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EU-UK TRADE AND COOPERATION AGREEMENT Guidance on “Section 2: Origin procedures”

**TRADE AND COOPERATION AGREEMENT BETWEEN THE EUROPEAN UNION AND THE
EUROPEAN ATOMIC ENERGY COMMUNITY, OF THE ONE PART, AND THE UNITED
KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, OF THE OTHER PART**

PART TWO: TRADE, TRANSPORT, FISHERIES AND OTHER ARRANGEMENTS

HEADING ONE: TRADE

TITLE I: TRADE IN GOODS

Chapter 2: Rules of origin

Section 2: Origin procedures

To implement Section 2 of Chapter 2 on Origin Procedures, DG TAXUD of the European Commission developed the following Guidance document containing the following elements:

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1. INTRODUCTION

On 24 December 2020, the EU and the UK reached an agreement on the terms of their future relationship following the UK's withdrawal from the EU. The EU-UK Trade and Cooperation Agreement (TCA) provisionally entered into force on 1 January 2021 and provides for zero tariffs and zero quotas on all trade of EU and UK goods that comply with the appropriate rules of origin.

Rules of origin determine where goods originate for the purposes of customs, i.e. not where they have been shipped from, but where they have been most substantially produced or manufactured. As such, the 'origin' is the 'economic nationality' of the traded goods.

In the case of the EU-UK TCA, only goods considered as originating in the EU (i.e. having EU origin) or in the UK (i.e. UK origin) may benefit from preferential treatment and zero tariffs. All other non-originating goods (i.e. those mainly manufactured in a country other than the UK or which have had minimal processing in the UK) may be subject to tariffs and customs duties at the EU's border, and vice versa.

DISCLAIMER

This guidance document should be read in conjunction with the full text of the Trade and Cooperation Agreement (hereinafter, the TCA) between the European Union and United Kingdom with the exception of Northern Ireland. It is without prejudice to guidance documents published on specific aspects of the Agreement.

The TCA between the European Union and United Kingdom applies since 1 January 2021.

This guidance document is of an explanatory and illustrative nature. The text of the TCA as well as customs legislation in the EU and its Member States, as well as customs legislation of the UK takes precedence over the content of this document and should always be consulted. The authentic texts of the EU legal acts are those published in the Official Journal of the European Union. There may also be national instructions.

2. CLAIM FOR PREFERENTIAL TREATMENT

2.1. Relevant provisions

Article ORIG.18: Claim for preferential tariff treatment

1. The importing Party, on importation, shall grant preferential tariff treatment to a product originating in the other Party within the meaning of this Chapter on the basis of a claim by the importer for preferential tariff treatment. The importer shall be responsible for the correctness of the claim for preferential tariff treatment and for compliance with the requirements provided for in this Chapter.

2. A claim for preferential tariff treatment shall be based on:

(a) a statement on origin that the product is originating made out by the exporter; or

(b) the importer's knowledge that the product is originating.

3. The importer making the claim for preferential tariff treatment based on a statement on origin as referred to in point (a) of paragraph 2 shall keep the statement on origin and, when required by the customs authority of the importing Party, shall provide a copy thereof to that customs authority.

Article ORIG.18a: Time of the claim for preferential tariff treatment

1. A claim for preferential tariff treatment and the basis for that claim as referred to in Article ORIG.18(2) [Claim for preferential tariff treatment] shall be included in the customs import declaration in accordance with the laws and regulations of the importing Party.

2. By way of derogation from paragraph 1 of this Article, if the importer did not make a claim for preferential tariff treatment at the time of importation, the importing Party shall grant preferential tariff treatment and repay or remit any excess customs duty paid provided that:

(a) the claim for preferential tariff treatment is made no later than three years after the date of importation, or such longer time period as specified in the laws and regulations of the importing Party;

(b) the importer provides the basis for the claim as referred to in Article ORIG.18(2) [Claim for preferential tariff treatment]; and

(c) the product would have been considered originating and would have satisfied all other applicable requirements within the meaning of Section 1 [Rules of origin] of this Chapter if it had been claimed by the importer at the time of importation.

The other obligations applicable to the importer under Article ORIG.18 [Claim for preferential tariff treatment] remain unchanged.

Article ORIG.22: Record-keeping requirements

1. For a minimum of three years after the date of importation of the product, an importer making a claim for preferential tariff treatment for a product imported into the importing Party shall keep:

(a) if the claim was based on a statement on origin, the statement on origin made out by the exporter; or

(b) if the claim was based on the importer's knowledge, all records demonstrating that the product satisfies the requirements for obtaining originating status.

2. An exporter who has made out a statement on origin shall, for a minimum of four years after that statement on origin was made out, keep a copy of the statement on origin and all other records demonstrating that the product satisfies the requirements to obtain originating status.

3. The records to be kept in accordance with this Article may be held in electronic format.

2.2. Explanations

The importing Party grants on importation preferential tariff treatment for products originating in the exporting Party based on a claim by the importer.

Claiming preferential tariff treatment

This claim may be based either on a statement on origin made out by the exporter, or on the importer's own knowledge.

Basis for the claim

The importer shall be responsible for the correctness of the claim for preferential tariff treatment and for compliance with the requirements provided for in Chapter 2 (the requirements related to the origin of the products and other such as the non-alteration rule).

Responsibility of the importer

It is understood that a claim for preferential treatment has a sense when the MFN duties applicable to the product are not 0%. Importers do not need to claim preferential treatment if there is no advantage to do so..

No obligation to claim preferences

The claim for preferential tariff treatment is made at the time of importation. The basis for that claim (a statement on origin or the importer's knowledge) shall be included in the customs import declaration.

Time of the claim

In the EU, the common data requirements for customs declarations are laid down in Annex B, Title I of Commission Delegated Regulation 2015/2446¹ and their format and codes are laid down in Annex B of Commission Implementing Regulation 2015/244². 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-UK TCA,

The claim in the import customs declaration

¹ Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code.

² Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code.

shall consist in a three-digit code whose first digit shall be “3” and the next two digits “00”³.

That information shall be supplemented by the indication of the appropriate code which is “GB” (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 “U116”;
- where the claim for preferential tariff treatment is based on a 'statement of origin for multiple shipments of identical products, the code “U118”;
- where the claim for preferential tariff treatment is based on 'importer’s knowledge', the code “U117”.

The preferential treatment is granted upon importation in the importing Party when the customs import declaration is accepted without verification or once the particulars of the customs declaration have been verified.

