

RULES OF ORIGIN IN THE EU-JAPAN EPA



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I- INTRODUCTION

The European Union (EU) and Japan have agreed on progressive rules of origin in the Agreement between the European Union and Japan for an Economic Partnership ('EU-Japan EPA'¹). Rules of origin are one of the most important elements in FTAs, which set out the rules and requirements for application of preferential tariff treatment (reduced or eliminated customs duties) to originating products by the customs authority of the importing party. The EU and Japan jointly created one of the largest free and advanced economic zones in the world by the EU-Japan EPA with approximately 30% of the world GDP and 40% of world trade at the time of its entry into force on 1 February 2019,² and it is called a mega EPA/FTA.³ Considering the economic significance of the EPA and the political influence of the EU and Japan, the rules of origin in the EU-Japan EPA are important not only for those who may utilise the EPA but also for third-party countries, as these rules can be referred to as model provisions with modern and high-standard elements for future negotiations of other FTAs.

The purpose of this article is not to cover every aspect of the rules of origin of the EU-Japan EPA equally but to analyse and evaluate significant provisions to reveal considerations behind them and organise points of future discussion. In order to achieve this goal, Section II starts with an introduction of two different concepts of originating products. Then, Section III explains the

importance of the achievement of full accumulation and analyses the logical relationship between the concepts of originating products and accumulation systems. Thereafter, Section IV describes special rules in relation to certain vehicles and parts of vehicles, especially focused on the cross-accumulation system, which is an ambitious attempt to connect various FTAs. After that, in Section V, an historical analysis of trends regarding origin certification is provided with reference to certification procedures in the EU-Japan EPA, followed by Section IV, which discusses the verification system.

II- ORIGINATING PRODUCTS

A- CONCEPT OF ORIGINATING PRODUCTS

The EU and Japan shall grant preferential tariff treatment to 'originating products of the other Party' in accordance with respective tariff schedules set out in Annex 2-A (Tariff Elimination and Reduction).⁴ Within the FTA context, originating products are generally classified in two different ways and each FTA adopts either one of them: (1) originating products of a party or (2) originating products produced in the territory of the FTA. Under the former concept of 'originating products of a party', it is examined whether a product acquired originating status in the territory of the exporting party. Under this concept, products originating in another party(ies) of the FTA are considered non-originating products of the party. On the other hand, under the latter concept of 'originating products produced in the territory of the FTA', all products that acquired originating status within the territory of any party of the FTA are considered originating products under the FTA, and all production processes conducted within the territory of any party of the FTA are allowed to be included in the consideration of satisfaction of origin requirements. This difference in the concept brings different functions of accumulation systems, which is elaborated on in Section III-B.

The EU-Japan EPA adopts the concept of 'originating products of a party'. As the contracting parties of the

1 Japan has traditionally named its FTA the 'Economic Partnership Agreement (EPA)', as the Japanese EPA covers a broader range of fields and is not limited to mere elimination/reduction of customs duties. As such, in this article, 'FTA' refers to free trade agreements in general and the Japanese FTA is called the 'EPA'. It should be noted that the EU-Japan EPA is different from the EU's traditional 'EPAs', which are trade and development agreements negotiated between the EU and African, Caribbean and Pacific (ACP) partners engaged in regional economic integration processes. (The European Commission, 'Economic partnerships' <<https://ec.europa.eu/trade/policy/countries-and-regions/development/economic-partnerships/>> accessed 31 May 2020).

2 Ministry of Foreign Affairs of Japan, 'Japan-EU EPA' <<https://www.mofa.go.jp/files/000013835.pdf>> accessed 31 May 2020.

3 There is no particular definition of a mega EPA/FTA. However, an EPA/FTA with significant economic impacts is usually called a mega EPA/FTA.

4 Article 2.8.

EU-Japan EPA are the EU and Japan (each member state of the EU is not a party⁵), products that acquire originating status in an EU member state are considered originating products of the EU and not originating products of the particular EU member state. For example, if products produced in France satisfy the requirements of originating products, they shall be considered originating products of the EU and not of France. On the other hand, products originating in Japan shall be dealt with as originating products of Japan.

