

# Three origin concepts

Veterinary and phytosanitary certificates as a base for customs preferential origin

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## Preface

For the Executive Master Customs and Supply Chain Compliance at the Erasmus University of Rotterdam, I have written this thesis. In the thesis, I have focused on three origin concepts, namely veterinary origin, phytosanitary origin, and customs preferential origin. I have conducted research on whether veterinary or phytosanitary export certificates can be serve as the only legally valid evidence for wholly obtained goods for determining customs preferential origin.

I would like to thank my supervisors prof. dr. W. de Wit and dr. J. Hulstijn for the supervision. Hopefully, you will enjoy reading my thesis.



Wikje van der Zee  
13 April 2023

## Executive summary

The Netherlands is one of the largest agricultural 'exporter' in the world. Animals, products of animal origin and vegetable products are agricultural products. Certain documents are required in international trade of agricultural products, such as a veterinary or phytosanitary export certificate. A proof of origin is required to have benefit of preferential treatment in the importing country. On these documents a country (or place) of origin is indicated. A preferential proof of origin can be an origin certificate approved by Dutch Chamber of Commerce and validated by Dutch Customs or exporter's self-certification. Based on verification results, it is common that Dutch Chamber of Commerce approves an origin certificate based on only a phytosanitary export certificate. A phytosanitary or veterinary export certificate is not sufficient evidence to prove the origin of the products, according to Dutch Customs.

Research is needed to determine whether veterinary or phytosanitary export certificates can serve as the only legally valid evidence for determining customs preferential origin. The research focuses on wholly obtained veterinary (excluding fishery products) and phytosanitary products, such as described in the trade agreements for customs preferential origin purposes. The research focuses on the trade agreements which the European Union has agreed with the United Kingdom, pan-Euro-Mediterranean countries, Canada and Japan. This has led to the following research question:

*Can a veterinary or phytosanitary export certificate serve as the only legally valid evidence for wholly obtained goods for determining customs preferential origin, allowing a preferential proof of origin to be issued for the goods?*

The concept of origin is used for phytosanitary or veterinary and customs purposes. Although all terms refer to 'origin', they do not have the same legal meaning as the terms are based on their own laws. For that reason, the research method used is legal descriptive and comparative research, to find out the differences and similarities about the backgrounds of origin and about the criteria for obtaining the origin. The provisions of the phytosanitary and veterinary origin have been compared with the provisions of the customs preferential origin. In addition, to verify the origin criteria for veterinary and phytosanitary products, discussion have taken place with an expert in the field of export of veterinary products and an expert in the field of export of phytosanitary products, both working at the Dutch Food and Safety Authority.

The background of veterinary or phytosanitary origin and customs preferential origin differs. Veterinary or phytosanitary measures may be imposed for protecting human, animal or plant life or health. The import measures are applicable for products from a certain country, place of origin or area. Products of preferential origin may benefit from preferential treatment in the importing country. The (preferential) origin of the products should be indicated to prevent the possibility of preferential treatment for non-originating products.

The differences between the veterinary or phytosanitary origin concept and the customs preferential origin concept are too significant, hence a veterinary or phytosanitary export certificate cannot serve as the only legally valid evidence for wholly obtained products for determining customs preferential origin. Thus issuing proof of origins based on only a veterinary or phytosanitary export certificate should not be allowed.

A veterinary export certificate cannot serve as the only legally valid evidence for wholly obtained goods for determining customs preferential origin, because the country of origin on a veterinary export certificate does not correspond with the country of origin for customs preferential purposes or no country of origin is indicated on the certificate. However, other information on some veterinary export certificates gives (indirectly) insights about where the animal is born and or raised. Additional supporting documents are required that prove where the animals are born and or raised.

Phytosanitary export certificates can never serve as the only legally valid evidence for wholly obtained goods for determining customs preferential origin, when product shall exported to Canada and PEM-countries, because the origin criteria of phytosanitary origin and customs preferential origin are not similar. Other supporting documents are required that prove whether the products are wholly obtained in the European Union.

When product shall exported to United Kingdom or Japan the phytosanitary export certificate can also not serve as the only legally valid evidence, even though it seems that the origin criteria of phytosanitary origin corresponds with the criteria of customs preferential origin. There are still differences, with just a phytosanitary export certificate it is not certain that the criteria of wholly obtained products are met for customs purposes. Additional supporting documents should prove whether the products are wholly obtained in the European Union.

Further research could be performed to determine which supporting documents indicates where animals have been born and raised and where plants have been grown. These documents can be approved by Customs as supporting documents.

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## 1. Introduction

The first chapter introduces the research performed. In the first paragraph, the background information is described, thereafter in the second paragraph the problem analysis is described. In the third paragraph the scope of the research is included. The motivation contribution of the thesis is described in the fourth paragraph. Thereafter the research objectives are explained in the fifth paragraph. In paragraph six the research design is discussed. The summary of conclusions and recommendations is given in the seventh paragraph. Finally, the structure of the thesis is included in the eighth paragraph.

### 1.1. Background information

The Netherlands is one of the largest agricultural 'exporter' in the world. In 2021 104,7 billion euros of agricultural products were exported to European Union Member-States and third countries. 31% has been exported to third countries. Animals, products of animal origin and vegetable products are agricultural products (e.g. ornamental horticultural products, live animals, meat, dairy products and eggs, vegetables and fruit). The export of agricultural goods consists of agricultural goods originating from the Netherlands and agricultural goods originating from other countries. Since 1 January 2021, the United Kingdom has been a third country. The United Kingdom is one of the largest export destinations of agricultural products for the Netherlands in 2021 (G.D. Jukema, P. Ramaekers, P. Berhout, 2022). In figure 1, the top 15 destination (third) countries are shown of the exported agricultural products from the Netherlands in 2020 and 2021 based on export value.