Granting of the preference

However, the claim may also be made after importation (i.e. ‘retrospective claim’). The importing Party shall grant preferential tariff treatment and repay or remit any excess customs duty paid under the following conditions:

Remission or repayment of the customs duties (i.e. Retrospective claim)

- the importer did not make a claim for preferential tariff treatment at the time of importation;
- the claim for preferential tariff treatment is made no later than three years after the date of importation, or such longer time period as specified in the laws and regulations of the importing Party; the three year period is in line with the time of duration attributed in the EU to the customs debt;
- the importer provides the basis for the claim using either a statement on origin or importer’s knowledge and
- the product at the time of importation:
- would have been considered originating if the preferential tariff treatment had been claimed by the importer;
- would have satisfied all other applicable requirements within the meaning of Section 1 [Rules of origin] of Chapter 2.

The provisions on repayment or remission of the customs debt of the EU internal legislation should apply subject to the conditions of

‘Retrospective claim’, remission

³ Except in case of origin quota derogations where the digits “20” will be used.

Article ORIG 18 a). The customs debt expires 3 years from the moment in which the debt is incurred (Art. 103.1 UCC), which is the time of importation. Therefore, the time provided for a retrospective claim under the provisions of the TCA and the time for remission or repayment of the EU internal legislation are consistent. The time of three years provided in the TCA for the importer to keep the records (Article 51.1 UCC) is also in coherence with the time provided in the EU internal legislation for the remission or repayment and the customs debt.

or repayment of the customs duties and importer's record keeping

The importer may claim the preference at a late moment, close to the expiration of the customs debt and the time provided in the TCA for retrospective claims. In such cases, if the customs authorities would decide to grant the preference by the remission or repayment of the duties, a verification procedure could still be initiated (Article ORIG.25(2)). This is because the verification through administrative cooperation may take place “within a period of two years” not only after the importation of the products, but also “from the moment the claim is made pursuant to point (a) of Article ORIG.18a(2), i.e. the retrospective claim. This, however, would have no purpose because the customs debt would have already expired.

Late 'retrospective claim'

To avoid the impossibility to recover the due duties, in such cases of late claim of preference, before granting the preference by the remission or repayment of the duties, the verification procedure should be triggered (unless the customs authorities have no doubts that the product is originating). The decision on the granting of the preference would take place after the verification is finalised. Article 97.3.b UCC DA provides for an extension of the time (up to 15 months) to decide on the remission or repayment adjusted to the time to finish the verification. In this case, if the verification concludes that the product is not originating, the decision on remission or repayment would be negative and the preference would not be granted.

This implies that in the cases of late retrospective claim the time for the decision on remission or repayment may take up to 15 months, which should be considered by the operators.

3. STATEMENT ON ORIGIN

3.1. Relevant provisions

Article ORIG.19: Statement on origin

1. A statement on origin shall be made out by an exporter of a product on the basis of information demonstrating that the product is originating, including information on the originating status of materials used in the production of the product. The exporter shall be responsible for the correctness of the statement on origin and the information provided.

2. A statement on origin shall be made out using one of the language versions set out in ANNEX ORIG-4 [Text of the statement on origin] in an invoice or on any other document that describes the originating product in sufficient detail to enable the identification of that product. The exporter shall be responsible for providing sufficient detail to allow the identification of the originating product. The importing Party shall not require the importer to submit a translation of the statement on origin.

3. A statement on origin shall be valid for 12 months from the date it was made out or for such longer period as provided by the Party of import up to a maximum of 24 months.

4. A statement on origin may apply to:

- (a) a single shipment of one or more products imported into a Party; or
- (b) multiple shipments of identical products imported into a Party within the period specified in the statement on origin, which shall not exceed 12 months

5. If, at the request of the importer, unassembled or disassembled products within the meaning of General Rule 2(a) for the Interpretation of the Harmonised System that fall within Sections XV to XXI of the Harmonised System are imported by instalments, a single statement on origin for such products may be used in accordance with the requirements laid down by the customs authority of the importing Party.

Article ORIG.20: Discrepancies

The customs authority of the importing Party shall not reject a claim for preferential tariff treatment due to minor errors or discrepancies in the statement on origin, or for the sole reason that an invoice was issued in a third country.

Article ORIG.23: Small consignments

1. By way of derogation from Articles ORIG.18 [Claim for Preferential Tariff Treatment] to ORIG.21 [Importer's Knowledge], provided that the product has been declared as meeting the requirements of this Chapter and the customs authority of the importing Party has no doubts as to the veracity of that declaration,

the importing Party shall grant preferential tariff treatment to:

- (a) a product sent in a small package from private persons to private persons;
- (b) a product forming part of a traveller's personal luggage; and
- (c) for the United Kingdom, in addition to points (a) and (b), other low value consignments.

2. The following products are excluded from the application of paragraph 1 of this Article:

(a) products, the importation of which forms part of a series of importations that may reasonably be considered to have been made separately for the purpose of avoiding the requirements of Article ORIG.18 [Claim for Preferential Tariff Treatment];

(b) for the Union:

(i) a product imported by way of trade; the imports which are occasional and consist solely of products for the personal use of the recipients or travellers or their families are not be considered as imports by way of trade if it is evident from the nature and quantity of the products that no commercial purpose is intended; and

(ii) products, the total value of which exceeds EUR 500 in the case of products sent in small packages, or EUR 1 200 in the case of products forming part of a traveller's personal luggage. The amounts to be used in a given national currency shall be the equivalent in that currency of the amounts expressed in euro as at the first working day of October. The exchange rate amounts shall be those published for that day by the European Central Bank, unless a different amount is communicated to the European Commission by 15 October, and shall apply from 1 January the following year. The European Commission shall notify the United Kingdom of the relevant amounts. The Union may establish other limits which it will communicate to the United Kingdom; and

(c) for the United Kingdom, products whose total value exceeds the limits set under the domestic law of the United Kingdom. The United Kingdom will communicate these limits to the Union.

3. The importer shall be responsible for the correctness of the declaration and for the compliance with the requirements provided for in this Chapter. The record-keeping requirements set out in Article ORIG.22 [Record-keeping requirements] shall not apply to the importer under this Article.

3.2. Explanations

A statement on origin:

- a) is a text by which the exporter states the originating status of a product;
- b) is made out by an exporter of an originating product;

*What is the
Statement on
origin*

c) shall be made out on an invoice or on any other document that describes the originating product in sufficient detail to enable its identification

A statement on origin is not a document but a text by which the exporter states the originating status of a product. This text is in ANNEX ORIG-4. It is added on an invoice or any other document that describes the originating product in sufficient detail to enable its identification.