In contrast to the EU-Japan EPA, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership ('CPTPP', also known as TPP11⁶), another mega EPA/FTA in which Japan is a party, is based on the concept of 'originating products produced in the territory of the FTA'. Accordingly, products originating in Japan under the CPTPP are considered 'originating products of the CPTPP', and there is no concept of originating products of Japan or other contracting countries.

B- THREE CATEGORIES OF ORIGINATING PRODUCTS

a) Overview

Under the EU-Japan EPA, three categories of products are considered originating products: (1) wholly obtained or produced products, (2) products produced exclusively from materials originating in the EU or Japan and (3) products produced using non-originating materials provided they satisfy all applicable requirements of Annex 3-B (Product Specific Rules of Origin 'PSR'). This three-category classification of originating products is traditionally used in Japanese EPAs. The EU's FTAs generally classify originating products in two different categories: (i) wholly obtained or produced products and (ii) products obtained in a party incorporating materials that have not been wholly obtained there, provided that such materials have undergone sufficient working or processing in the party concerned.⁷ This is purely a difference of categorisation. Under the EU's categorisation system, products produced in a party exclusively from products specified in the list of other originating products are included in wholly obtained or produced products.

⁵ As a result, the EU-Japan EPA will automatically cease to be applied to the UK once Brexit is completed.

⁶ The TPP11 is named after the 11 original signatories of the agreement. As of 31 May 2020, the CPTPP is in force with Japan, Australia, Canada, Mexico, New Zealand, Singapore and Vietnam. The other four original signatory countries, namely Brunei, Chile, Malaysia and Peru, have not completed its national ratification procedures, and hence, the CPTPP has not entered into force in relation to these countries.

⁷ E.g., Article 2(a) of Protocol 1 of the FTA between the EU and the Republic of Singapore.

b) Wholly obtained or produced products

Wholly obtained or produced products are products in which the entire production process takes place in either the EU or Japan. For example, plants such as rice harvested in the EU or Japan, live animals such as horses born and raised there and minerals or other naturally occurring substances such as gold extracted there are considered to satisfy the requirements.

c) Products produced exclusively from materials originating in the EU or Japan

In this category, materials originating in the EU or Japan include the materials that acquired originating status by using non-originating materials of the Japan or EU and satisfied the relevant PSR.

d) Products satisfying the PSR

Products produced using non-originating materials shall satisfy all applicable requirements of Annex 3-B (PSR). The PSR are classified into three categories: (1) change in tariff classification, (2) production process and (3) maximum value of non-originating materials or minimum regional value content.⁸ Each product shall meet one or multiple PSR requirements pertaining to the product in order to claim preferential tariff treatment.

III- ACCUMULATION OF ORIGIN

A- FULL ACCUMULATION

A system of accumulation⁹ of both (1) product and (2) production is provided under the EU-Japan EPA.¹⁰ 'Full accumulation' is the term to refer to an FTA with both accumulation systems. Full accumulation greatly facilitates the acquisition of originating status of products, as explained below.

First, accumulation of product means that a product that qualifies as originating in a party shall be considered as originating in the other party if used as a material in the production of another product in the other party. For example, if a company in the EU imports vehicle components that are originating products of Japan, the company may consider the vehicle components originating products of the EU in the calculation of the regional value content of the vehicles produced by the company in the EU. Second,

⁸ Article 2 of Note 1 of Annex 3-A.

⁹ The EU generally uses the term 'cumulation' and accepted Japanese terminology of 'accumulation' in the EU-Japan EPA. There is no difference in concept.

¹⁰ Article 3.5.

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accumulation of production means that production carried out in a party on a non-originating material may be taken into account for determining whether a product is originating in the other party. For instance, if a company in the EU imports computer parts that are not originating products of Japan but a company in Japan added value to them, the company in the EU may include such value added to the computer parts in the calculation of the regional value content of the computers produced by the company in the EU. In addition, accumulation of production is also applicable to satisfy production process requirements of PSR.

However, as an important exception, neither accumulation system is applicable if the production carried out in the other party does not go beyond one or more of the operations listed as insufficient working or processing in Article 3.4(1).¹¹ For example, preserving operations, changes of packaging, washing and simple mixing of products are considered insufficient working or processing of products.

