

DECISION OF THE JOINT COMMITTEE ESTABLISHED UNDER THE AGREEMENT ON
FREE TRADE AND ECONOMIC PARTNERSHIP BETWEEN JAPAN AND THE SWISS
CONFEDERATION

No. 3 of 2009

(Adopted on 1 September 2009)

OPERATIONAL PROCEDURES FOR RULES OF ORIGIN

THE JOINT COMMITTEE,

Having regard to the Free Trade and Economic Partnership Agreement between the Swiss Confederation and Japan, signed in Tokyo on 19 February 2009 (hereinafter referred to as “the Agreement”),

Whereas:

Article XXVIII of Annex II of the Agreement provides that the Joint Committee shall adopt the Operational Procedures for Rules of Origin,

DECIDES:

Article 1

The Operational Procedures for Rules of Origin are adopted as set out in the Annex to this Decision.

Article 2

This Decision enters into force with immediate effect.

Annex to Decision No. 3 of 2009 of the Joint Committee

OPERATIONAL PROCEDURES FOR RULES OF ORIGIN

referred to Article XXVIII of Annex II of the

Agreement on Free Trade and Economic Partnership between Japan and the Swiss Confederation

Section 1

Chapter 1 Proof of origin

Rule 1 Document

- (a) A Certificate of Origin should be on ISO A4 size paper (210 x 297 mm) in conformity with the specimen provided in Appendix 2 to Annex II of the Agreement.
- (i) In the case of a Certificate of Origin issued in Japan, the paper used should be light blue, sized for writing, not containing mechanical pulp and weighing not less than 50 g/m². It should have a printed guilloche pattern background making any falsification by mechanical or chemical means apparent to the eye.
- (ii) In the case of a Certificate of Origin issued in Switzerland; a tolerance of up to minus 5 mm or plus 8 mm in the length may be allowed. The paper used should be white, sized for writing, not containing mechanical pulp and weighing not less than 25 g/m². It should have a printed green guilloche pattern background making any falsification by mechanical or chemical means apparent to the eye.
- (b) The competent governmental authority of each Party or its designees may print its forms of Certificate of Origin itself or may have them printed by approved printers. In the latter case, each form should include a reference to such approval. Each form should bear the name and address of the printer or a mark by which the printer can be identified. It should also bear a serial number, either printed or not, for identification purposes.
- (c) A Certificate of Origin should be completed in English. If it is handwritten, it should be completed in ink in printed characters. The description of the products should be given in field 8 reserved leaving any blank lines. Where field 8 is not completely filled, a horizontal line should be drawn below the last line of the description, the empty space being crossed through.

Rule 2 Issuance

- (a) Signatures of the representatives of the competent governmental authority of the exporting Party or its designees on a Certificate of Origin should be autographed or electronically printed. In case of Japan, stamps of the competent governmental authority or its designees may be printed electronically as well.

- (b) Each Certificate of Origin should bear a certification number.

- (c) For the purposes of paragraph 2 of Article XVII of Annex II of the Agreement, a Certificate of Origin issued retrospectively should bear the phrase "ISSUED RETROSPECTIVELY" in field 7.

- (d) For the purposes of Article XVIII of Annex II of the Agreement, the date of issuance of the original Certificate of Origin together with the following matters should be indicated in field 7 of the new Certificate of Origin:
 - (i) In the case of Japan, the original certification number; and

 - (ii) In the case of Switzerland, the word "DUPLICATE".

Rule 3 Weight

For the purposes of Appendix 2 to Annex II of the Agreement, "other measure" referred to in the title of field 9 may include the net weight of the product concerned.

Rule 4 Description of products in a Certificate of Origin

When the space of field 8 of the Certificate of Origin is insufficient for the description of the products, particularly in the case of large consignments, the exporter may specify the products to which the certificate relates on attached invoices of the products and, if necessary, additional commercial documents on condition that:

- (a) the invoices numbers are shown in field 10 of the certificate of origin,

- (b) the invoices and, where relevant, additional commercial documents are firmly attached to the certificate prior to presentation to customs or competent governmental authorities of the exporting Party, and
- (c) the customs or competent governmental authorities have stamped the invoice and additional commercial documents, officially attaching them to the certificates.

