

OVERVIEW OF TRANS-PACIFIC PARTNERSHIP (TPP)

The text of the Agreement was released by TPP Parties on 5 November 2015. The Contracting Parties are Australia, Brunei Darussalam, Canada, Chile, Japan, Mexico, Malaysia, New Zealand, Peru, Singapore, United States of America and Viet Nam. The text will continue to undergo legal review and will be translated into French and Spanish prior to signature.

The main topics covered by the TPP in terms of origin procedures relate to certification of origin, claims for preferential tariff treatment and origin verification. In relation to originating goods the main topics covered by the Agreement are provision on regional value content (RVC) and *de minimis*.

Compared to the established origin models, the TPP also contains some special topics such as a provision on the update of the rules of origin to reflect changes to the Harmonized System as well as a specific chapter on textile and apparel goods.

The present document is a first overview of the main features of the origin provisions contained in the TPP. A more detailed comparison between the Agreement and the existing origin models will be conducted once the final text is available.

MAIN TOPICS ON ORIGIN PROCEDURES

Certification of origin / Proofs of origin

The preferences granted under a free trade agreement are limited to products fulfilling the origin rules of the respective agreement. All origin legislations contain provisions how the preferential origin of a good can be proven and certified.

In line with the spirit of the Revised Kyoto Convention, measures to facilitate legitimate trade should be encouraged while ensuring compliance with the necessary requirement for Customs purposes. Self-certification should be recognized as a primary concept for facilitating the origin related procedures. In this context, the WCO recommends in its Guidelines on Certification of Origin to utilize self-certification to the maximum extent possible.

The certification system (Article 3.20) in the Trans-Pacific Partnership (TPP) is based on self-certification. Claims for preferential treatment may be made based on a certification of origin completed by the exporter, producer or importer. The contracting Parties shall provide that certification is only completed by exporters, producers or importers having information that the good is actually originating and may require supporting documentation for the originating status of the goods.

In order to claim for preferential tariff treatment upon importation, the importer shall: i) make a declaration that the goods qualify as an originating good, ii) have a valid certification of origin, iii) submit the certification of origin to the importing Party upon request, and iv) upon request by a Party to demonstrate that the requirements in Article 3.18 (Transit and Transshipment) have been satisfied, including provide relevant documents to support the claim.

According to the TPP origin provisions the certification of origin must be in writing (including electronic format) but need not follow a prescribed format as long as it contains a set of minimum data requirements set out in Annex 3-B to the Agreement. The certification of origin may apply to a single shipment or to multiple shipments of identical goods. The certification of origin is valid for one year after the date of issuance.

A certification of origin shall not be rejected due to minor errors or discrepancies. This provision is pertinent to the good functioning of a free trade agreement, and clearly shows that rules of origin are meant as a tool to ensure the application of the agreement, not as a barrier to trade and to trade facilitation.

No certification of origin is required for importations of a value not exceeding USD 1000. A certification of origin shall not be required either for goods for which the importing Party has waived the requirement of a certification of origin.

Origin verifications

The enforcement of preferential trade systems needs control elements to assure that the benefits are not unduly accorded to imports of goods which do not conform to the origin requirements, i.e. there must be a system in place allowing to control that the origin related information given at the importation of goods are accurate.

According to the TPP origin provisions on verification of origin (Article 3.27), the importing Party may conduct a verification via: i) a written request directly to the importer, exporter or producer of the goods, ii) a verification visit to the premises of the exporter or producer, and/or iii) other procedures decided by the importing Party and the Party where the producer or exporter of the goods is located. Special procedures apply for textile or apparel goods (see Specific provisions on Textile products). In addition, the importing Party may request assistance from the Party where the exporter or producer is located when requesting information from exporter or producer.

For claims for preferential treatment based on a certification of origin completed by the exporter or producer of the goods, the claim can only be denied after the importing Party requests information from the exporter or producer of the goods. This means that the importing party may request information from the importer of the goods, and if the importer does not provide information sufficient enough to support a claim for preferential tariff treatment, the importing party shall then request information from the exporter or producer before it may deny the claim for preferential tariff treatment. The aim of this particular provision is to protect the interests of the exporter/producer and the exporting country, when the certifier is located in the exporting country.

The TPP origin provisions specify in details the formal requirements relating to verification requests, including the information to include in the request, the deadlines to respond etc. The provisions also include a requirement to inform the importer, as well as the exporter or producer that provided information, about the result of the verification procedure. The Agreement also specifies what consequences a negative result of a verification has on future claims for preferential treatment.

During the verification process, the importing Party shall allow for the release of the goods, subject to payment of duties or provision of security.

Claims for preferential treatment

Article 3.20 stipulates that an importer may make a claim for preferential tariff treatment, based on a certification of origin completed by the exporter, producer or importer.

An importer may apply for preferential tariff treatment and a refund of any excess duties paid for a good if the importer did not make a claim for preferential tariff treatment at the time of importation, provided that the good would have qualified for preferential tariff treatment when it was imported into the territory of the Party (Article 3.29).

Each party shall grant a claim for preferential treatment made in accordance with Chapter 3 of the TPP for a good that arrives in the territory for that party (Article 3.28).

If an importing party declines to grant preferential treatment, it shall issue a determination to the importer that includes reasons for the determination (Article 3.28, paragraph 3).

According to Article 3.28 paragraph (4), if an invoice is issued by a non-party, a party shall require that the certificate of origin be separate from the invoice.

MAIN TOPICS ON ORIGIN CRITERIA

Originating goods

Territories in the TPP origin model are defined for each party in Annex 1-A (party specific definitions) of Chapter 1, initial provisions and general definitions of the TPP text.