B- RELATION BETWEEN CONCEPT OF ORIGINATING PRODUCTS AND ACCUMULATION SYSTEM

Since the EU-Japan EPA adopts the concept of 'originating products of a party' as explained in Section II-A above, an originating product of Japan (i.e. non-originating product of the EU) or production carried out in Japan in its nature cannot be included in the consideration of whether the final products produced in the EU acquire originating status. Hence, the accumulation system in the EU-Japan EPA is a remedial provision enabling the inclusion of the value added to or certain production processes conducted on non-originating products. In contrast, in the FTAs adopting the concept of 'originating products produced in the territory of the FTA', products originating in and production carried out in another party(ies) of the FTA are considered elements to increase originating status without an accumulation system. In that sense, accumulation systems in these kinds of FTAs are merely confirmatory provisions.

IV- SPECIAL RULES IN RELATION TO CERTAIN VEHICLES AND PARTS OF VEHICLES

A- OVERVIEW

Reflecting the high demand for the trade of vehicles and parts of vehicles, there are four special rules of origin applicable to certain vehicles and parts of vehicles under the EU-Japan EPA. These rules are (1) suppliers' declarations, (2) interim threshold of PSR

for vehicles and parts of vehicles, (3) special PSR for certain motor vehicles through production processes related to certain parts and (4) cross-accumulation.¹²

B- SUPPLIER'S DECLARATIONS

Where a supplier in Japan provides a producer in Japan certain parts of vehicles (HS84.07, 84.08, 87.01–87.08) with the information necessary to determine the originating status of the products, a supplier's declaration may be provided by the supplier.¹³ This treatment enables the suppliers to avoid disclosing confidential information to the vehicle manufacturing company, including price information of the parts produced by the supplier. As the supplier's declaration system has already taken place in the EU, this provision is only applicable to Japanese entities.

C- INTERIM THRESHOLD FOR VEHICLES AND PARTS OF VEHICLES

For motor vehicles principally designed for the transport of persons (HS87.03) and certain parts of vehicles (HS84.07, 84.08, 87.06–08), requirements on maximum value of non-originating materials or minimum regional value content in a product are temporarily relaxed.¹⁴ For said motor vehicles, 10% relaxation is applicable from the first year until the end of the third year, 5% relaxation is applicable from the fourth year until the end of the sixth year and the agreed maximum value of non-originating materials or minimum regional value content in the PSR is applied from the beginning of the seventh year (i.e. six years of relaxation). Regarding the parts of vehicles, 5% relaxation is applicable from the first year until the end of the third year, and agreed rates are applied from the beginning of the fourth year (i.e. three years of relaxation). This temporary relaxation treatment is designed to serve as a preparation period for carmakers to re-organise their supply chain to adapt to the EU-Japan EPA.

D- SPECIAL PSR FOR CERTAIN MOTOR VEHICLES THROUGH PRODUCTION PROCESSES RELATED TO CERTAIN PARTS

For certain parts of vehicles listed in Section 3 of Appendix 3-B-1, if listed materials such as (i) toughened glass, (ii) bumpers or (iii) drive-axles with differential, whether or not provided with other transmission components, are (a) used in the production of motor vehicles and (b) carrying out of specific production

¹¹ Article 3.5(3).

¹² Appendix 3-B-1.

¹³ Section 1 of Appendix 3-B-1.

¹⁴ Section 2 of Appendix 3-B-1.

processes, such as (i) tempering, (ii) production from certain non-originating semi-finished steel products or (iii) production of drive shaft and differential gears from non-originating flat-rolled metal (corresponding to the same numbering item, respectively), such parts shall be considered originating in a party. The application of this special production process can be employed as an alternative to the PSR rules for respective products, and it is expected to facilitate the acquisition of originating status.