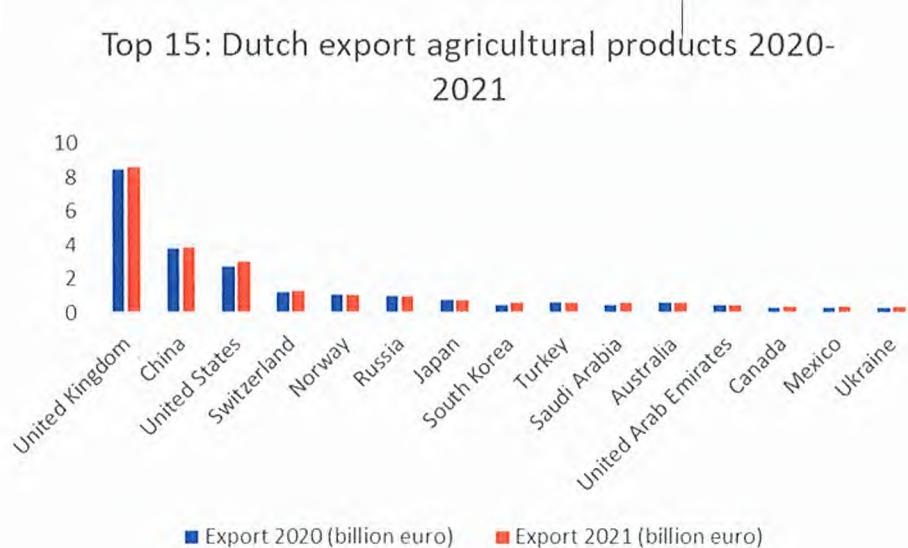


FIGURE 1  
Top 15: Dutch export agricultural products 2020-2021  
Source: G.D. Jukema, P. Ramaekers, P. Berhout, 2022, table B4.5

The European Union has concluded agreements with various third countries in which, among other things, it has been agreed that no import duties or lower import duties will be levied on products originating from the contracting country. However, an importer can only apply a preferential import duty rate if he is in possession of the required proof of origin. The exporter of the products must provide the proof of origin to the importer. The proof of origin states that the goods are of European

Union preferential origin. The required proof of origin is determined in the rules of origin between the European Union and the other contracting party. The proof of origin can be an origin certificate (e.g. EUR1) or the exporters' self-certification (e.g. statement on origin). The origin certificate will be issued by Dutch Customs after approval by Dutch Chamber of Commerce (Dutch Customs Handbook, 2023).

In addition to customs documents, other documents are required in the case of export of agricultural products. An export certificate for agricultural goods based on article 176 of regulation (EU) No 1308/2013 may be required. However, no country (or place) of origin is mentioned on these kinds of export certificates (annex I Implementing Regulation (EU) 2016/1239). Additionally, agricultural products are subject to phytosanitary or veterinary rules. A phytosanitary or veterinary export certificate – which includes the place of origin – is required to export the agricultural products from the Netherlands to a third country. In the Netherlands, these veterinary and phytosanitary export certificates are issued by the Dutch Food and Safety Authority (NVWA).

## 1.2. Problem analysis

The exporter needs to apply for an origin certificate at the Dutch Chamber of Commerce. The application should contain data and supporting documents enabling the origin of the goods mentioned in the application to be determined (article 1:16 (1) and (2) (Dutch) General customs regulation ('Algemene douaneregeling')). If the application is approved by the Dutch Chamber of Commerce the exporter submits the origin certificate to Customs for validation. Customs validates the origin certificate if the Dutch Chamber of Commerce has assessed the application positively after Customs has checked whether the description and quantity of the goods on the origin certificate match with the information in the export declaration. Dutch Customs considers that rules of origin should be strictly applied during the assessment of the origin certificate. However, the Dutch Chamber of Commerce focuses more on trade facilitation by issuing many origin certificates which leads to more exports.

The National Origin Team of Dutch Customs carries out tasks related to the origin of goods. One of the responsibilities of the Dutch National Origin Team is the verification of proof of origins issued upon export in the Netherlands. This verification is based on the provision in the free trade agreements or origin protocols between the European Union and the contracting party. All free trade agreements and origin protocols have a provision for verification of proof of origins<sup>1</sup>. Customs authorities of the importing contracting party may request verification of proof of origin to the customs authorities of the exporting contracting party. The customs authority of the exporting contracting party should perform the verification. In the Netherlands, the National Origin Team receives the verification requests. Client Management of the exporter's customs region carries out the verification and may carry out any inspection of the exporter's accounts or any other check considered appropriate. The National Origin Team shares the results of the verification with the customs authority of the importing contracting party. The customs authority of the importing contracting party shall accept or refuse entitlement to the preferences based on the verification results.

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<sup>1</sup> For example: article 32 of the Regional Convention on pan-Euro-Mediterranean preferential rules of origin

In 2020, the National origin Team received 909 verification requests. An overview of the number of verification requests per country (of all product groups) in 2020 is shown in figure 2.

