

EU-Canada Comprehensive Economic and Trade Agreement (CETA)

Guidance on the Rules of Origin

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General disclaimer

These guidance documents are of an explanatory and illustrative nature. Customs legislation takes precedence over the content of these documents 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.

Acronyms:

CETA Origin Protocol: the Protocol on rules of origin and origin procedure of CETA

UCC: Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013

UCC-DA: Commission Delegated Regulation (EU) 2015/2446

UCC-IA: Commission Implementing Regulation (EU) 2015/2447

1. Exporters' 'customs authorisation number' - Value limit

Relevant provisions

a) CETA Origin Protocol

- i. Article 18
- ii. Article 19
- iii. Annex 2

b) EU legal base

- i. Article 68(4) UCC-IA
- ii. Article 68(5) UCC-IA, as amended by Regulation (EU) 2017/989

In the EU

According to Article 18 in the CETA Origin Protocol, the proof of origin to be used in CETA is the origin declaration.

Article 19 in the CETA Origin Protocol refers to the internal legislation of the Parties as regards the conditions that must be fulfilled by an exporter completing an origin declaration.

In the EU, the Registered Exporter System (REX) applies according to Article 68(1) UCC-IA.

Annex 2 of the CETA Origin Protocol contains the text of the origin declaration, which refers to a '(customs authorization No...)'. Footnote 2 of that Annex specifies that in the EU, when the origin declaration is completed by a registered exporter, that number is the exporter's registration number.

Concerning EU exports to Canada, the origin declaration should therefore include a REX-number.

However, according to article 68(4) UCC-IA, an exporter who is not a registered exporter may complete a document on origin up to the value threshold of EUR 6 000, for each consignment. In such cases, footnote 2 of Annex 2 of the CETA Origin Protocol sets out that the words in brackets concerning the '(customs authorization No...)' in the origin declaration shall be omitted or the space left blank.

In the context of CETA, and according to Article 68(5) UCC-IA, EU approved exporters are entitled to make out an origin declaration using their approved exporter number as if it was a REX number until 31 December 2017 provided they have not yet been registered by the Member State concerned. This is applicable over the value threshold EUR 6 000, for each consignment, but is not compulsory below this threshold given that no number is needed below this threshold.

In Canada

For the most part, exporters of commercial goods in Canada will have a business number, as it is mandatory for all exporters of commercial goods required to be reported to the Canada Border Services Agency (CBSA), to have a Business Number. However, there may be situations where an exporter of a good is not required to have a business number, such as,

where the exported good is a non-commercial good. In cases where the exporter does not have a business number, the exporter will complete field 5 of the origin declaration by including the signature and the name of the exporter.

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2. Origin declaration: making out - waiver from signature

Relevant provisions

a) CETA Origin Protocol

- i. Article 19(1)
- ii. Article 19(3)
- iii. Footnote 5 of Annex 2

b) EU legal base

- i. Article 68(1) UCC-IA, as amended by Regulation (EU) 2017/989
- ii. Article 68(5) UCC-IA, as amended by Regulation (EU) 2017/989
- iii. Subsection 2 to Subsection 9 UCC-IA, applied *mutatis mutandis* - (Article 68(1) UCC-IA)

In the EU

1) Origin declarations made out by a Registered Exporter

Article 19(3) of the CETA Origin Protocol provides for origin declarations to be completed and signed by the exporter *'unless otherwise provided'*.

In accordance with EU legislation (Article 92(3) UCC-IA applied *mutatis mutandis* to origin declarations made out by registered exporters in preferential arrangements with a third country) an origin declaration does not have to be signed. This is also included in Chapter 6, paragraph 2, point 5 of the REX guidance.

“No handwritten signature of the exporter is required on statements on origin. In the context of an FTA, when a document on origin is made out by a registered exporter, that document on origin does not need to be signed by the registered exporter provided that the text of the FTA foresees that the document on origin may not be signed.”

The REX guidance can be found at the following link.

https://ec.europa.eu/taxation_customs/sites/taxation/files/registered_exporter_system_rex_-_guidance_document_v1_en.pdf

2) Origin declarations made out by an Approved Exporter (during a transitional period ending on 31 December 2017)

In accordance with Article 68(5) UCC-IA, and until 31.12.2017, an exporter to Canada who is already an approved exporter and not yet a registered exporter will be entitled to make out origin declarations using his approved exporter number as if it was a REX number, as long as he is not registered in the REX system.

The signing of the origin declaration by an approved exporter follows the same procedures for all declarations made out by approved exporters. Where the approved exporter has provided a

written undertaken accepting full responsibility for the declaration then no signature is required.