E- CROSS-ACCUMULATION

There are notable provisions under the EU-Japan EPA with regard to the potential accumulation of product (not accumulation of production) system in relation to specific parts of vehicles produced in certain third countries.¹⁵ This special accumulation is called cross-accumulation. To be specific, the EU and Japan may decide¹⁶ that petrol engines (HS84.07), wire harnesses (HS85.44) and parts and accessories of motor vehicles (HS87.08) originating in a third country used in the production in the EU or Japan of motor vehicles principally designed for the transport of persons (HS87.03) are considered originating materials under this Agreement under three conditions:

- (a) both the EU and Japan have an FTA with that third country, within the meaning of Article XXIV of GATT 1994;
- (b) an arrangement is in force between the EU/Japan and that third country on adequate administrative cooperation ensuring full implementation of the cross-accumulation and the EU/Japan notifies the other party of such arrangement; and
- (c) the EU and Japan agree on any other applicable conditions.

In relation to requirement (a), Canada, Chile, Mexico, Singapore and Switzerland are current candidate countries with which FTAs are in force with both the EU and Japan. In addition, Vietnam will be added as a candidate after its FTA with the EU enters into force, which is expected to be 1 August 2020. It should be noted, however, that cross-accumulation is not automatically applied in relation to these candidate countries, as requirements (b) and (c) shall also be satisfied before the decision to introduce the cross-accumulation system is made by the EU and Japan.

This cross-accumulation system is an ambitious attempt to connect the EU-Japan EPA with other FTAs. This may allow car manufacturing companies in the EU and Japan to procure necessary vehicle parts in a certain third-party country(ies). In particular, Mexico and Vietnam seem to be two of the best candidate countries for cross-accumulation, since there are already remarkable production bases in these countries.

For Japan, the EU-Japan EPA is the very first EPA to introduce potential cross-accumulation provisions. On the other hand, the EU has adopted this kind of provision in the FTA with Canada (CETA). Moreover, the EU has traditionally used diagonal accumulation systems, such as the FTA with Serbia and the FTA among the EU, Colombia and Peru. In the diagonal accumulation system, (i) the FTA with the common third-party country shall be in force respectively and (ii) the rules of origin of these FTAs are required to be identical. The latter requirement is rather difficult to meet. In this regard, it is pointed out that diagonal accumulation and cross-accumulation have some similar concepts, but the former requires harmonisation and the latter is based on mutual recognition.¹⁷ Although the Committee on Regional Trade Agreement of the WTO, which mandated the consideration of individual FTAs, has not reported any concerns regarding the conformity of the cross-accumulation and diagonal accumulation systems with the most-favoured-nation treatment obligation under the WTO Agreement, it may require further detailed analysis and discussion.

V- ORIGIN CERTIFICATION

A- ADOPTION OF SELF-CERTIFICATION

The originating status of products shall be proved to the customs authority of the importing party upon importation of the products in order to claim for preferential tariff treatment, unless such products are sent as small packages from private persons to private persons or form part of travellers' personal luggage and meet price requirements.¹⁸ The self-certification (self-declaration) system is introduced in the EU-Japan EPA as a means of origin certification. To be specific, a claim for preferential tariff treatment shall be based either on

¹⁵ Section 5 of Appendix 3-B-1.

¹⁶ This expression elaborates the intention of the EU and Japan that separate agreement is required to introduce cross-accumulation system.

¹⁷ Maria Donner Abreu, 'Preferential rules of origin in regional trade' in Rohini Acharya (ed), *Regional Trade Agreements and the Multilateral Trading System* (Cambridge University Press, 2016) 66.

¹⁸ Pursuant to Article 3.20, for importation to the EU, 500 euros in the case of small packages or 1,200 euros in the case of products forming part of travellers' personal luggage. For importation to Japan, a statement on origin or the importer's knowledge is not required where the total customs value is less than 200,000 yen.

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a statement on origin¹⁹ or the importer's knowledge.²⁰

B- BRIEF HISTORY ON TRANSITION OF ORIGIN CERTIFICATION SYSTEM

a) EU

The introduction of self-certification systems is a recent trend in the FTAs of developed countries, including the EU and Japan, as it facilitates logistics with regard to the preparation of proof of origin and enables exportation with shorter lead-time with less costs.²¹ To understand the importance of the self-certification system, a brief history of the transition of the origin certification system in the EU is explored, as shown in **Chart 1**.