Any of the (official) language versions included in ANNEX ORIG-4 may be used. A translation of the statement may not be required by the importing customs authority. However, given the use of the statement on origin in both Parties, to avoid misunderstanding it is best to use the same language (and Latin characters) as it being used for the document itself which is in most cases using the English language.

A statement on origin does not need to be signed or stamped by the exporter or by any governmental authority.

Small errors or discrepancies in the text of the statement, like simple spelling mistakes or the use of other wording than the one established in the agreement as the legal reference to the origin of a product, shall not invalidate the statement.

A statement on origin or importer's knowledge is not required for certain low value consignments following the waiver provided for under Article ORIG.23. Point B.8 (vii). The general [Guidance on preferential origin](#) provides relevant explanations about this waiver.

Exemption of the statement; only for private shipments; This shall not apply in the EU to any type of commercial shipment i.e. internet sales

From the perspective of imports into the EU there are no changes in relation to the traditional approach to this provision.

This means that imports in the EU of products sent in small packages from a private person to a private person with a value not exceeding 500 Euros and products included in personal travellers' luggage with a value not exceeding 1200 Euros,

-which are not imported by way of trade, and

-which are not forming part of a series of importations that may reasonably be considered to have been made separately for the purpose of avoiding the requirements of Article ORIG.18 are exempted from the obligation to have a statement on origin.

It should be noted that the exemption refers only to the requirements related to the statement on origin or the importer's knowledge and not to the conditions for the product to be originating. It is also convenient to note that the fact that the provision refers to small packages from a private person to a private person implies that imports from online stores are excluded from the waiver.

From the perspective of imports in the UK the exemption is wider and covers products sent in small packages from a private person to a private person; products included in personal travellers' luggage, and other small consignments, all three with a value not exceeding 1000 GBP, which are not forming part of a series of importations that may reasonably be considered to have been made separately for the purpose of avoiding the requirements of Article ORIG.18.

There is, therefore, a category of small consignments of a value not exceeding 1000 GBP in the case of imports into the UK, other than small packages from a private person to a private person and products included in personal travellers' luggage which may be imported in the UK by way of trade.

A statement on origin may apply to a single shipment or to multiple shipments of identical products (see the section of this guidance on statements on origin for multiple shipments).

Single or multiple consignments

The exporter making out the statement:

- a) is a person located either in the EU or in the UK, and fulfils the legal obligations established in that Party;
- b) exports or produces the originating product and makes out a statement on origin;
- c) is responsible for the correct identification of the originating products on the invoice or any other document;
- d) shall keep a copy of the statement on origin (and all other records pertaining to the origin of the originating product) for a minimum of four years.

The exporter making out the statement

The exporter can be any person (such as a producer or a trading company) making out the statement on origin involved in the exportation of the product, as long as this person fulfils the obligations under the TCA. It is not necessary that the exporter lodges the customs export declaration in respect of the products.

Who can act as an exporter?

The exporter is identified by its Exporter Reference Number which, unless provided otherwise⁴, shall be included in the statement on origin⁵. This number may be left blank in accordance with domestic legislation of the Party. 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". Considering the current state of implementation of this provision in the EU and in the UK, the number may be left blank only in the case of statements on origin made out in the EU for consignments of less than 6000 Euros for which the exporter does not

How is the exporter identified in the Statement on Origin

⁴ Which is the case where the exporter has not been assigned a number, in which case the field may be left blank

⁵ Where the claim for preferential tariff treatment is based on the importer's knowledge, there is no statement on origin and such identification of the exporter is not required.

need to be registered in REX, as explained below.

It is up to the respective legislation of the EU and the UK to identify who can act as an 'exporter' for the purpose of the TCA.

In the EU, the exporter is required to register in the Registered Exporter (REX) system and the Exporter Reference Number is the REX number, which is a number allocated by that system.

Details on registration in the REX system can be found here:

https://ec.europa.eu/taxation_customs/business/calculation-customs-duties/rules-origin/general-aspects-preferential-origin/arrangements-list/generalised-system-preferences/the_register_exporter_system_en

An Exporter Reference Number is not required to be put in the statement on origin where the value of the exported consignment does not exceed 6,000 euros (Article 68(4) of UCC-IA). For such consignments, any EU exporter may make out statements on origin to claim preferential tariff treatment in the UK, and the corresponding data element in the statement on origin may be left blank (ANNEX ORIG-4.). As stated above, in that case the exporter may indicate its full address under the part "Place and date".

The absence of an Exporter Reference Number (i.e. the REX number) in a statement on origin made out by an EU exporter does not indicate in any way that the statement on origin is not authentic.

In the UK, the Exporter Reference Number is the EORI number which starts with "GB" You can check the EORI number here: <https://www.gov.uk/check-ori-number>

The period of the validity of the statement is only filled in if the statement is used for multiple shipments. In case the statement is made out for a single shipments the wording "(Period: from.....to.....(1))" does not have to be reproduced as the field can be left blank.

Filling the period of validity of the Statement

The origin of the products may be indicated either in full or using abbreviations. For the EU, the origin may be indicated as: the Union, European Union, EU, UE, etc. For the UK, the origin may be indicated as: the United Kingdom, UK or GB, etc. On statements made out in the EU, the indication of individual Member States in whatever form shall be avoided. The double indication "EU/UK" cannot be used.

Filling the mention of the origin

The 'Name of the exporter' may be handwritten but this is not obliged. The name of the exporter shall be the name (legal or natural) of the person to which an Exporter Reference Number is assigned. In case no number is assigned and the Exporter Reference Number is left blank, it is best to add identifying details (its full address), as indicated above, in particular when such exporter's details are not included in the invoice or other document used for the statement on origin.

Filling the name of the exporter

The date at which the statement on origin is made out is indicated in the statement but may be omitted if the date is included on the document itself (e.g. the invoice date). In the case of retrospective claim, the date at which the statement on origin is made out should be

Filling the date of making out of the statement

indicated as the date of the invoice and of the statement will necessarily differ.

A statement on origin shall be valid for 12 months or for such longer period as provided by the Party of import up to a maximum of 24 months from the date it was made out. For imports in the EU the statement on origin made out by the UK exporter shall be valid for 12 months. For imports in the UK, the statement on origin made out by the EU exporter is valid for 24 months, according to the current state of implementation of this provision.

Validity of the statement

The statement on origin must be valid at the time when the claim for preferential tariff treatment is made. This can be the time at which the import declaration in respect of the originating products is accepted by the customs, or the moment when a retrospective claim (for repayment or remission, see Article ORIG.18a) is submitted.