Rule 5 Invoice number

For the purposes of Article XXI of Annex II of the Agreement, the number and the date of the invoice issued for the importation of the products into the importing Party, if available, should be indicated in field 10 of the Certificate of Origin. If such information is not mentioned on the Certificate of Origin and in case the customs authority of the importing Party has doubts that the products declared for importation are the originating products indicated in the Certificate of Origin, it may request the importer to provide any relevant documents to confirm.

Rule 6 Declaration by an Exporter

Field 12 of a Certificate of Origin should be completed by the exporter or his authorised representative. The exporter's or his authorised representative's signature in this field should be autographed or electronically printed.

Rule 7 Modification

(a) In case a Certificate of Origin contains incorrect information, the exporter or his authorised representative may request the issuance of a new Certificate of Origin and the invalidation of the original Certificate of Origin.

(b) Notwithstanding subparagraph (a), the competent governmental authority of the exporting Party or its designees may, in response to the request for the issuance of a new Certificate of Origin or at their own initiative, make modification on the Certificate of Origin by striking out errors and making any addition required. Such modification should be certified by authorised signature and stamp of the competent governmental authority of the exporting Party or its designees.

(c) Erasures, superimpositions and modifications other than those referred to in subparagraph (b) should not be allowed on the issued Certificate of Origin.

Rule 8 Two or more invoices

For the purposes of paragraph 1 of Article XXI of Annex II of the Agreement, a Certificate of Origin, in which numbers and dates of two or more invoices issued for a single shipment are indicated, should be accepted by the customs authority of the importing Party.

Rule 9 Invoice issued in a non-Party

An invoice relating to originating products of a Party covered by a Certificate of Origin may be issued in a non-Party.

Rule 10 Origin declaration

- (a) In cases where a commercial document on which an origin declaration was produced covers also non-originating products, the indication of the non-originating products and therefore products which are not covered by the origin declaration should not be made in the origin declaration itself. However, such indication should appear on the commercial document in an appropriate way so as to avoid any misunderstandings;
- (b) an origin declaration may be produced on the reverse side of the commercial document;
- (c) the origin declaration may be produced on a separate sheet of the document provided that the sheet shall be considered as part of the document. A complementary form may not be used;

Rule 11 Minor errors

The customs authority of the importing Party should disregard minor errors in a proof of origin, such as slight discrepancies or omissions, typing errors or, in the case of a Certificate of Origin, protruding from the designated field, provided that these minor errors may not affect the authenticity of the proof of origin or the accuracy of the information included in the proof of origin.

Chapter 2 Administration and enforcement

Rule 12 Focal points of administrative offices

- (a) The focal point of the competent governmental authority of the exporting Party is:
-in the case of Japan, the Origin Certification Policy Office of the Trade Administration Division of the Trade and Economic Cooperation Bureau of the Ministry of Economy, Trade and Industry; and
-in the case of Switzerland, the Directorate General of the Federal Customs Administration.
- (b) The focal point of the customs authority of the importing Party is:
-in the case of Japan, the Customs and Tariff Bureau of the Ministry of Finance; and
-in the case of Switzerland, the Directorate General of the Federal Customs Administration.
- (c) Each Party should provide the other Party with the address, phone number, fax number and e-mail address of its focal points referred to in subparagraphs (a) and (b) upon adoption of this Operational Procedures, and should notify the other Party of any modification regarding such information within 30 days after such modification.
- (d) If the competent governmental authority of the exporting Party designates other entities or bodies for the issuance of the Certificate of Origin in accordance with paragraph 2 of Article XVI of Annex II of the Agreement, or makes modification or revocation with respect to its designees, it should immediately notify the importing Party of such designation, modification or revocation.

Rule 13 Procedure to exchange forms of a Certificate of Origin and samples of impressions of stamps

Each Party should provide the other Party with its form of a Certificate of Origin, the design feature of impressions of stamps used for the issuance of a Certificate of Origin, and a sample of impressions of the stamps in accordance with paragraph 1 of Article XXIV of Annex II of the Agreement, upon the date of adoption of this Operational Procedures, as well as upon their modification thereafter.