[Chart 1: Transition of origin certification system in the EU]

In the past, the EU's FTAs have adopted a dual origin certification system: approved exporters system and third-party certification system, such as in the FTA with Mexico (entered into force on 1 July 2000) and the FTA with Chile (entered into force on 1 February 2003) (Phase 1). Under the approved exporters system, only exporters who meet certain qualifications are allowed to issue origin certificates by themselves. Other non-approved exporters are required to request the relevant authority (e.g. customs authority) to issue origin certificates (EUR.1), and this requires a certain period of time (third-party certification system) and fees. The European Commission issued the then-new trade strategy *Global Europe: Competing in the World*²² in 2006. In this strategy paper, the European Commission emphasised that 'we should also ensure Rules of Origin in FTAs are simpler and more modern and reflect the realities of globalization' [emphasis added]. This is considered to mean abolishment of the third-party certification system and integration of the origin certification system into the approved exporters system (later leading to the introduction of the self-certification system). The FTA with South Korea (entered into force on 1 July 2011) and the FTA with Singapore (agreed in principle on October 2014

and entered into force on 21 November 2019) only adopted the approved exporters system in line with *Global Europe: Competing in the World* (Phase 2).

Recently, the EU has moved to introduce the self-certification system in FTAs (Phase 3). To date, the FTA with Canada (entered into force provisionally on 21 September 2017) and the EU-Japan EPA (entered into force on 1 February 2019) solely adopt the self-certification system. In addition, the aforementioned FTA with Mexico is undergoing the finalisation of the text of the amendment agreement, and that with Chile is currently under negotiation for amendment, both of which are expected to abolish the approved exporters system and replace it with the self-certification system.

The difference between approved exporter system and self-certification system is that there is no requirement of prior approval from the authority to conduct self-certification in the later system. Accordingly, self-certification system would make FTA available to more entities.

b) Japan

Japan is also moving forward to introduce the self-certification system.²³ The Japan-Australia EPA (entered into force on 15 January 2015) introduced the self-certification system in addition to the third-party certification system as the very first Japanese EPA to adopt the self-certification system. After that, the Trans-Pacific Partnership Agreement (signed on 4 February 2016 by 12 countries, including the US, 'TPP12') was supposed to be the first Japanese EPA to solely adopt the self-certification system. However, the TPP12 has not entered into force, since the US withdrew from it on 30 January 2017.²⁴ Thereafter, Japan took the lead to conclude the CPTPP (TPP11) without the US, and it entered into force on 30 December 2018. As

¹⁹ Article 3.16.2(a).

²⁰ Article 3.16.2(b).

²¹ The US has adopted the self-certification system since the early days of its FTA history, including the NAFTA. ASEAN is introducing self-certification system on a trial basis.

²² Com/2006/567 (4 October 2006).

²³ Traditionally, Japan has solely adopted the third-party certification system in most of its EPAs. For the EPAs with Mexico, Peru and Switzerland, both the third-party certification and approved exporters system were adopted.

²⁴ The Office of the United States Trade Representative, 'The United States Officially Withdraws from the Trans-Pacific Partnership' <<https://ustr.gov/about-us/policy-offices/press-office/press-releases/2017/january/US-Withdraws-From-TPP>> accessed 31 May 2020.

the rules of origin in the TPP12 are fully maintained in the CPTPP, the CPTPP and the EU-Japan EPA are the first and second Japanese EPAs to solely adopt the self-certification system, respectively.²⁵ As the EU and Japan are influential actors in internal trade, the trend of the introduction of the self-certification system may spread to other upcoming FTAs, especially those of developed countries. In contrast, developing countries may find it too early to introduce such a system given their lack of reliance on capabilities for stable self-certification in their own nations.