A statement on origin may be made out at any time, so before, when or after the products to which it relates are exported. It can, of course, only be used as the basis of a claim for preferential tariff treatment during its validity period.

When a statement on origin may be made out?

The issue of a replacement of the statement on origin issued in the context of the EU-UK TCA for sending products elsewhere in the EU is an internal matter for the EU and therefore provided for (only) in Article 69 UCC-IA.

There is no legal definition of what constitutes a “document”.

The only legal requirement for the invoice or any document to be considered as the basis for a statement on origin is that it shall contain a description of the originating products in sufficient detail to enable their identification. Other products, which may be included in the same invoice or other document, shall be clearly distinguished from the originating products.

What is the “any other document” on which the text of the Statement on Origin is made out

Since a commercial document is not required under the TCA, a statement on origin can be printed on any document, provided that this document allows the identification of the product. This is because the nature of the document is not relevant but its content in terms of the identification of the originating product. In this sense, not only a commercial document but also any other document (for example a paper with a company letterhead) may be also used, but only if those documents describe the originating product in sufficient detail to enable its identification and respect the conditions explained below in the point ‘*May the exporter use the document of another person to make out the Statement on Origin*’.

The original of the invoice or other document or copies thereof all have the same status and may all be used for the statement on origin. The document may be in electronic format.

Who issues the document used for the statement?

The TCA imposes that the statement on origin is made out by the exporter but does not include any explicit requirement as to the identity of the person issuing the document used for making out the

statement.

The obligation to provide a sufficient description of the products lies on the exporter even if its statement on origin appears on another person's document.

Therefore, nothing in the TCA prevents the following scenarios to apply where the producer and a trading (exporting) company are both located in the exporting Party, and where:

- the producer acting as the “exporter”, although not exporting the products, makes out a statement on origin on its own document;
- the trading company acting as the “exporter”, based on information from the producer, makes out a statement on origin on its own document;
- the producer acting as the “exporter”, although not exporting the products, makes out a statement on origin on a document of the trading company;
- the trading company acting as the “exporter”, based on information from the producer, makes out a statement on origin on a document of the producer

1. May the exporter use the document of another person to make out the Statement on Origin?

The two last scenarios nevertheless imply that the exporter making out the statement on origin, and not being the person having issued the 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".

Where the “exporter” (producer or trader) is located in the exporting Party but the trader issuing the invoice is established in a third country, the “exporter” is not supposed to make out a statement on origin on a document of that trader. In that case, the Statement on Origin should be placed on a document issued by the “exporter” (or another person established in a Party, under one of the scenarios provided for the question ‘What is the “any other document” on which the text of the Statement on Origin is made out’ in the exporting Party.

2. Can the statement on origin be placed on a document made out in a third country?

It should be reminded that a claim for preferential tariff treatment based on a statement on origin made out on a document issued by the “exporter” (producer or trader, under one of the scenarios provided for the question which document may be used for the statement on origin), shall not be rejected for the sole reason that an invoice was issued in a third country.

This means that as far as the document on which the statement on origin is issued by the exporter (necessarily located in the exporting Party) the existence of invoices issued in a third country does not affect the validity of the statement.

4. STATEMENT ON ORIGIN FOR MULTIPLE SHIPMENTS OF IDENTICAL PRODUCTS

4.1. Relevant provisions

Article ORIG.19: Statement on origin

(...)

A statement on origin may apply to:

- (a) a single shipment of one or more products imported into a Party; or
- (b) multiple shipments of identical products imported into a Party within the period specified in the statement on origin, which shall not exceed 12 months.

4.2. Explanations

A statement on origin for multiple shipments of identical products is a statement valid for consignments of identical products over a period up to a maximum of 12 months. The statement on origin for multiple shipments provides facilitation for exporters including producers sending identical products as, within the given time period, only one statement is needed covering all products, instead of separate statements on each document per individual consignment.

What is a statement on origin for multiple shipments?

The statement on origin for multiple shipments shall only be valid for identical products, which means products which correspond in every respect to those described in the product description and which acquire their originating status under the same circumstances. The product description on the document used for making out a statement on origin for multiple shipments shall therefore be precise enough to clearly identify that product but also the identical products to be subsequently imported under cover of that statement.

Time of usage

A statement on origin for multiple shipments shall indicate three dates:

- a) the date on which it is made out (date of issue);
- b) the date of commencement of the period (start date);
- c) the date of end of the period (end date), which may not be more than 12 months after the date it was cleared (date of commencement)

According to footnote 1 of Annex ORIG-4, all importations of the product must occur within the period indicated between the start date and the end date. In any event a claim cannot be made before the date of issue and before the start date.

The statement on origin for multiple shipments of identical products may be used as a basis for preferential tariff treatment only for those import declarations that are accepted on or between the start date and the end date indicated in the statement.

How to use a statement on origin for multiple shipment to claim preferential

The procedure for claiming preferential tariff treatment shall be *treatment* slightly different in respect 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 within the validity period is "U118".

In addition, the importer shall keep in its records commercial documents for the identical products for subsequent consignments within the validity period. The documents for such subsequent consignments do not need to contain a statement on origin.

A statement on origin for multiple shipments has to be withdrawn by the exporter if the conditions for its use are no longer fulfilled. The withdrawal must be documented in connection with the original statement on origin for multiple shipments. Once the withdrawal is documented, a new statement on origin must be made out if the delivered products are again originating products.

Withdrawal of a statement on origin for multiple shipments

Given that a claim for preferential treatment must be based on a valid statement on origin it is not possible to make out this statement retroactively (i.e. after the claim) and give it a start date before the date of issue. This could potentially lead to a situation that preferential treatment is claimed on the basis of a statement which isn't yet issued and therefore does not exist at that time.

No retroactive use

For example:

Not allowed:

The products are exported on 1-4-2021 The preferential treatment is claimed upon importation on 1-5-2021 The statement on origin for multiple shipments is made out by the exporter on 1-6-2021 but giving it an application period from 1-4-2021 to 30-3-2022. This wouldn't work as at the time of the claim (1-5-2021) there would be no valid statement on origin.

Allowed:

The products are exported on 1-1-2021. The preferential treatment is claimed upon importation on 10-1-2021. The statement on origin for multiple shipments was made out by the exporter on 5-1-2021 (hence before the claim for preferential treatment) giving it an application period from 5-1-2021 to 4-1-2022.

In the EU, a claim for preferential tariff treatment is usually made at the time of importation of the products but may also concern a request

Retrospective claim

for repayment or remission of customs duties relating to earlier importations as is foreseen in Article ORIG.18a (retrospective claim). The claim for preferential tariff treatment related to such earlier importations can be based on a statement on origin for multiple shipments made out retrospectively.