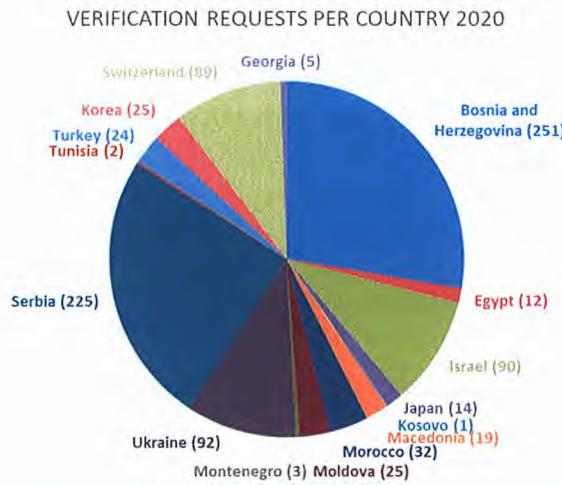


FIGURE 2  
Verification requests per country 2020

Based on the results of some verifications, the National Origin Team has established that Dutch Chamber of Commerce accepts phytosanitary export certificates as supporting document of customs preferential origin. This is because of an absence of other supporting documents.

For agricultural products, the concept of origin is used for phytosanitary or veterinary and customs purposes. Although all terms refer to 'origin', they do not have the same legal meaning as the terms are based on their own laws. The question is whether the preferential origin established on the basis of trade agreements does (always) correspond to the origin established on the basis of phytosanitary regulations. According to Dutch Customs a phytosanitary export certificate does not prove the preferential origin.

### 1.3. Scope

As mentioned in previous paragraphs, the Dutch Chamber of Commerce accepts a phytosanitary export certificate as supporting document for determining the customs preferential origin. Therefore, further research on whether phytosanitary certificates can be legally valid evidence for determining customs preferential origin is needed. Since it is the same kind of process, phytosanitary and veterinary products (excluding fishery products) are both the scope of the thesis research.

In general, products shall be considered as originating in the European Union for customs purposes when they are wholly obtained in the European Union, or the products have been sufficiently worked or processed in the European Union (Customs Expert Group – Origin Section (CEG-ORI), 2022). Just a veterinary or phytosanitary export certificate is not sufficient as a supporting document to prove the European Union preferential origin for sufficiently worked or processed products. An example of a supporting document in these cases is a list of all the non-originating materials, including their tariff classification (in 2, 4 or 6-digit format, depending on the origin criterion), where the origin criterion is based on the change in tariff classification (WCO, 2017, page 29). A veterinary or phytosanitary export certificate can perhaps (in certain cases) be a sufficient supporting document, but only for wholly obtained products. Therefore, the wholly obtained (veterinary and phytosanitary) products will be the scope of this thesis research.

In addition to an origin certificate, an increasingly common preferential proof of origin is a declaration by the exporter on a commercial document, like a statement on origin, origin declaration or invoice declaration. The exporter declares with a (standard) text on the invoice or other commercial document that the goods mentioned on that commercial document are of European Union preferential origin. The exporter can do this without the intervention of Customs, the Chamber of Commerce or another external party (WCO, 2020). Nevertheless, the exporter should have data and supporting documents enabling the origin of the products. It is possible that an exporter issues a statement on origin based on just a phytosanitary or veterinary export certificate. As shown in figure 3, more verification requests are related to self-certification.

RATIO VERIFICATION REQUESTS 2020

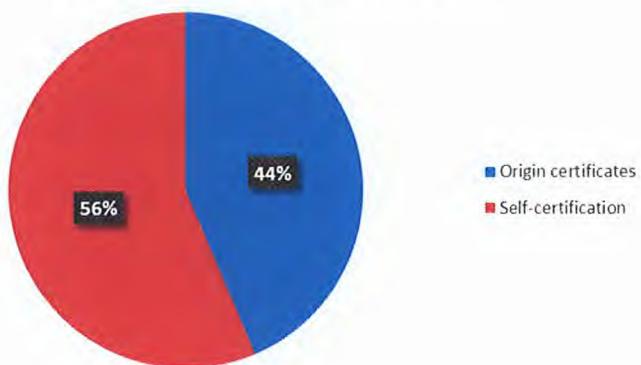


FIGURE 3  
Ratio verification requests 2020

Because of this, I have selected trade agreements that include origin certificate and / or self-certification as proof of origin. I have selected four trade agreements / origin protocols based on the following two criteria:

- 1) The (different) definitions of wholly obtained products.
- 2) The third country/group of countries to which often has been exported from the Netherlands in 2021 (based on export value) with which the European Union has a trade agreement (see figure 1).

Based on the above mentioned criteria, I have selected the following trade agreements for my research:

- Trade and Cooperation Agreement between the European Union and United Kingdom of Great Britain and Northern Ireland,
- Regional Convention on pan-Euro-Mediterranean preferential rules of origin between European Union and PEM-countries,
- Comprehensive Economic and Trade Agreement between the European Union and Canada,
- Economic Partnership Agreement between European Union and Japan.