C- STATEMENT ON ORIGIN

The statement on origin shall be made out by the exporter (including producers of products,²⁶ the same shall apply hereafter) using one of the linguistic versions²⁷ of the text set out in Annex 3-D (Text of Statement on Origin, *see Table 1*) on an invoice or on any other commercial document²⁸ that describes the originating product in sufficient detail to enable its identification.²⁹ The importing party shall not require the importer to submit a translation of the statement on origin. The statement on origin can be used either for a single shipment of one or more products imported into a party or for multiple shipments of identical products within a period not exceeding 12 months.³⁰

D- IMPORTER'S KNOWLEDGE

Importers are allowed to claim preferential tariff treatment based on their knowledge that particular products originate in the exporting party and satisfy the requirements provided for in Chapter 3 (Rules of Origin and Origin Procedures).³¹

[Table 1: Text of Statement on Origin (note omitted)]

(Period: from to)
The exporter of the products covered by this document (Exporter Reference No) declares that, except where otherwise clearly indicated, these products are of preferential origin.
(Origin criteria used)
.....
(Place and date)
.....
(Printed name of the exporter)
.....

VI- VERIFICATION

A- REQUEST FOR INFORMATION FROM THE IMPORTER

The customs authority of the importing party may conduct verification in order to verify whether a product imported into the party originates in the other party or the other requirements of Chapter 3 (Rules of Origin and Origin Procedures) are satisfied.³² It may conduct verification at the time of the customs import declaration, before the release of products or after the release of products. In any case, the customs authority of the importing party shall first request information from the importer who made the claim for preferential tariff treatment under the EU-Japan EPA.

B- INDIRECT VERIFICATION FOR THE EXPORTER

If the claim for preferential tariff treatment was based on a statement on origin made by the exporter, the customs authority of the importing party has two options for further verification. First, it 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.³³ Second, the customs authority of the exporting party may, if requested by the customs authority of the importing party, 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 in accordance with its laws and regulations.³⁴ As both verification

25 Under the CPTPP, Vietnam is temporarily exempted from the self-certification system and using the third-party certification system under Annex 3-A (Other Arrangement) of Chapter 3 of the CPTPP.

26 Article 3.1(c).

27 23 out of 24 EU official languages excluding Irish, and Japanese.

28 There is no legal definition of what constitutes a 'commercial document', which nonetheless can be considered a written record of a commercial transaction. It therefore covers, apart from the invoice itself, different types of documents, such as a pro-forma invoice, a shipping document (packing list, delivery note), etc. (quoted from the European Commission 'EU-Japan EPA Guidance on Statement on Origin' dated 16 December 2019, p.7). <https://ec.europa.eu/taxation_customs/sites/taxation/files/eu-japan-epa-guidance-statements-on-origin.pdf> accessed 31 May 2020.

29 Articles 3.17(1) and 3.17(2).

30 Article 3.17(5).

31 Article 3.18.

32 Article 3.21.

33 Article 3.22(2).

34 Article 3.22(3).

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options require involvement of the customs authority of the exporting party, verification to the exporter under the EU-Japan EPA is called indirect verification.

By contrast, under the CPTPP, the customs authority of the importing party may conduct direct verification including a written request for information from the exporter or producer of the product or a verification visit to the premises of the exporter or producer.³⁵ As the exporter is required to deal directly with the customs authority of the importing party even for the verification visit for its company or factory,³⁶ the burden of arrangement is much higher in direct verification.

C- ADDITIONAL INFORMATION REQUEST FOR THE IMPORTER

If the claim for preferential tariff treatment was based on the importer's knowledge, the customs authority of the importing party may request additional information from the importer.³⁷

VII- CONCLUSION

The EU and Japan were good trade partners even before the entry into force of the EU-Japan EPA, and they recently further tightened their ties by the EPA. As mentioned above, the rules of origin of the EU-Japan EPA, with their open, progressive and well-balanced contents, are models of modern rules of origin in FTAs. Under the growing protectionist trend around the world, the EU and Japan should lead free, fair and open trade, which supports global development and poverty reduction. As its operation and detailed rules as well as guidance information are developing on a daily basis, the EU-Japan EPA will surely become more sophisticated in the near future, and it is expected that such meaningful experiences will be shared with the world.

³⁵ Article 3.27(1)(b)(c) of the CPTPP.

³⁶ Support from the exporting party may be available upon request from the exporter or producer pursuant to Article 3.27(7) of the CPTPP.

³⁷ Article 3.21(5).