The statement on origin for multiple shipments needs to be present in the records of the importer by the time the claim for preferential tariff treatment is made, and needs to be accompanied by invoices or other commercial documents which identify the quantities of the products for which the statement may be used as a basis for the claim.

*Record keeping
requirement*

In respect of the record keeping requirements, the time limits for keeping the statement on origin for multiple shipments shall be calculated from the end date of the validity period.

5. IMPORTER'S KNOWLEDGE

5.1. Relevant provisions

Article ORIG.21: Importer's knowledge

For the purposes of a claim for preferential tariff treatment that is made under point (b) of Article ORIG.18(2) [Claim for preferential tariff treatment], the importer's knowledge that a product is originating in the exporting Party shall be based on information demonstrating that the product is originating and satisfies the requirements provided for in this Chapter.

Before claiming the preferential treatment, in the event that an importer is unable to obtain the information referred to in paragraph 1 of this Article as a result of the exporter deeming it to be confidential information or for any other reason, the exporter may provide a statement on origin so that the importer may claim the preferential tariff treatment on the basis of point (a) of Article ORIG.18(2) [Claim for Preferential Tariff Treatment].

5.2. Explanations

The 'Importer's knowledge' is one of the two basis for the importer to claim preferential treatment. It allows the importer to claim preferential tariff treatment merely based on its own knowledge about the originating status of imported products (Article ORIG.21). This knowledge is based on information in the form of supporting documents or records provided by the exporter or manufacturer of the product, which are in the importer's possession. This information provides valid evidence that the product qualifies as originating.

What is the importer's knowledge?

The importer basing his claim on his own knowledge has to have the information relating to the origin of the product and to the other requirements provided in Chapter 2 Rules of Origin before claiming the preference.

If the importer cannot obtain the information relating to the origin of the product from the exporter because the exporter considers such information as confidential or by any other reason, the importer should not claim the preference based on his knowledge. Instead, before claiming the preference, the importer could obtain from the exporter a statement on origin and the importer could claim the preference on such basis (Paragraph 2 of Article 21 TCA). The exporters have an effective choice to issue a statement of origin and avoid having to give the information to the importer. The importers are not bound to use importer's knowledge if they may not be able to fulfil the associated conditions. It is consistent with their choice under Article ORIG.18.2, before claiming the preferential treatment, to base his/her claim on a statement on origin instead.

When the importer should have the information?

The information demonstrating that the product is originating may be based on any document which contains information relating to:

- (i) where the origin criterion is “wholly obtained”, the applicable category (such as harvesting, mining, fishing) and the place of production;
- (ii) where the origin criterion is based on change in tariff classification, a list of all the non-originating materials, including their tariff classification (in 2, 4 or 6-digit format, depending on the origin criterion);
- (iii) where the origin criterion is based on a value method, the value of the final product as well as the value of all the non-originating materials used in the production of that product;
- (iv) where the origin criterion is based on weight, the weight of the final product as well as the weight of the relevant non-originating materials used in the final product;
- (v) where the origin criterion is based on a specific production process, a description of that specific process

Information that the importer should have as evidence of the origin

This information may be in the form of any supporting documentation including supplier’s declarations or any other document used in the exporting Party for the exporter to demonstrate the origin of the product and that the exporter may have received from his suppliers and which he has given to the importer.

As an importer is making a claim using his own knowledge, no statement on origin is used and no exporter (ie. meaning also producer) needs to be identified and take any action pertaining to the preferential origin of goods in the exporting Party.

The importer using ‘importer’s knowledge’ does not need to be registered in the REX database.

In the case of claiming the preference under an origin quota derogation according to Annex Orig-2a: Origin quotas and alternatives to the Product-Specific Rules of Origin in Annex Orig-2 [Product-Specific Rules of Origin], the importer may base his claim on his own knowledge. In such a case the importer needs to know that the product does not satisfy the product specific rule of Annex Orig-2, but only the alternative product specific rule provided for in Annex Orig-2 a and apply for the relating tariff quota in the customs declaration.

Origin quota derogation and importer’s Knowledge

In the case that the importer did not claim the preference at the moment of import, he may claim the preference retrospectively based on his knowledge when he has the information relating to the origin of the product and to the other requirements provided in Chapter 2 Rules of Origin.

Retrospective claim based on the import’s knowledge

The importer shall keep, for a minimum period of three years, all records demonstrating that the products for which preferential tariff treatment is claimed are originating. The time limit shall be calculated from the date when the import declaration was made.

Record keeping requirements

The importer that claimed the preference based on his knowledge cannot

- a) change his claim and based it, instead, on a statement on origin after the goods have been released for free circulation beyond the cases provided in the EU legislation and the limitation imposed by the need to have a valid statement at the moment of the claim.
- b) during or after the verification procedure use a statement on origin made out by the exporter to proof the origin of the product
- c) claim the preference retrospectively based on a statement on origin

The knowledge of the importer as a separate track to claim the preference

The importer shall choose between one or the other basis for his/her claim. If he/she makes a claim on the basis of importer's knowledge, to change the claim he/she would need to change the customs declaration⁶, which can only be done in the cases provided for by the UCC, cf. Article 173 UCC). For example, if the importer by mistake has used a wrong code in the import declaration (i.e. the code 'U117' correspondent to the knowledge of the importers instead of the code 'U116' correspondent to the statement on origin), though he has a statement on origin, issued by the exporter before he/she made the claim.

If the importer claims origin on the basis of his knowledge he/she should be sure that he/she has information demonstrating that the product is originating and satisfies the requirements of the Origin Chapter, in accordance with Article ORIG.21(1) TCA. The verification process will be conducted in accordance with the provisions of the Agreement which are specific for importer's knowledge, which do not provide for administrative cooperation (as in those instances it is up to the importer to have all the necessary information to prove the origin).

If the importer lacks the necessary information during the verification and has to pay duties, he/she cannot afterwards request the reimbursement of the duties based on a retrospective claim, as such possibility is limited under Article ORIG.18.2 to cases where no preference had been claimed.

The importer's knowledge is not designed to be a way of "testing" the claim of preference (i.e. if he/she does not have sufficient information to conclude that the product is originating but introduces nevertheless a claim of preference, and in case there is a verification, expecting that

⁶ Pro memoria, 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 "U116";
- where the claim for preferential tariff treatment is based on a 'statement of origin for multiple shipments of identical products, the code "U118";
- where the claim for preferential tariff treatment is based on 'importer's knowledge', the code "U117".

there will be a way to try to prove origin through other means). It cannot be used either in case the importer does not have a statement of origin in the expectation that he/she can get one later on: it can be used only in case the importer has the necessary information to prove the origin of the product.