3) Origin declarations made out by a non-registered exporter (REX) for consignments up to EUR 6 000

No signature is required for origin declarations made out for originating products of a value up to EUR 6 000 in a consignment, provided that as per Article 92(3) UCC-IA the commercial document on which the origin declaration is made out allows for the identification of the exporter. Otherwise, where the exporter is not identified on the commercial document it is required to complete field 5 (signature and name of the exporter) of Annex 2 of the CETA Origin Protocol.

In Canada

1) Origin declaration

Under CETA, commercial businesses in Canada exporting products to the EU are required to provide the business number assigned by the Canada Revenue Agency on the origin declaration, as per the footnote instructions contained in Annex 2 of the Protocol on Rules of Origin and Origin Procedures. Field 5 may be left blank where the exporter in Canada includes a Business Number.

2) Business number

For the most part, exporters of commercial goods in Canada will have a business number, as it is mandatory for all exporters of commercial goods required to be reported to the CBSA, to have a Business Number. However, there may be situations where an exporter of a good is not required to have a business number, such as, where the exported good is a non-commercial good. In cases where the exporter does not have a business number, the exporter will complete field 5 of the origin declaration.

For more information about the business number:

<https://www.canada.ca/en/revenue-agency/services/tax/businesses/topics/registering-your-business/you-need-a-business-number-a-program-account.html>

3. Validity of exporters' registration in the EU

Relevant provisions

a) CETA Origin Protocol

Not applicable

b) EU legal base

Article 26 UCC

In the EU

Registration of an EU exporter in the REX database is according to Article 26 UCC valid throughout the customs territory of the Union and consequently the REX number assigned to an exporter may be used irrespective of the place where products are declared for exportation and where the real export is taking place. This means that the REX number can be used to export the products from different Member States and not only from a Member State where it was assigned.

In Canada

Not applicable

4. Transitional arrangements

Relevant provisions

a) CETA Origin Protocol

No legislation

b) EU legal base

No legislation

In the EU

The provisions of the Agreement may be applied to goods which comply with the provisions of the CETA Origin Protocol and which on the date of provisional application of CETA are/were either in transit or are/were in the Union in temporary storage in customs warehouses or in free zones, subject to the submission to the customs authorities of the importing country, of an origin declaration issued according to the provisions of Article 18 and 19 of the CETA Origin Protocol.

In case such goods were released for free circulation with the application of MFN duty rates, an origin declaration can be presented within two years (Article 19(4) of CETA Origin Protocol) from the date of the importation of the goods. This does not apply to goods released for free circulation into the EU before the provisional application of the agreement.

When the goods have been exported from Canada before the provisional application of the agreement and are either in transit or are in the Union in temporary storage in customs warehouses or in free zones, the origin declaration should be made on a copy of the invoice or on the copy of another commercial document related to the goods sent to the importer. The date of the declaration of origin, as provided by Annex 2 of CETA Origin Protocol, cannot be omitted (see footnote 4 of Annex 2) and it should be the date of the making out of the declaration which cannot be before the provisional application of the agreement.

In Canada

For imports into Canada, the Canada Border Services Agency (CBSA) will extend the CETA preferential tariff treatment to products released from customs control on or after the date of the provisional application of the agreement. Granting of the CETA preference will not be based on production or shipping date.

5. Origin quotas

Relevant provisions

a) CETA Origin Protocol

Annex 5-A

b) EU legal base

Commission Implementing Regulation (to be determined)

In the EU

The CETA Origin Protocol provides for alternative product specific rules, as a derogation from the product specific rules set out in Annex 5, for some categories of products within limited quantities (origin quotas). The categories of products, the quantities and the alternative product specific rules to be applied within the limits of annual origin quotas are provided for in Annex 5-A.

Exporters are reminded that, as per the Protocol on Rules of Origin and Origin Procedures of the CETA, the exporter of the product is required to provide an Origin Declaration to the importer.

In order to benefit from origin quota allocation, reference to Annex 5-A must be made on the invoice or on the commercial document on which the origin declaration is made out (Note 4 of Annex 5-A). Thus, in addition to the text of the origin declaration, the following text is recommended to be written on the same document:

“Products originating according to the provisions of Annex 5-A”

In Canada

Information on the application of quotas on goods exported from Canada to the EU can be found at the following link.

http://www.international.gc.ca/controls-controles/prod/ceta_origin_quotas-contingents_origine_aecg.aspx?lang=eng

Exporters are reminded that, as per the Protocol on Rules of Origin and Origin Procedures of the CETA, the exporter of the product is required to provide an Origin Declaration to the importer.