#### 1.4. Motivation contribution of thesis

Dutch Customs considers that rules of origin should be strictly applied. There should be supporting documents that prove the European Union preferential origin. This view is applied by Dutch Customs to a verification of the proof of origin. When Dutch Customs receives a verification request and Dutch Customs determines there is only a phytosanitary or veterinary export certificate, Dutch Customs

shall inform the contracting party that the products may not be considered as products originating in the European Union. If the Dutch Chamber of Commerce issues origin certificates wrongly and this is determined during a verification request by Client Management, post-clearance claims shall arise in the (third) country of importation, because the preferential import duty has been applied incorrectly. This leads to non-compliance with traders (export and import) and inefficiency for them. However, this can also lead to disruption in the cooperation between the European Union and the third country. In the case that Customs refuse a proof of origin incorrectly, the post-clearance claims are also incorrectly. This should be avoided. For these reasons it is interesting to research whether and in which cases phytosanitary or veterinary export certificates may be sufficient supporting documentation that proves the European Union preferential origin.

When it is clear in which cases an phytosanitary or veterinary export certificate may be a supporting document that proves the European Union preferential origin, this will facilitate and expedite the verification of proof of origin. When the phytosanitary or veterinary export certificate can be used as evidence of the European Union preferential origin, this prevents unnecessary refusal of the preferential rate in the importing country. Since Dutch Customs now has the official policy that only a phytosanitary or veterinary export certificate does not prove the European Union preferential origin. In case the phytosanitary or veterinary export certificate cannot be used as evidence of the European Union preferential origin, Client Management needs to do further research to determine whether the European Union preferential origin is issued correctly. In the second case, Dutch Customs can share these research results with the Dutch Chamber of Commerce to reach uniformity about the procedures of the European Union preferential origin of phytosanitary and veterinary products. This can prevent the claiming of a preferential rate in the country of import wrongfully. Perhaps Coordinated Border Management can in this case improve cooperation between Dutch Customs and the Dutch Chamber of Commerce.

## 1.5. Research objectives

This research aims to gather knowledge about the differences and similarities between the different interpretations of legal disciplines (customs preferential origin, veterinary origin and phytosanitary origin) of the concept 'origin'.

The research results can be used for further research or Dutch Customs can decide for certain products to allow phytosanitary or veterinary export certificates as sufficient evidence that proves the European Union preferential origin. Dutch Customs can avoid wrongful refusal of preferential tariffs for those particular products. The research results can also confirm the correctness of the current policy of Dutch Customs.

## 1.6. Research design

For the conduction of the research, I formulated the following research question:

*Can a veterinary or phytosanitary export certificate serve as the only legally valid evidence for wholly obtained goods for determining customs preferential origin, allowing a preferential proof of origin to be issued for the goods?*

To be able to answer this research question, first the differences and similarities between the different concepts of origin have been clarified. The provisions of the phytosanitary and veterinary origin have been compared with the provisions of the customs preferential origin. During this research, three theoretical cases have been highlighted and discussed. I have discussed the following sub-questions:

- 1) What is the background of the origin rules for veterinary products?
- 2) What is the background of the origin rules for phytosanitary products?
- 3) What is the background of the preferential origin for customs purposes?
- 4) What are the differences and similarities between the above mentioned backgrounds?
- 5) When are phytosanitary and veterinary products wholly obtained products and thus of European Union preferential origin for customs purposes?
- 6) What are the conditions, for determining place of origin for phytosanitary purposes?
- 7) What are the conditions, for determining place of origin for veterinary purposes?
- 8) In which cases can an export certificate serve as a supporting document for European Union preferential origin for customs purposes and which do not?

I have conducted desk research and legal research to answer the research question. First, I started the research by conducting desk research to gather knowledge and insights on the origin rules for customs, veterinary and phytosanitary purposes. After completing the desk research, I have continued with the legal research. I have started the legal research with descriptive legal research. "Describing the law is the first step in any legal research", as mentioned by Kestemont (Kestemont, 2018). The objective of this research is descriptive. For this research, the rules of origin of the (selected) trade agreements, the veterinary regulation and phytosanitary regulation are described, including the backgrounds of the legislations. I have focused on the rules of origin in the sense when the products receive the European Union (preferential, veterinary and phytosanitary) origin status.

After describing the law, I proceeded with the comparative legal research. The objective of this legal research is to compare legal constructs in order to uncover their similarities and differences. The legal constructs that I have compared are the rules of origin from the selected trade agreements with the origin provisions in the European Union veterinary and phytosanitary regulation. The comparative research is an internal comparison, namely comparing the concept 'origin' between different legal disciplines (Kestemont, 2018).

In addition, the following three theoretical cases are discussed to clarify the differences and similarities of the different origin concepts.

**Case 1**

Company A, established in the United States, sells a calf born in the United States to Company B in the Netherlands. The calf is raised in the Netherlands and subsequently the cow is exported to Canada. 50 days before export, the cow remains in the holding of origin in the Netherlands. What is the origin of the cow that is exported from The Netherlands to Canada for customs and veterinary purposes? What is the origin for veterinary and customs purposes if the cow is exported to PEM-countries, Japan or United Kingdom?

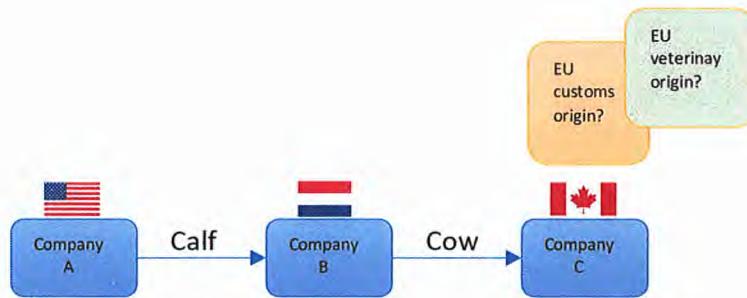


FIGURE 4  
Case 1: origin of live animals

**Case 2**

Company A, established in Kenya, sells seeds that originated from Kenya to Company B in the Netherlands. Roses have been grown from these seeds in the Netherlands, and harvesting of these roses takes place in the Netherlands. Subsequently, the roses are exported to the United Kingdom. What is the origin of the roses that are exported from the Netherlands to the United Kingdom for customs and phytosanitary purposes? What is the origin for phytosanitary and customs purposes if the roses are exported to PEM, Japan or Canada?