Rule 14 Procedure to exchange information on the composition of authorisation number for approved exporters

Each Party should provide the other Party with information on the composition of authorisation number for approved exporter in accordance with paragraph 3 of Article XXIV of Annex II of the

Agreement, upon the date of adoption of this Operational Procedures, as well as upon its modification thereafter.

Rule 15 Communications for verification of proofs of origin

- (a) For the purposes of Article XXV of Annex II , any communication between the competent governmental authority of the exporting Party and the customs authority of the importing Party should be made through the Embassy of Japan in Switzerland or the Embassy of Switzerland in Japan. Such communications should be made by any method with a confirmation of receipt.

- (b) The direct communications between the competent governmental authority of the exporting Party and the customs authority of the importing Party may be made by facsimile or e-mail in parallel with the communications set out in subparagraph (a).

- (c) The period for providing the reply pursuant to paragraph 7 of Article XXV of Annex II of the Agreement should commence from the date of the confirmation of receipt of the request pursuant to paragraph (a).

- (d) The request for verification should include:
 - (i) the identity of the customs authority sending the request for verification: and
 - (ii) the scope of the requested verification, including specific reference to the product subject of the verification referred to in the proof of origin.

- (e) The request referred to in paragraph 8 of Article XXV of Annex II of the Agreement (hereinafter referred to as “the request for presence”) may be submitted to the competent governmental authority of the exporting Party along with the request for verification.

- (f) The request for presence should include the names and titles of customs officials of the importing Party which will be present as observers during the verification.

- (g) For the purposes of the verification, when the competent governmental authority of the exporting Party decides to visit the premises of the exporter or producer of the product or other person in the exporting Party as required in the request for presence submitted by the importing Party, the exporting Party is recommended to notice of the followings to the customs authority of the importing Party sufficiently in advance before the visit, taking into account of the possible presence of customs officials of the importing Party as observers during the visit.

- (i) the premises to be visited;
- (ii) the date of the visit; and
- (iii) conditions set out by the competent governmental authority of the exporting Party referred to in Paragraph 8 of Article XXV of Annex II, if any.

Rule 16 Goods exported by a customs clearance agent

A customs clearance agent may be allowed to act as the authorised representative of the person who is the owner of the goods or has a similar right of disposal over them, even in cases where the person is not situated in the customs territory of an exporting Party, as long as the agent is in a position to prove the originating status of the goods.

Section 2

The following are examples of applications of rules of origin:

Ex-works price, Calculation of the Value of Non-originating Materials (VNM), Accumulation of Origin, Tolerance, Unassembled or Disassembled Goods, Splitting-up of consignments.

1. Ex-works price

(1) The ex-works price of a product, as defined in paragraph (e) of Article I of Annex II of the Agreement, should include:

- the value of all materials used in the production of the product;
- all other costs for the production, such as wage and overhead costs, effectively incurred in the production of the product. For example, the ex-works price of recorded video cassettes, records, discs, media-carrying computer software and other such products containing an element of intellectual property rights should, to the extent possible, include all costs paid by the producer, which are pertinent to the use of the rights in connection with the production of the product, regardless of whether the holder of such rights has his seat or residence in the customs territory of the Party where the product is produced; ;
- profit (minus any internal taxes returned or repaid when the product obtained is exported).

No account should be taken of commercial price reductions (e.g. reduction of costs for early payment, or large quantity deliveries).

(2) In cases where the price paid for the product does not contain the value of all the materials used, or where the transaction is not under an ordinary course of trade (e.g. trade between sister companies), the ex-works price should be adjusted to be comparable with the price paid under regular conditions (e.g. trade with a non- Party) as necessary.

2. Calculation of the Value of Non-originating Materials (VNM)

2-1

In calculating the value of VNM, the profit as well as the costs other than prices of non-originating materials, incurred in the production of the product should be disregarded. The value of non-originating materials means the customs value at the time of importation of the non-originating materials used, or, if such value is unknown and cannot be ascertained, the first ascertainable price paid for the non-originating materials in the customs territory of a Party.