6. VERIFICATION OF THE ORIGIN

6.1. Relevant provisions

Article ORIG.24: Verification

1. The customs authority of the importing Party may conduct a verification as to whether a product is originating or whether the other requirements of this Chapter are satisfied, on the basis of risk assessment methods, which may include random selection. Such verifications may be conducted by means of a request for information from the importer who made the claim referred to in Article ORIG.18 [Claim for Preferential Tariff Treatment], at the time the import declaration is submitted, before the release of the 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 the claim was based on a statement on origin, that statement on origin; and

(b) information pertaining to the fulfilment of origin criteria, which is:

(i) where the origin criterion is “wholly obtained”, the applicable category (such as harvesting, mining, fishing) and the place of production;

(ii) where the origin criterion is based on change in tariff classification, a list of all the non-originating materials, including their tariff classification (in 2, 4 or 6-digit format, depending on the origin criterion);

(iii) where the origin criterion is based on a value method, the value of the final product as well as the value of all the non-originating materials used in the production of that product;

(iv) where the origin criterion is based on weight, the weight of the final product as well as the weight of the relevant non-originating materials used in the final product;

(v) where the origin criterion is based on a specific production process, a description of that specific process.

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 is based on a statement on origin, the importer shall provide that statement on origin but may reply to the customs authority of the importing Party that the importer is not in a position to provide the information referred to in point (b) of paragraph 2.

5. If the claim for preferential tariff treatment is based on the importer’s knowledge, after having first requested information in accordance with paragraph 1, the customs authority of the importing Party conducting the verification may request the importer to provide

additional information if that customs authority considers that additional information is necessary in order to verify the originating status of the product or whether the other requirements of this Chapter are met. The customs authority of the importing Party may request the importer for specific documentation and information, if appropriate.

6. If the customs authority of the importing Party decides to suspend the granting of preferential tariff treatment to the product concerned while awaiting the results of the verification, the release of the products shall be offered to the importer subject to appropriate precautionary measures including guarantees. Any suspension of preferential tariff treatment shall be terminated as soon as possible after the customs authority of the importing Party has ascertained the originating status of the products concerned, or the fulfilment of the other requirements of this Chapter.

Article ORIG.25: Administrative cooperation

1. In order to ensure the proper application of this Chapter, the Parties shall cooperate, through the customs authority of each Party, in verifying whether a product is originating and is in compliance with the other requirements provided for in this Chapter.

2. If the claim for preferential tariff treatment was based on a statement on origin, as appropriate after having first requested information in accordance with Article ORIG.24(1) [Verification] and based on the reply from the importer, the customs authority of the importing Party conducting the verification may also request information from the customs authority of the exporting Party within a period of two years after the importation of the products, or from the moment the claim is made pursuant to point (a) of Article ORIG.18a(2) [Time of the claim for preferential treatment], 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 or to verify that the other requirements provided for in this Chapter have been met. The request for information shall include the following elements:

- (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) any relevant documentation.

In addition, the customs authority of the importing Party may request the customs authority of the exporting Party to provide specific documentation and information, where appropriate.

3. The customs authority of the exporting Party 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 Party receiving the request referred to in paragraph 2 shall provide the customs authority of the importing Party 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 that is subject to examination and the tariff classification relevant to the application of this Chapter;
- (d) a description and explanation of the production process that is sufficient to support the originating status of the product;
- (e) information on the manner in which the examination of the product was conducted; and
- (f) supporting documentation, where appropriate.

5. The customs authority of the exporting Party shall not provide the information referred to in points (a), (d) and (f) of paragraph 4 to the customs authority of the importing Party if that information is deemed confidential by the exporter.

6. Each Party shall notify the other Party of the contact details of the customs authorities and shall notify the other Party of any change to those contact details within 30 days after the date of the change.

6.2. Explanations

Verification is triggered by risk assessment methods (which are not further addressed in this guidance) following a claim for preferential treatment by the importer. Once the customs declaration for release for free circulation is accepted, the verification may be conducted before or after the release of the goods and may lead to a denial of preferential tariff treatment and the incurrence of customs debt.

Provisions on verification determine which steps in this process can be taken by the importing customs authority to assure that the claim for preferential treatment is correct.

The basis of the claim, i.e. by using either the statement on origin or importer's knowledge, determines the way the verification is conducted

In case the claim is based on **importer's knowledge**, verification potentially covers the following two steps:

Step 1: The importing customs authority requests from the importer no more information than provided in the list of data elements of Article ORIG 24(2).

Step 2: In case the importing customs authority needs more

Why and when verification can be triggered?

Basis for the claim determines the way verification is conducted

Verification (Importer's knowledge)

Two steps verification (Importer's knowledge)

information to determine the originating status of the product and following step 1, the importing Party may request the importer to provide additional details (Article ORIG.24(5)).

In case of ‘importer’s knowledge’, the importer shall be able to demonstrate that the product is originating and satisfies the requirements of Chapter 2 (Rules of Origin) of Part Two, Heading One of the EU-UK TCA.

*(Importer’s knowledge)
Obligation by the importer to provide information to the importing customs authority during Step 1*

As all information demonstrating that the product is originating and satisfies the requirements provided for in Chapter 2 (Rules of Origin) of Part Two, Heading One of the EU-UK TCA should be available, the importer is under the obligation to provide the requested information to the importing customs authority. Non-compliance will result in a denial of preferential tariff treatment and as appropriate administrative measures or sanctions.

A request for additional information by the importing customs authority to the importer is only possible following a request for information to the importer (Step 1) and if it considers that this additional information is necessary to verify the originating status of the product.

Request for additional information (importer’s knowledge) Step 2

The importing customs authority cannot request administrative cooperation from the exporting customs authority (Article ORIG.25(2)) as no exporter in the exporting Party is identified.

In case the claim is based on a **statement on origin** made out by the exporter in the exporting Party, verification potentially covers the two options:

Verification (Statement on Origin)

- a) either the importing customs address to the importer (Art ORIG 24); or
- b) Trigger directly the administrative cooperation addressing to the exporting customs (Art ORIG 25)

Two options: verification addressed to the importer or administrative cooperation

a) The importing customs address to the importer (Art ORIG 24)

The importing customs authority requests from the importer no more information than provided in the list of data elements of Article ORIG.24(2), which starts by the statement on origin (point (a) of the list). The importer shall provide that statement, but may reply to the customs authority of the importing Party that he/she is not in a position to provide the other information referred to in point (b) of the list (Article ORIGIN.24(4)).