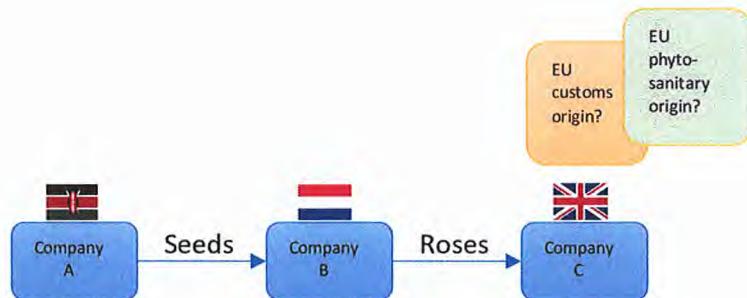


FIGURE 5  
Case 2: origin of roses

**Case 3<sup>2</sup>**

Company A, established in the Netherlands, sells plants to Company B in Kenya. When young shoots have sprouted, these are cut from the mother plants in Kenya. The cuttings are placed in small fleece pots and then placed in a nursery plant pallet (tray). Subsequently these cuttings are exported to Company C in the Netherlands. In the Netherlands plants have been grown between 4 to 8 weeks, and as a result of which, the plants have formed roots. Subsequently, the seedlings (rooted plants) are exported from Company C in The Netherlands to Company D in Japan. What is the origin of the seedlings that are exported from the Netherlands to Japan for customs and phytosanitary purposes? What is the origin for phytosanitary and customs purposes if the seedlings are exported to PEM, Canada or United Kingdom?

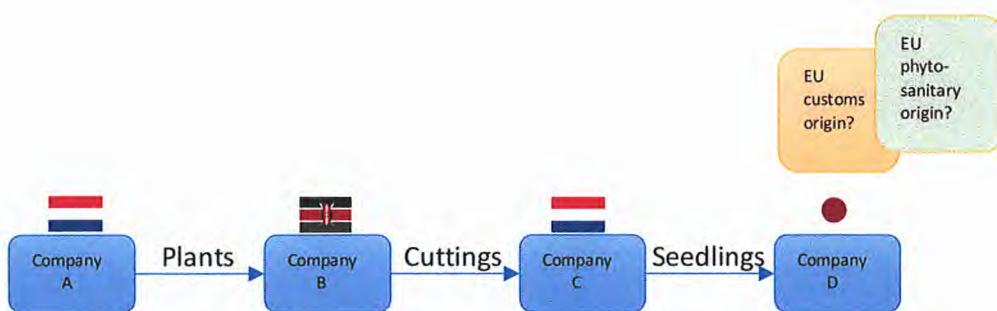


FIGURE 6  
Case 3: origin of seedlings

Based on the results of the research, I will give recommendations to the National Origin Team about whether a veterinary or phytosanitary export certificate can serve as the only legally valid evidence for wholly obtained goods for determining customs preferential origin. Possible outcomes of this research can be that never, in some cases or in all cases a veterinary or phytosanitary export certificate can serve as the only legally valid evidence for wholly obtained goods for determining the customs preferential origin.

### 1.7. Summary of conclusions and recommendations

Within Dutch Customs it is unknown how the veterinary and phytosanitary origin is determined. Therefore, research on whether phytosanitary and veterinary export certificates can be evidence for preferential origin is needed. It is recommended to select a few trade agreements to perform this research. Later, depending on the research results, research could carry out based on other trade agreements.

The recommendation is to compare the legal criteria for determining the origin for veterinary, phytosanitary and customs purposes. Through the legal comparison, there will be an overview of the differences and similarities of the different origin concepts. When this information is clear, it is possible to determine for which agricultural goods and in which cases the (veterinary or phytosanitary) export certificate can serve as a supporting document for customs preferential origin. The research results can be communicated with the Dutch Chamber of Commerce, because they approve origin certificates. So they might (when needed) change their procedure. It should be noted that the procedure of the Dutch Chamber of Commerce is beyond my influence. For that reason,

<sup>2</sup> Based on case discussion in Customs Expert Group – Origin Section Origin (TAXUD/1409266/18)

recommendations to Customs shall also be given, e.g. to use the research results during the verification of the proof of origins. This will facilitate the verification. Wrongful refusal of tariff preference can be prevented.

### 1.8. Structure of thesis

In the next chapter the research methodology is included. In chapter 3, a review of the research literature is included. The research results and analysis have been elaborated in chapter 4 and 5. In chapter 4, the backgrounds of the three origin concepts are discussed. The origin criteria of the three origin concepts are discussed and analyzed in chapter 5. In chapter 6 the contribution of research and practice have been described. Finally, chapter 7 includes the conclusions.

## 2. Research methodology

In chapter 2, the research methodology (research approach) is included.