2-2 Example of the calculation of VNM

Company A produces refrigerators in Switzerland using non-originating materials and plans to export them to Japan under the Agreement.

The conditions for refrigerators (HS 8418.21) to qualify as an originating product of Switzerland are:

- (a) the value of non-originating materials used in the production of the product does not exceed 60% of ex-works price of the product; or
- (b) all non-originating materials used in the production of the product have undergone in Switzerland, a change in tariff classification at the 4-digit level of the Harmonized System.

To prove that the refrigerator qualifies as originating in Switzerland, Company A decides to apply rule (a) above. Therefore, the value of non-originating material is required not to exceed 60% of the ex-works price (i.e. US\$ 720).

Company A's manufacturing costs of a refrigerator:

| Factors | Sources | Originating Status | Value US\$ | In percentage |
|-----------------|-------------------------|--------------------|------------|---------------|
| Material 1 | Switzerland | Originating | 200 | 16.6% |
| Material 2 | Switzerland | Originating | 100 | 8.3% |
| Material 3 | Germany | Non-originating | 100 | 8.3% |
| Material 4 | (unknown) ^{*1} | (Non-originating) | 100 | 8.3% |
| Material 5 | Italy | Non-originating | 200 | 16.6% |
| Other costs and | - | - | 500 | 41.6% |

| | | | | |
|----------------|---|---|-------|------|
| profit | | | | |
| Ex-works price | - | - | 1,200 | 100% |

*1 When the originating status of a material is “unknown”, the material is considered as “non-originating.”

Ex-works price consists of:

VNM + value of originating materials + other costs and profit

Whether the product qualifies as an originating product of Japan may be determined on the basis of the following calculating methods:

(1) the ratio of the value of “non-originating materials (VNM)”

VNM (materials 3+4+5) / ex-works price

= $(\$100+\$100+\$200) / \$1,200 = 33.3\%$ (VNM does not exceed 60% of the ex-works price);

(2) the ratio of the value other than VNM

(material 1+2 + Other costs and profit) / ex-works price

= $(\$200+\$100+\$500) / \$1,200 = 66.6\%$ (This means that the VNM does not exceed 60% of the ex-works price); or

(3) the ratio of “other costs and profit”

(other costs and profit) / ex-works price

= $\$500 / \$1,200 = 41.6\%$ (This means that the VNM does not exceed 60% of the ex-works price) *2

*2 If the value of costs and profit is not high enough to exceed 40% of ex-works price, the company may add the value of originating materials may be added until the percentage exceeds 40% of the ex-works price.

Company A may decide which calculating method is the best to prove that the product qualifies as an originating product of Switzerland. To prove that the VNM does not exceed 60% of the ex-works price company A may do so, not only by adding up the value of non-originating materials, but also by showing that the “value added” in Switzerland is 40% or higher.

It should be noted that, in any case, working or processing beyond the operations referred to in Article VII of Annex II of the Agreement (Non-Qualifying Operations) carried out in Switzerland is required for qualifying the product as an originating product of Switzerland.

2-3 Example of the use of the method provided for in paragraph 6 of Article IV of Annex II of the Agreement (“roll-up”)

In the example of 2-2, company A purchased material 1 from company B in Switzerland.

Material 1 is determined as an originating material as a result of calculation of its VNM. By applying the provision stipulated in paragraph 6 of Article IV of Annex II of the Agreement, the value of material 1 as a whole (\$ 200) is treated as originating material and the company A does not have to divide the value of material 1 into the originating and non-originating part, even though material 1 in fact includes the non-originating part (Input material 1-b: \$50) whose value does not exceed 60% of ex-works price of material 1.

Company A’s manufacturing costs of the refrigerator:

| Factors | Sources | Originating Status | Value US\$ |
|------------------------|---------------|--------------------|------------|
| Material 1 | Switzerland | Originating | 200 |
| Input material 1-a | Switzerland | Originating | 100 |
| Input material 1-b | China | Non-originating | 50 |
| Costs, etc.. | (Switzerland) | (Originating) | 50 |
| Material 2 | Switzerland | Originating | 100 |
| Material 3 | Germany | Non-originating | 100 |
| Material 4 | (unknown) | (Non-originating) | 100 |
| Material 5 | Italy | Non-originating | 200 |
| Other costs and profit | (Switzerland) | (Originating) | 500 |
| Ex-works price | - | - | 1,200 |

If company B exports material 1 to Japan, it is qualified as an originating product. Thus, whether material 1 is used in the production of the refrigerator in Switzerland or directly exported to Japan does not affect the determination of the originating status of material 1.