Verification addressed to the importer (Statement on Origin)

In case the importing customs authority needs, in addition to the statement on origin, the information requested to the importer to verify the originating status of the product, but the information provided by the importer is not sufficient, the importing customs authority may request administrative cooperation from the exporting customs authority (Article ORIG.25(2)). The importing customs authority may nevertheless consider not appropriate to first request from the importer information other than the statement on origin, and continue directly to administrative cooperation.

The importer who is requested to submit information may provide this information to the importing customs authority. However, apart from contractual obligations between the importer (buyer) and the exporter (seller), Chapter 2 (Rules of Origin) of Part Two, Heading One of the EU-UK TCA does not contain any obligation for the exporter to provide information to the importer, even where the importer is requested by the importing customs authority to provide that information (but is not obliged to do it) under verification addressed to the importer.

(Statement on Origin)

No obligation for the exporter to provide information to the importer

b) Administrative cooperation

The importing customs authority shall not employ any verification activity in the exporting Party other than through a request to the exporting customs authority and only if the claim is based on a statement on origin. 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.

No direct relationship between the importing customs authority and the exporter

In the case that the claim was based on a statement on origin, a request for administrative cooperation by the importing customs authority to the exporting customs authority is possible, where appropriate, either following a request for information to the importer and if it considers that additional information is necessary to verify the originating status of the product; or directly without having addressed first to the importer. Under the REX System in the EU, the exporting customs authority may also be requested to verify the legal entitlement of the exporter making out the statement on origin. A request for administrative cooperation is only possible in case the claim for preferential tariff treatment is based on a statement on origin.

(Statement on origin)

Possibility b): Request for administrative cooperation

The request by the importing customs authority to the exporting customs authority may only be made within the period of two years following the importation of the product, or from the moment the claim is made in the cases of retrospective claim, pursuant to point (a) of Article ORIG.18a(2).

Request for administrative cooperation within 2 years

The requested exporting customs authority may request the exporter who made out a statement on origin to provide documentation and provide evidence of the originating status for the products included in the statement on origin. It may also visit the premises to review records maintained in respect of the originating products and observe production facilities where the originating products were produced.

Rights and obligations of the exporter vis-à-vis the exporting customs authority

The requested exporter is obliged to cooperate with the exporting customs authority in the verification but has the right to review all information which the exporting customs authority intends to provide to the importing customs authority in reply to the request for information. The exporter may subsequently decide that any information deemed confidential, may not be submitted to the importing customs authority.

Information deemed confidential by the exporter, may still be used by the exporting customs authority for the opinion provided for under Article ORIG.24(4)(b). In that case, the exporting customs authority may state in the opinion that following the verification (review of documents, visit, etc.), it considers that the products concerned can (or cannot) be considered as originating in a Party and fulfil the other requirements of Chapter 2 (Rules of Origin) of Part Two, Heading One of the EU-UK TCA. As part of the opinion, it can present the findings and facts of the verification, but only those allowed by the exporter.

Use of confidential information for the opinion by the exporting customs authority

7. DENIAL OF THE PREFERENCE

7.1. Relevant provisions

Article ORIG.26: Denial of preferential tariff treatment

1. Without prejudice to paragraph 3, the customs authority of the importing Party may deny preferential tariff treatment, if:

(a) within three months after the date of a request for information pursuant to Article ORIG.24(1) [Verification]:

(i) no reply has been provided by the importer;

(ii) where the claim for preferential tariff treatment was based on a statement on origin, no statement on origin has been provided; or

(iii) where the claim for preferential tariff treatment was based on the importer's knowledge, the information provided by the importer is inadequate to confirm that the product is originating;

(b) within three months after the date of a request for additional information pursuant to Article ORIG.24(5) [Verification]:

(i) no reply has been provided by the importer; or

(ii) the information provided by the importer is inadequate to confirm that the product is originating;

(c) within 10 months³ after the date of a request for information pursuant to Article ORIG.25(2) [Administrative Cooperation]:

(i) no reply has been provided by the customs authority of the exporting Party; or

(ii) the information provided by the customs authority of the exporting Party is inadequate to confirm that the product is originating.

2. The customs authority of the importing Party may deny preferential tariff treatment to a product for which an importer claims preferential tariff treatment where the importer fails to comply with requirements under this Chapter other than those relating to the originating status of the products.

3. If the customs authority of the importing Party has sufficient justification to deny preferential tariff treatment under paragraph 1 of this Article, in cases where the customs authority of the exporting Party has provided an opinion pursuant to point (b) of Article ORIG.25(4) [Administrative cooperation] confirming the originating status of the products, the customs authority of the importing Party shall notify the customs authority of the exporting Party of its intention to deny the preferential tariff treatment within two months

after the date of receipt of that opinion.

If such notification is made, consultations shall be held at the request of either Party, within three months after the date of the notification. The period for consultation may be extended on a case-by-case basis by mutual agreement between the customs authorities of the Parties. The consultation may take place in accordance with the procedure set by the Trade Specialised Committee on Customs Cooperation and Rules of Origin.

Upon the expiry of the period for consultation, if the customs authority of the importing Party cannot confirm that the product is originating, it may deny the preferential tariff treatment if it has a sufficient justification for doing so and after having granted the importer the right to be heard. However, when the customs authority of the exporting Party confirms the originating status of the products and provides justification for such conclusion, the customs authority of the importing Party shall not deny preferential tariff treatment to a product on the sole ground that Article ORIG.25(5) [Administrative cooperation] has been applied.

4. In all cases, the settlement of differences between the importer and the customs authority of the Party of import shall be under the law of the Party of import.

7.2. Explanations

The EU-UK TCA provides precise time limits and conditions following which the importing customs authority may deny preferential tariff treatment. The provisions on denial (in Article ORIG.26) mirror the steps taken by the importing authority in the verification process by defining for each step the cases providing legal grounds to deny preferential tariff treatment.

Denial of preference under the EU-UK TCA

The time limits after which the importing customs authority may deny preferential tariff treatment are:

Time limits

a) Verification addressed to the importer

Step 1: three months from the time the request for information was made to the importer when

-there is no reply or,

-in the case of statement on origin, the statement on origin is not provided, and

-in the case of knowledge of the importer the information provided is 'inadequate' to confirm the originating status of the product

Step 2: if the claim for preferential tariff treatment was based on the

importer's knowledge, three months from the time the request for additional information was made to the importer

-when the information provided is '*inadequate*' to confirm the originating status of the product

b) Administrative cooperation (only for the cases of claim based on statement on origin)

Ten months from the time the request was made to provide administrative cooperation to the exporting customs authority, unless the exporting customs authority has provided an opinion confirming the originating status of the products pursuant to Article ORIG.24(4)(b).