The research and its findings are based on qualitative research. The research method used is legal descriptive and comparative research. As explained in paragraph 1.6., I have started the research with desk research. First, consultation with the National Origin Team took place to understand the problem and identify the scope of the research. Knowledge and insights about customs preferential origin, phytosanitary origin and veterinary origin was gathered by means of desk research. During the desk research I have collected data from among others European Union customs law, selected trade agreements, veterinary law, phytosanitary law, European Commission Customs Expert Group (origin section), International standards for phytosanitary measures and court case C-686/17. The European Union legislation have been consulted via the Official Journal of the European Union (Eurlex-website).

In addition, I have applied for access to documents under Regulation (EC) No 1049/2001. I have requested documents regarding the correct establishment of preferential origin of seedlings, definition of harvesting (reference to TAXUD/1409266/18). Via this procedure I have received the following three documents of the European Commission Customs Expert Group (origin section):

1. Document with subject: Appeal case before HZA Hannover regarding the correct establishment of preferential origin of seedlings – Definition of 'harvesting' (TAXUD/1409266/18);
2. Addendum of doc. 1. (TAXUD/1409266/18 ADD.1);
3. Minutes of the 11th meeting of the Customs Expert Group – Origin Section held in Brussels, on 22 March 2018 (Ares(2018)3697009).

Further, I have requested written submissions of all parties in the European Court of Justice case C-686/17. The second preliminary question is interesting for this research. The preliminary question was about whether cultivated mushrooms have their origin in the country where harvest took place, if substantial production steps take place in other countries. It should be noted that this court case was about giving food information to consumers (goods with identification 'origin'), based on the non-preferential origin rules of the Union Customs Code. Another point of attention is that the production steps only took place in European Union-Member States. Since the criteria for wholly obtained products are similar for determining non-preferential origin and preferential origin, it is interesting to know what the different parties have submitted and perhaps they have made the comparison with the criteria of preferential origin. For that reason I have requested the written submissions. I have received the written observations of the European Commission, Zentrale zur Bekämpfung unlauteren Wettbewerbs Frankfurt am Main eV, German Government, French Government and the Italian Government. Only the access to the written observations of Prime Champ Deutschland Pilzkultuur GmbH has refused on the ground of protection of commercial interests.

Academic articles have also been researched. This source were retrieved from online libraries. Webpages from government, e.g. World Customs Organization, European Commission, Dutch Customs and Dutch Food and Safety Authority have also been consulted. Various websites, articles and guidance documents were consulted, e.g. (not limited) Preferential Trade - Guidance on the Rules of Origin, CETA Guidance on the Rules of Origin, A User's Handbook to the Rules of Preferential

Origin used in trade between the European Community, other European Countries and the countries participating to the Euro-Mediterranean Partnership, WCO Rules of Origin - Handbook, WCO Origin Compendium and various instructions of the Dutch Food and Safety Authority.

After I had completed the desk research, I started with the legal research (Kestemont, 2018). The research focuses on the criteria of wholly obtained live animals, animal products and vegetable products for customs preferential origin. The following four selected trade agreements have been consulted:

- Trade and Cooperation Agreement between the European Union and United Kingdom of Great Britain and Northern Ireland,
- Regional Convention on pan-Euro-Mediterranean preferential rules of origin between European Union and PEM-countries,
- Comprehensive Economic and Trade Agreement between the European Union and Canada,
- Economic Partnership Agreement between European Union and Japan.

The phytosanitary provisions are included in Regulation (EC) No 2016/2031 and the veterinary provisions are among others included in Regulation (EU) No 2016/429, Implementing Regulation (EC) No 2020/2235 and Implementing Regulation (EU) No 2021/403. The provisions of official controls to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products are included in Regulation (EU) No 2017/625. All these legislations have been studied, including the backgrounds of the legislation and especially the applicable origin criteria. Description of the backgrounds of the legislation and the different criteria are described first. Next, the criteria of the veterinary and phytosanitary origin have been compared with the customs preferential origin criteria. Subsequently, the differences and similarities have been identified. As mentioned in paragraph 1.6., three theoretical cases are discussed to clarify and show the differences and similarities of the different origin concepts.

In addition, I have had a discussion to verify my findings about the conditions of the veterinary and phytosanitary origin with an expert in the field of export of veterinary products and an expert in the field of export of phytosanitary products, both working at the Dutch Food and Safety Authority. The Dutch Food and Safety Authority is responsible for issuing phytosanitary and veterinary export certificates, for that reason I have contacted experts working at the Dutch Food and Safety Authority. The meeting notes from both discussions are attached in appendices 1 and 2.

### 3. Review of research literature

In this chapter, the review of the research literature is elaborate on. The following key articles have been selected for case analysis:

1. E. Rogiest, D. Rovetta, A. Smiatacz, E. Vermulst, Rules of Origin in the EU, a Simplification? GTCJ 2020/150302 (2020)
2. European Commission, Minutes 11<sup>th</sup> meeting Customs Expert Group – Origin Section (TAXUD/1409266/18)
3. WCO Comparative Study on Preferential Rules of Origin (2017)
4. R. Eschen, K. Britton, E. Brockerhoff et all, International variation in phytosanitary legislation and regulations governing importation of plants for planting, Elsevier (2015)
5. K. van der Meer and L. Ignacio, Border Management Modernization, The World Bank (2011)

The first three articles are related to the customs preferential origin. The fourth and fifth article relates to the phytosanitary and veterinary measures.