2-4 Example of the use of the method provided for in paragraph 7 of Article IV of Annex II of the Agreement

This paragraph allows to take into account every working or processing carried out in the course of the production in the customs territory of a Party (full accumulation in the Party). In other words, any value added in the course of the production by one or more producers at different stages in the customs territory of the Party, such as originating materials used, and costs and profit incurred at the different stages of the production processes, may be accumulated. In any case the exporter should be prepared to prove that the product qualifies as an originating product of the Party with sufficient transparency.

Company A's manufacturing costs of a refrigerator:

| Factors | Sources | Originating Status | Value US\$ |
|------------------------|-------------|---------------------|------------|
| Material 1 | Switzerland | Non-originating | 200 |
| Input material 1-a | Germany | Non- Originating | 130 |
| Input material 1-b | Switzerland | Originating | 40 |
| Costs, etc.. | - | - | 30 |
| Material 2 | Switzerland | Originating | 100 |
| Material 3 | Germany | Non-originating | 200 |
| Material 4 | (unknown) | (Non-originating) | 150 |
| Material 5 | Italy | Non-originating | 200 |
| Other costs and profit | - | - | 350 |
| Ex-works price | - | - | 1,200 |

Material 1 is delivered by Supplier B and is determined as a non-originating material as a result of calculation of its VNM by Supplier B. If company A would simply aggregate all the value of non-originating materials:

$$\text{VNM} = (\text{materials } 1+3+4+5) / \text{ex-works price}$$

$$= (\$200+\$200+\$150+\$200) / \$1,200 = 62.5\% >60\%$$

The refrigerator would have to be considered as a non-originating product.

Nevertheless, when company A applies paragraph 7 of Article IV of Annex II of the Agreement to the case above, it may exclude the value of other than the non-originating portion of material 1 (value of input material 1b and costs etc. incurred in Switzerland) from the VNM to the extent possible. In this case, company A may exclude such part (input material 1-b: \$40 + costs.etc: \$30) from the value of material 1 (\$200):

$$\text{VNM} = (\$130+\$200+\$150+\$200) / \$1,200 = 56.7\% <60\%$$

Therefore the refrigerator can be considered as an originating product of Switzerland.

As a result of applying this paragraph, a proof of origin may be issued or produced for the refrigerator.

It should be noted that this paragraph applies only to non-originating materials obtained in the Party where the production of the product is carried out, and not to non-originating materials imported from the other Party or non-Parties. Even if non-originating materials imported from non-Parties (in this case, material 3 or 5) are produced using some Japanese or Swiss originating materials, company A may not exclude the value of such originating materials when calculating the value of the non-originating materials.

3. Accumulation of Origin

Paragraph 1 of Article V of Annex II of the Agreement enables companies in the customs territory of a Party to consider originating materials of the other Party as those of the Party provided that the working or processing on these materials in the Party goes beyond the operations referred to in Article VII of Annex II. If a company in Japan imports an originating material of Switzerland and uses it in the production of a product which is to be exported to Switzerland, such originating material of Switzerland may be considered as an originating material of Japan, provided that the working or processing on the Swiss materials in Japan goes beyond the operations referred to in Article VII of Annex II. The company has neither to include the value of that material in the VNM of the product, nor to check whether it meets change in tariff classification rule.

It should be noted that materials which have been subject to the accumulation provision should be verifiable under the Agreement.

4. Tolerance

4-1 Example of the application of Tolerance for products other than textile and apparel products (paragraph 1 (b) of Article VI of Annex II of the Agreement)

Company A produces a baby carriage (HS 8715.00) using non-originating materials in Japan and plans to export them to Switzerland under the Agreement. The conditions for baby carriages (HS 8715.00) to qualify as an originating product of Japan are:

- (a) the value of non-originating materials used in the production of the product does not exceed 60% of ex-works price of the product; or
- (b) all non-originating materials used in the production of the products have undergone in the customs territory of Japan , a change in tariff classification at the 4-digit level of the Harmonized System.