In order for the exporter in Canada to identify origin quota exports to the EU and to inform the importer of the application of Annex 5-A, the exporter is to include a reference to Annex 5-A on the commercial invoice or other commercial document and if an export permit was obtained, provide the importer with a copy of that permit.

6. Advance rulings - Binding Origin Information (BOI)

Relevant provisions

a) CETA Origin Protocol

Article 33

b) EU legal base

- i. Article 33 and 34 UCC
- ii. Article 19-22 UCC-DA
- iii. Articles 16, 18-19 and 22-23 UCC-IA

Introduction

Binding origin information / advance rulings are decisions by the competent authorities, which are binding for the issuing customs authorities against the holder of the decision where the goods being imported or exported and the circumstances governing the acquisition of origin correspond in every respect with what is described in the Binding origin information / advance rulings.

In the EU

General guidance on BOI is available on the EU website.

https://ec.europa.eu/taxation_customs/sites/taxation/files/guidance_boi_en.pdf

Canadian exporters or EU importers may apply for a binding origin information according to Article 33 UCC.

The application for a BOI decision shall be submitted to the competent authorities, as designated by Member States:

http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2017.029.01.0019.01.ENG&toc=OJ:C:2017:029:TOC

In Canada

The CBSA will issue advance rulings directly to EU exporters or producers and importers in Canada. For further detail and information on how to apply for an advance ruling, refer to CBSA's Advance Ruling Departmental Memorandum

<http://www.cbsa-asfc.gc.ca/publications/dm-md/d11/d11-4-16-eng.html>

7. Full cumulation: supplier's statement

Relevant provisions

a) CETA Origin Protocol

- i. Article 3, paragraphs 4 to 7
- ii. Annex 3

b) EU legal base

No legislation

In the EU

It is recommended, for the purpose of full cumulation referred to in Article 3(2) of the CETA Origin Protocol, to use the model of supplier's statement provided in Annex 3 of the CETA Origin Protocol.

However, in accordance with Article 3(5) of the CETA Origin Protocol, other equivalent documents containing the same information as in Annex 3 can be used irrespective of the format.

The supplier's statement may cover a single invoice or multiple invoices on the same statement.

In Canada

Other equivalent documents containing the same information as Annex 3 of the Origin Protocol can be used irrespective of the format.

8. Replacement of origin declarations

Relevant provisions

a) CETA Origin Protocol

Not applicable

b) EU legal base

Article 69 UCC-IA, as amended by Regulation (EU) 2017/989

In the EU

General guidance of replacement of proofs of origin can be found at:

http://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/customs/customs_duties/rules_origin/preferential/movement_certificates_en.pdf

When goods are imported from Canada and a replacement of a proof of preferential origin is issued for the purposes of sending all or some of those products elsewhere within the Union then Article 69 UCC-IA shall apply. There are no provisions in CETA on this.

Where originating products covered by a proof of preferential origin issued or made out previously for the purposes of a preferential tariff measure and have not yet been released for free circulation and are placed under the control of a customs office in the Union, the initial proof of origin may be replaced by one or more replacement proofs for the purposes of sending all or some of those products elsewhere within the Union, as referred to in Article 69(1) UCC-IA.

In the present state of the law, Article 69(2) UCC-IA shall apply since the proof of origin required for the purposes of the preferential tariff measure with Canada is an 'origin declaration', even if not made out by an approved exporter. This means the replacement proof of origin shall be issued or made out in the form of one of the documents listed in points (a) to (e) of Article 69(2) UCC-IA, including a statement on origin made out by a re-consignor or a registered exporter.

Article 69(2), as amended:

"2. Where the proof of origin required for the purposes of the preferential tariff measure as referred to in paragraph 1 is a movement certificate EUR.1, another governmental certificate of origin, an origin declaration or an invoice declaration, the replacement proof of origin shall be issued or made out in the form of one of the following documents:

(a) a replacement origin declaration or a replacement invoice declaration made out by an approved exporter re-consigning the goods;

(b) a replacement origin declaration or a replacement invoice declaration or a replacement statement on origin made out by any re-consignor of the goods where the total value of originating products in the initial consignment to be split does not exceed the applicable value threshold;

(c) a replacement origin declaration or a replacement invoice declaration or a replacement statement on origin made out by any re-consignor of the goods where the total value of originating products in the initial consignment to be split exceeds the applicable value threshold, and the re-consignor attaches a copy of the initial proof of origin to the replacement origin declaration or replacement invoice declaration or replacement statement on origin;

(d) a movement certificate EUR.1 issued by the customs office under whose control the goods are placed where the following conditions are fulfilled:

(i) the re-consignor is not an approved exporter nor a registered exporter and does not consent to a copy of the initial proof of origin being attached to the replacement proof;

(ii) the total value of the originating products in the initial consignment exceeds the applicable value threshold above which the exporter must be an approved exporter or a registered exporter in order to make out a replacement proof;

(e) a replacement statement on origin made out by a registered exporter re-consigning the goods."