#### 3.1. Customs preferential origin

The customs preferential origin is discussed in multiple articles. Mostly the provisions about sufficient working or processing products are often further explained, while the wholly obtained products are only referred to in the list of wholly obtained products contained in each trade agreement. Often the complexity of the rules of origin is discussed. While Rogiest, Rovetta, Smiatacz and Edwin Vermulst (2020) have among others discussed the simplification and modernization of the rules of origin and origin procedures that are included in free trade agreements between the European Union-Japan and European Union-Canada. The products considered as wholly obtained products are not further discussed by Rogiest, Rovetta, Smiatacz and Vermulst (2020). Considering trade agreements that the European Union conducted with Japan and Canada, also a simplification and modernization have been implemented for wholly obtained products. In most trade agreements the criteria for plant and plant products considered as wholly obtained is 'harvested there'. Whereas in the trade agreement European Union-Japan the criteria is more general, namely 'grown, cultivated, harvested, picked or gathered there'. Consequently, plant and plant products may obtain preferential origin more often when a trade agreement between European Union and Japan is applicable. In the trade agreement European Union-Canada notes are included in product specific rules of origin (annex 5), e.g. note in section II vegetable products. Because of this note, vegetable products shall be considered as wholly obtained even if grown from seed, bulbs, rootstock, cuttings, slips, grafts, shoots, buds or other live parts of plants imported from a third country.

With the Comparative Study on Preferential Rules of Origin (2017) the WCO has analyzed origin legislation of PEM, NAFTA (Americas with the North American Free Trade Agreement), ATIGA (ASEAN Trade in Goods Agreement) and TPP (Trans-Pacific Partnership agreement). This study gives among others an explanation on wholly obtained. This WCO study is relevant for my research, because PEM is part of the WCO study and the consideration of wholly obtained products in trade agreements are similar. The interpretation of wholly obtained should be interpreted strictly. Namely, products including imported parts or materials from third countries shall not be considered as wholly obtained. These kind of products need to fulfill the requirement of the product specific rules to obtain preferential origin. Every trade agreement set out the different treatments which are considered to

be wholly obtained in an exhaustive list. However, products can be considered as wholly obtained in case imported products are used. The WCO study illustrate this with the following two examples:

- 1) Live animals born and raised in the contracting party shall be considered as wholly obtained, despite created with imported semen.
- 2) Plants harvested in a contracting party shall be considered as wholly obtained, despite created with imported seeds.

This interpretation is also given in the Commission's User's Handbook to the preferential rules of origin used in the trade between the European Community, the European Countries and the countries and the countries participating in the Euro-Mediterranean Partnership. The criteria wholly obtained product does not exclude imported elements, like imported seed to grow vegetables.

Another subject that is included in the WCO study is origin verification. The verification process of the PEM is discussed. Reference is made to the WCO Research Paper No. 20, World Trends in Preferential Origin Certification and Verification (2011). One of the conclusions is to strengthening the cooperation with the competent authorities, which include the Chamber of Commerce. This WCO research is international related and relatively old, nevertheless the conclusion about strengthening the cooperation with competent authorities is still relevant given my problem definition.

Further, the European Commission had discussed the definition harvested in the European Customs Expert Group – Origin section (2018). Determining of preferential origin of seedlings cultivated from imported cuttings based on Protocol 3 (Agreement EU-Switzerland) and Protocol 4 (Agreement on the European Economic Area) has been discussed. A comparison is made with the criteria for live animals, namely live animals originate where they were born and raised (dual condition). Whereas, the criteria for vegetable products refers exclusively to the harvesting. According to the European Commission, the previous stages of production of the vegetable products are not relevant. Hence, the conclusion of the European Commission is crop products are wholly obtained if they have been separated from the soil or substrate in which they are grown. Though, a life plant (seedlings), from imported cuttings cultivated, which cannot be separated from the soil or substrate (no harvested), therefore this life plant shall not be considered as wholly obtained.

### 3.2. Phytosanitary and veterinary measures

Eschen, Britton, Brockerhoff et all (2015) have compared phytosanitary legislation of different countries. They have determined that all countries required phytosanitary certificates and import inspection. This article shows that a phytosanitary certificate is important, because the authority in the exporting country has certified that the consignment meets the requirements of the importing country and optionally the phytosanitary products are practically free of those pests that are regulated by the importing country. Countries can implement import authorization for plants or plant products of particular genera or origins. With the information on the phytosanitary certificates the importing country can impose necessary measures to prevent dispersal of pests and diseases. The phytosanitary legislation in countries are mostly based on provision in the International Plant Protection Convention and the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS-agreement). Limits on trade based on the SPS-agreement should be based on science or international standards (e.g. International Standards on Phytosanitary Measures (ISPM). ISPM 12 is a relevant document for this research, this document includes requirements and guidelines for phytosanitary certificates.

Van der Meer and Ignacio (2011) describes the sanitary and phytosanitary measures and border management. Veterinary certificates are required for importing live animals, animal products and phytosanitary certificates are required for importing plants and plant products. Exporting countries should provide data on their pest and disease. Importing countries may impose an import ban when for example a plant or animal disease breaks out in the country of origin. Import of agricultural products can be forbidden, restricted and nonprohibited. When there is an import ban, the agricultural products cannot be imported. There are (extra) requirements for importing restricted products (e.g. import authorization, certificates or treatment at import). Phytosanitary and veterinary certificates are mostly required for importing nonprohibited products. These phytosanitary and veterinary certificates should be issued in the exporting country.

In the next two chapters among others the theory is given about the backgrounds and the criteria of the origin concepts.