According to Article 3.2 Section A of Rules of origin in the TPP model, a good shall be considered to be originating if it is:

- Wholly obtained entirely in the territory of one or more of the Parties as established in Article 3.3 (wholly obtained or produced goods);
- produced entirely in the territory of one or more of the Parties, exclusively from originating materials; or
- produced in the territory of one or more of the Parties using non-originating materials provided the good meets the requirements stipulated in Annex 3-D (product specific rules of origin),
- and the good satisfies all other applicable requirements of Chapter 3.

According to Article 2.4 (Elimination of Customs Duties),

1. Except as otherwise provided in this Agreement, no Party may increase any existing customs duty, or adopt any new customs duty, on an originating good.
2. Except as otherwise provided in this Agreement, each Party shall progressively eliminate its customs duties on **originating goods** in accordance with its Schedule to Annex 2-D (Tariff Elimination).
3. On the request of any Party, the requesting Party and one or more other Parties shall consult to consider accelerating the elimination of customs duties set out in the Schedules to Annex 2-D (Tariff Elimination).

Article 3.10 on accumulation confirms the principle of Article 3.2 by stating that goods are originating when they are produced in the territory of one or more of the Parties.

Direct transport / Transshipment / Non-manipulation clause

In many free trade agreements a direct transport rule ensures that the goods arriving in the country of importation are identical to those goods that left the country of exportation. The objective of this rule is to reduce the risk that goods eligible for preferences under a free trade arrangement will be manipulated or mixed during transportation with non-eligible goods. This means that the direct transport rule is in fact not an “origin rule” *per se*, but an administrative requirement to prevent circumvention and abusive manipulations of originating goods during transportation.

Due to the changes in transportation methods and routes, an emerging trend on a global level is to move away from a very strict requirement in relation to direct transportation or direct consignment.

In the TPP origin provisions, the main provision in Article 3.18 (Transit and Transshipment) requires an originating good be transported to the importing Party without passing through the territory of a non-Party. An alternative provision allows for goods to be transported through the territory of non-Parties, provided that the good retains its originating status, i.e. does not undergo any operation other than operations specifically mentioned and remains under customs control during the transit or transshipment.

A proof of non-manipulation and other relevant documents can be required by the importing Party (Article 3.24 1 (d)).

Regional value content / Value added rules

In the TPP origin legislation, there is a provision on how to calculate the regional value content (RVC) in Article 3.5. This article explains the different calculation methods: (i) Focused Value Method, (ii) Build-down Method, (iii) Build-up Method and (iv) Net Cost Method. The applicable calculation methods are specified in the product specific rules (PSRs) in Annex 3-D.

The focused value method is considered to be a new method for calculating the RVC of the good. This method may be regarded as a variant of the build-down method. Whereas the build-down method requires the RVC be calculated based on the value of all the non-originating materials, the focused value method requires the calculation be based on the value of only the non-originating materials specified in the applicable PSR. As the number of materials specified in the PSR tends to be very limited, this method would give less administrative burden associated with certifying and verifying the originating status of the good than other types of calculation methods. This method is particularly effective when a great number of materials are used in the production of a good such as machinery and mechanical appliances (Section XVI, Chapter 90 etc. of the HS).

In some cases the focused value method is based on materials specified in the PSRs by the commodity's name and not by the HS codes, e.g. where a HS code covers more than the specific material listed. In these cases there could be a risk of misapplication of the rules and creating HS subheadings for such items might help to solve or mitigate the risk.

De minimis / Tolerance

An origin rule based on a tariff change requirement requests that all non-originating input materials must undergo the required tariff change. The non-fulfillment of the required tariff change of simply one minor input material will prevent the final good to qualify as an originating good.

Article 3.11 of the TPP alleviates this requirement within a certain limitation (10% of the value of the good) for a good that contains non-originating materials that do not satisfy the applicable change in tariff requirement. This provision is not applied to certain goods specified in Annex 3-C (Exceptions to Article 3.11).

The article also stipulates that, if a good is also subject to a regional value content requirement, the value of the non-originating material falling under this alleviation shall be included in the value of non-originating materials for the applicable regional value content (Article 3.11, paragraph 3). For textile and apparel goods a *de minimis* rules based on weight is applied (Article 4.2)

SPECIAL TOPICS IN TPP

Specific provisions on Textile products

The TPP Agreement contains separate origin provisions on textiles and apparel goods (Chapter 4 and Annex A). The general rules of origin and origin procedures (Chapter 3) apply to textiles and apparel goods unless otherwise specified.

Chapter 4 contains rules on *de minimis*, treatment of sets, treatment of Short Supply List, and treatment for Certain Handmade or Folkloric Goods.

The provisions also makes it possible, under specific conditions, for contracting Parties to take emergency actions if as a result of the reduction or elimination of customs duties, textile or apparel goods are being imported in such increased quantities that it causes serious damage to domestic industry.

The specific rules of origin for textile and apparel goods also contain provisions on cooperation between contracting Parties, monitoring programmes to identify and address customs offences, verification procedures and the establishment of a Committee on Textile and Apparel Trade Matters comprised of representatives from all contracting Parties.

Committee on Rules of Origin and Origin Procedures

Article 3.32 of the Agreement provides the establishment of the Committee on Rules of Origin and Origin Procedures (Committee) to ensure the Rules of Origin of the TPP are administered effectively, uniformly and consistently with the spirit and objectives of the Agreement. The Committee consults regularly and cooperates in the administration of Rules of Origin of the Agreement.

This article further requires, prior to the entry into force of an amended version of the HS, the Committee consult to prepare updates to the Rules of Origin of the Agreement that are necessary to reflect changes to the HS. This provision is considered to be useful to maintain the consistency in the structure of the HS and the Rules of origin thus reduce the administrative burden on traders and to avoid misapplication of the relevant rules.