A replacement origin declaration can also be made out by a registered exporter using the wording in Annex 2 of the CETA Origin Protocol (recital 18 of Regulation (EU) 2017/989). Guidance on the necessary information on how to do this can be found in the General guidance of replacement of proofs of origin.

Article 69(4) UCC-IA is not applicable since it refers to the replacement of a 'statement on origin'.

9. Accounting segregation

Relevant provisions

a) CETA Origin Protocol

Article 10

b) EU legal base

Article 14(1) UCC

In the EU

Accounting segregation is provided for in many of the EU's Free Trade Agreements, some of which authorisation is mandatory.

If originating and non-originating fungible materials are used in the working or processing of a product, the management of the materials could be realized by using the accounting segregation method without keeping the different materials in separate stocks.

The CETA-Agreement provides the application of accounting segregation of fungible materials and also of certain fungible products.

As a suitable inventory (stock) management system is needed to apply this method correctly and in the case of subsequent verifications the evidence of origin of the products needs to be reproduced, the EU exporter should preferably ask his customs authorities for support before applying this system. The provision of information by the customs authorities to any person requesting the application of customs legislation is governed by Article 14 of the UCC.

In Canada

Under CETA, no authorization from CBSA is required should the exporter choose to apply an inventory management system to demonstrate that materials or goods are originating. However, should the CBSA conduct a verification where fungible materials or products was applied, the CBSA would establish whether the appropriate inventory management method was used by reviewing; a) the processes of purchasing, receiving, storage, removal from storage, shipping, and b) associated documents such as purchase orders, commercial invoices, bills of materials.

10. Exemptions from origin declarations

Relevant provisions

a) CETA Origin Protocol

Article 24

b) EU legal base

None

In the EU

Article 24(1) of the CETA Origin Protocol indicates that a Party may, in accordance with its domestic legislation, waive the requirement to present an origin declaration for low value shipments of originating products from another Party and for originating products forming part of the personal luggage of a traveller coming from another Party.

Article 24(3) of the CETA Origin Protocol indicates that the Parties may set value limits for products referred to in paragraph 1, and that they shall exchange information regarding those limits.

At the moment, these exemptions are not allowed at import to the EU as there is no legal basis for them in EU legislation.

In Canada

1) Low value shipments

Concerning imports to Canada, the requirement for importers to have the origin declaration in their possession is waived for commercial products valued at CAD \$1600 or less. Rather the importer is required to have a commercial invoice with any statement attesting to the products originating status. This requirement to waive the presentation of an origin declaration is contained in Canada's *Proof of Origin of Imported Goods Regulations* which will be amended to include CETA¹.

2) Personal luggage of travellers

In Canada, all goods acquired that are not intended for resale, meaning non-commercial, are considered casual goods. The origin declaration is not required for casual goods, but rather the Canada Border Services Agency (CBSA) applies the marking of the good, or lack thereof, to determine origin. Therefore, if the good does not bear a mark and nothing indicates that the goods are products of a non-EU country, then the goods will receive the CETA preferential tariff treatment.

¹ See information provided by the Canada Border Services Agency website at the following address: <http://www.cbsa-asfc.gc.ca/publications/dm-md/d11/d11-4-13-eng.html>

11. Multiple shipments of identical originating products

Relevant provisions

a) CETA Origin Protocol

- i. Article 19(5)
- ii. Annex 2

b) EU legal base

None

In the EU

Article 19(5) of the CETA Origin Protocol stipulates that the customs authority of the Party of import may allow the application of an origin declaration to multiple shipments of identical originating products that take place within a period of time that does not exceed 12 months as set out by the exporter in that declaration.

The EU as Party of import is not at the moment in a position to allow such application of an origin declaration to multiple shipments in the absence of EU legislation providing a legal base.

Where the origin declaration is completed with the dates mentioned in field 1 of Annex 2 of the CETA Origin Protocol, customs authorities in the EU will accept the origin declaration only for the first consignment.

In Canada

The CBSA promotes the use of a single origin declaration to apply to multiple shipments of identical products, up to a period of 12 months. This period is determined by the exporter. In Canada, this is commonly referred to as a “blanket period”. Thus the EU exporters, should they intend to export identical products to Canada, may provide importers in Canada with an origin declaration that relates to multiple shipments, from the provisional application of CETA.