identification claiming preferential origin used under the NACCS system in Japan

(Q 4: Codes of identification claiming preferential origin used under the NACCS system)

With regard to the codes 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. This means that the statement on origin shall start from “the exporter” even if the producer makes out the SOO. 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?

(A 4)

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 SOO”. From this definition it is obvious that, under the Japan-EU EPA, the exporter includes a person who produces the originating product. Therefore, the text of the SOO shall be made out by stating “The exporter . . .” even though the producer possesses necessary documents to prove the originating status of the product. In addition to it, the letter “P” should be inserted to process the NACCS clearance system.

5. Validity period of SOO and the time of import clearance for stored goods

(Q 5: Validity period of SOO and the time of import clearance for stored goods)

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, 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 may be granted preferential tariff treatment in the following case?

- the application for approval of storing in the Customs warehouse is lodged on and after the entry into force of the Agreement, and
- the valid SOO (within one year from the date of making out) is submitted to Japan Customs at the time of the application for approval of storing the goods in the customs warehouse, even if the import declaration is made beyond the 12 months period from the date of making out the SOO.

The reason behind this argument is that the Customs law and regulations of Japan have no provision for the deadline for the import declaration of the originating goods.

(A 5)

Article 3.17(4) provides that “A SOO 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 SOO shall be submitted at the time of the application (Customs Law Article 43-3). Therefore, any SOO made out over 12 months ago at the time of the application is invalid.

However, when the SOO 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 SOO for the import/withdrawal declaration of the products. Thus, even though more than 12 months has passed since the date of making out the SOO, 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).

6. Verification and denial of preferential treatment

(Q 6-1: Omission of the “exporter’s name” and consequences for the preferential treatment)

When an exporter (or a producer) makes out a SOO, 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 SOO 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 6-1)

As the Agreement does not provide that the name of the exporter can be 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 SOO.

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

(Q 6-2: Statistical data of denial of preferential treatment and verification conducted)

How many cases of verification through the administrative cooperation (Art. 3.22) have been conducted during one year since the Agreement entered into force in February 2019? In particular, with regard to the following:

- total number of cases during the period mentioned;
- the ratio in percentage of such cases against the total EU/Japan EPA import declarations;
- number or percentage of the verification cases either by visiting the exporters or sending documentary enquiries undertaken by the EU Member Customs administrations.

(A 6-2)

The statistical data concerning verification shall be kept confidential from the viewpoint of Customs control. With regard to the verification visit to the exporting country, the importing Customs authority is unable to visit the exporting country under the Japan-EU EPA.

(Q 6-3: Information on cases of denial)

Wishing Japan Customs to make the information available preferably on the website of Japan Customs concerning the cases denying preferential tariff treatment resulting from the verification to EU Member Customs authorities and the reasons for them.

(A 6-3)

With regard to the details of the verification such as administrative cooperation or verification of the importer, it is not appropriate for Japan Customs to make the information available to the public from the viewpoint of Customs control. However, the denial cases will be added to the current Japan Customs website column for “Cases of failure to prove originating status under the EPA/GSP”.

(Q 6-4: Ratio between (i) claims for preferential treatment with the SOO only and (ii) claims for preferential treatment accompanied with additional information)

I wish to request the information on the current ratio between (i) claims for preferential treatment with the statement on origin only (no additional information provided) and (ii) claims for preferential treatment accompanied with additional information.

(A 6-4)

From the viewpoint of Customs control, we decline to make such a ratio available to the public.