To prove that the baby carriage qualifies as an originating product of Japan, company A decides to apply rule (b) above.

The baby carriage is made from Indian aluminum bar (HS 7604.10), Chinese handle grip (HS 8715.00) and Japanese wheels (HS 8715.00). Due to the fact that the wheels are originating materials of Japan, a change in tariff classification at the 4-digit level is not required.

The handle grip which is a non originating material does not undergo “a change in tariff classification at the 4-digit level. However, if the value of the handle grip (HS 8715.00) does not exceed 10% of the ex-works price of the baby carriage to be exported to Switzerland, company A is allowed to disregard the handle grip in applying the rule of change in tariff classification pursuant to paragraph 1 (b) of Article VI of Annex II of the Agreement, and therefore, the baby carriage is qualified as an originating product of Japan.

4-2 Example of the application of Tolerance for textile and apparel products (paragraph 1 (c) of Article VI of Annex II of the Agreement)

Company A produces silk yarn (HS 5006.00) using non-originating materials in Japan and plans to export it to Switzerland under the Agreement. The condition for silk yarn (HS 5006.00) to qualify as an originating product of Japan is:

“all non-originating materials, except products of heading 50.05, used in the production of the product have undergone, in the customs territory of Japan, a change in tariff classification at the 4-digit level of the Harmonized System.”

The silk yarn (HS 5006.00) is made from Indian raw silk (HS 5002.00) and Chinese silk thread (HS 5006.00). The silk thread does not undergo the required change in tariff classification. However, if the weight of the silk thread (HS 5006.00) does not exceed 7% of the total weight of the silk yarn (HS 5006.00), company A is allowed to disregard the silk thread in applying the rule of change in tariff classification, pursuant to paragraph 1 (c) of Article VI of Annex II of the Agreement and therefore, the silk yarn can be qualified as originating.

5. Unassembled or Disassembled Products

Example of originating products imported from a Party to the other Party in a disassembled form but classified as an assembled product (paragraph 1 of Article IX of Annex II of the Agreement)

Company A produces a gas turbine (HS 8411.82) in Switzerland, which is an extremely large machine, and plans to export it to Japan under the Agreement. The company exports it in a disassembled form (a group of lots) for the convenience of transportation. In this case, the Japanese customs authority classifies the group of lots as an assembled product (“the article complete, presented disassembled”), i.e., an assembled gas turbine by virtue of Rule 2 (a) of the General Rules for the Interpretation of the Harmonized System. Although the form of the product has been changed after the product was determined as an originating product of Switzerland, the product retains qualifications as an originating product of Switzerland when imported to Japan.

6. Splitting-up of consignments (see Attachment)

(1) Allowing “splitting-up” in a non-Party

The consignment criteria provided for in subparagraph 1 (b) of Article XIV of Annex II of the Agreement allows for a consignment of originating products of a Party to be split up in a non-Party. Splitting up the consignment in a non-Party should not affect their status as originating products. In such a case a Certificate of Origin may be issued retrospectively or an origin declaration may be produced for the products split up.

(2) Example of cases where “splitting-up” is applicable (see Attachment)

When a Japanese company exports originating products produced in Japan to European countries, these products are shipped as a single consignment composed of seven containers to a port in an EU member country, such as the Netherlands. At the time of the shipment from Japan, the exporter does not know the final destination of the containers, and the containers may be stocked in bonded customs warehouses at the port for a certain time period until their final destination is decided. After the shipment it is decided that two containers are delivered to Switzerland.

In order to receive preferential treatment in Switzerland for the goods of these two containers, the Japanese exporter obtains or produces a proof of origin retrospectively, and then the Swiss importer should submit the proof of origin to the customs authority of the importing Party. It has to be noted that the consignment criteria of Article XIV of Annex II and all other requirements under the Agreement have to be fulfilled.

(Attachment)

With splitting-up provision