It has been explained above that denial of preferential tariff treatment by the importing customs authority is possible if following a request for information no reply is provided or when the claim for preferential treatment was based on the importer's knowledge and the information provided is '*inadequate*' to confirm the originating status of the product. The term '*inadequate*' is not further defined but must be considered as meaning (reasonably) insufficient as to be further determined by the importing customs authority. The term '*adequate*' is used in a similar scenario in Article 107(2)(c)(ii) of the UCC-IA⁷ related to the refusal to grant tariff preference.

What is 'inadequate'?

The importing customs authority shall not deny preferential tariff treatment, when the importer, following a request for information subsequent to Article ORIG.24(2) does not provide any other information than the statement on origin. In this case, considering additional information is necessary, the verification may continue⁸ with a request for administrative cooperation from the importing customs authority to the exporting customs authority.

Reply by the importer following a request for information Step 1 (Statement on origin)

In case the customs authority of the exporting provided the customs authority of the importing Party with the information referred to in Article ORIG.25(4), the latter shall not deny preferential tariff treatment to a product on the sole ground that Article ORIG.25(5) has been applied, but only on the basis that the information received is inadequate to confirm that the product is originating.

No denial on the sole ground that ORIG.25(5) has been applied

⁷ Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code

⁸ The importing customs authority may also decide to grant the preferential treatment, even when the reply provides inadequate information, e.g. in case when the selection for verification was made on a random basis.

8. CONFIDENTIALITY OF INFORMATION

8.1. Relevant provisions

Article ORIG.21: Importer's knowledge

(...)

Before claiming the preferential treatment, in the event that an importer is unable to obtain the information referred to in paragraph 1 of this Article as a result of the exporter deeming it to be confidential information or for any other reason, the exporter may provide a statement on origin so that the importer may claim the preferential tariff treatment on the basis of point (a) of Article ORIG.18(2) [Claim for Preferential Tariff Treatment].

Article ORIG.26: Denial of preferential tariff treatment

(...)

Upon the expiry of the period for consultation, if the customs authority of the importing Party cannot confirm that the product is originating, it may deny the preferential tariff treatment if it has a sufficient justification for doing so and after having granted the importer the right to be heard. However, when the customs authority of the exporting Party confirms the originating status of the products and provides justification for such conclusion, the customs authority of the importing Party shall not deny preferential tariff treatment to a product on the sole ground that Article ORIG.25(5) [Administrative cooperation] has been applied.

Article ORIG.27: 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. Where, notwithstanding Article ORIG.25(5) [Administrative cooperation], confidential business information has been obtained from the exporter by the customs authority of the exporting Party or importing Party through the application of Articles ORIG.24 [Verification] and ORIG.25 [Administrative cooperation], that information shall not be disclosed.

3. Each Party shall ensure that confidential information collected pursuant to this Chapter shall not be used for purposes other than the administration and enforcement of decisions and determinations relating to origin and to customs matters, except with the permission

of the person or Party who provided the confidential information.

4. Notwithstanding paragraph 3, a Party may allow information collected pursuant to this Chapter to be used in any administrative, judicial, or quasi-judicial proceedings instituted for failure to comply with customs-related laws implementing this Chapter. A Party shall notify the person or Party who provided the information in advance of such use.

8.2. Explanation

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.

This knowledge often includes information, which may be confidential as any disclosure of such information could harm the commercial interests of the exporter⁹ in question. However, 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.

*Confidentiality vs
assessment of the
origin of the
product*

The way the exporter informs the importer of the originating status of the product determines the type of claim for preferential treatment (i.e. based on a statement on origin or based on the importer’s knowledge) 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
between
exporter
importer** **the
and**

– where a claim is based on **a statement on origin** (Article ORIG.18(2)(b)), , in the case that the verification is addressed first to the importer, the exporter who made out the statement establishes which information is shared with the importer. The exporter may decide:

- not to share any information at all, or

⁹ The terms ‘exporter’ or ‘importer’ in this Guidance are understood as defined in Article ORIG.2 of the TCA

- to share one or more of the information elements included in the Article ORIG.24(2);
- where a claim is based on **importer’s knowledge** (Article ORIG.18(2)(b)) the exporter has already shared all information with the importer as this information must be available at the time when the claim is made. It should be noted that the exporter should not be forced to provide any information for the importer to claim the preference based on his knowledge. Instead, the exporter may provide the importer with a statement on origin for the importer to claim the preference on its basis

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

In the case that the verification is addressed first to the importer

- where a claim is based on a **statement on origin** and the exporter decides not to share any information with the importer 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 ORIG.24(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 ORIG.24(2) through the importer, 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.

**Relationship
between the
exporter and
importing Party**

In the case of administrative cooperation:

- If the importing customs authority request information from the exporting customs authority through the procedure of Article ORIG.25 (administrative cooperation), it is for the exporter to decide, in accordance with Article ORIG.24(5), whether the information it provides to the exporting customs authority may be

forwarded by that authority to the importing customs authority.

- 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.

Article ORIG.27 contains a number of specific provisions primarily directed at the competent authorities of each Party to protect confidential information obtained by the 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 boundaries of their own data protection laws 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. In accordance with paragraph 2, the same applies to all business confidential information obtained by the importing customs authority through verification (Article ORIG.24) and administrative cooperation(Article ORIG.25).This particularly applies to information, such as the description and explanation of the production process sufficient to support the originating status of the product.

Rights and obligations of the importing Party

Paragraph 3 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 purpose** other than the administration and enforcement of decisions and determinations relating to origin and to customs matters, except with the permission of the person or Party who provided the confidential information. As a result, the customs authorities of the importing Party are prohibited from sharing information with other governmental agencies other than those responsible for origin and customs matters except if so agreed by the person or Party who provided the confidential information.

By exception to paragraph 3, paragraph 4 allows the use of information collected by the importing Party pursuant to 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. There is an obligation of notification to the person or Party who provided the information.

Conclusion: The confidential information obtained by the importing Party may be used only for

- a) the administration and enforcement of decisions and determinations relating to origin and to customs matters;

- b) establishing the originating status of a product for which preferential tariff treatment is claimed in an administrative, judicial, or quasi-judicial proceedings;
- c) other purposes with the permission of the person or Party who provided the confidential information.