## 4. Backgrounds of origin concepts

In this chapter, the background of the three origin concepts are discussed. First an explanation of why customs preferential origin is needed. Why the phytosanitary and veterinary origin are needed is discussed secondly. Finally, the differences and similarities of the backgrounds are discussed.

### 4.1. Customs preferential origin

One of the principles of the trading system of the World Trade Organization is trade without discrimination. This means among others that countries must levy customs duties according to the most favoured nation (MFN) principle. Each country has its own customs tariffs towards imports from third countries (Article 1 of The General Agreement on Tariffs and Trade (GATT 1947)). Preferential rules of origin are not needed, because the MFN principle does not differentiate between different countries. Customs unions and free trade areas are approved exceptions to the MFN principle (Article XXIV of The General Agreement on Tariffs and Trade (GATT 1947)). Depending on the specific economic interests the contracting parties of the free trade agreement agree on zero rates or reduced rates for products. The aim to conduct a free trade area is that the contracting parties of the FTA will benefit economically, because the trade shall increase (van de Heetkamp and Tusveld, 2011, page 37).

In a free trade area there are no trade barriers between the contracting parties of the free trade agreement. Each contracting party still has its external customs tariff towards third countries. Preferential rules of origin determine whether goods qualify for a preferential treatment under the given trade agreement. Preferential rules of origin provide preferential treatment and are granted only to products originating in the contracting parties of the free trade agreement. Preferential rules of origin are necessary to prevent the possibility of preferential treatment by a non-contracting party through a contracting party (WCO, 2017, page 15).

The following two examples illustrate the description above. The first example (figure 7) shows that preferential rules of origin prevents that goods that have been manufactured in country A, supplies via country B and subsequently can be imported in country C claiming preferential treatment. Assuming that there is only a free trade agreement between country A and B and a free trade agreement between B and C without provisions about cumulation in the free trade agreements. In this example, the external tariff between country B and country C applies (WCO, 2017, page 15-16).

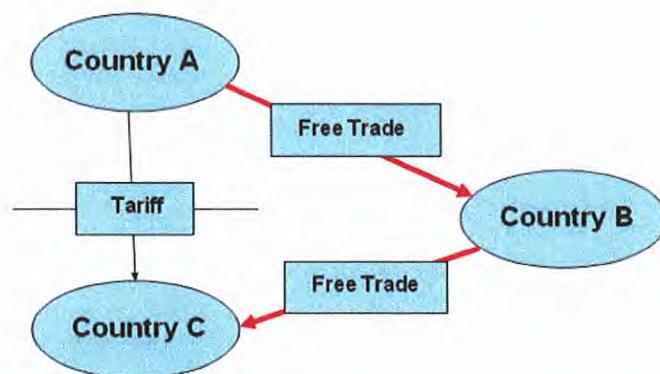


FIGURE 7  
Example 1: trade deflection  
Source: WCO, 2017, page 16

The second example (figure 8) shows that preferential rules of origin prevent goods originating in country B (third country) from being imported into country C (contracting party of the free trade agreement with the lowest external tariff) and subsequently the goods are supplied into country A without paying any customs duties in country A. Assuming that there is only a free trade agreement between country A and Country C. In this example, first the external tariff between country B and country C applies and second the external tariff between country C and country A applies (WCO Origin Compendium, 2017 page 16).

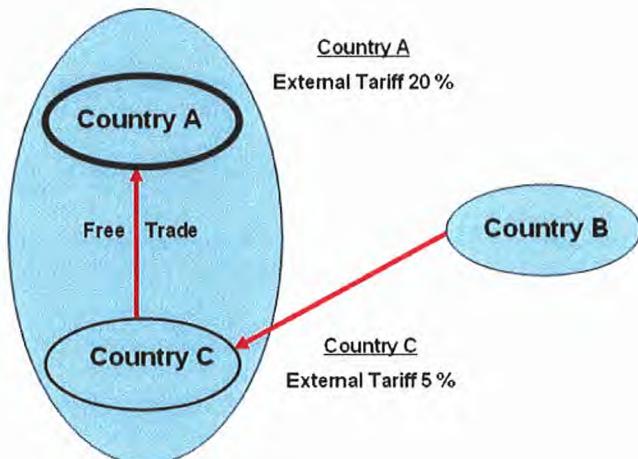


FIGURE 8  
Example 2: trade deflection  
Source WCO 2017, page 16

#### 4.2. Phytosanitary and veterinary origin

In the previous subparagraph, it is mentioned that the trading system of the World Trade Organization is trade without discrimination. The MFN principle also includes restrictions on animal and plant health purposes. Although, in case protecting human, animal or plant life or health is needed, countries are allowed to impose import measures (Article XX (b) of The General Agreement on Tariffs and Trade (GATT 1947)). The export certificate proves that the consignment meets the health requirements for plants, vegetables, fruit and plant products (phytosanitary certificate) and animals and animal products (veterinary certificate) of the country of destination.

Phytosanitary measures avoid (as much as possible) the entry, establishment and spread of pests of plants that do not exist or are not widely present in a country. These measures are needed to safeguard the country's biodiversity and environment and protect and ensure the quality of plants and plant products and the safety of food and feed made from plants (preamble 8 Regulation (EU) No 2017/625 and preamble Regulation (EU) No 2016/2031). In particular, the place of origin of the exported goods is important to identify if measures in the country of import are needed. Suppose there is a plant disease in a specific plant in the Netherlands that can seriously affect biodiversity and the environment in third countries. In that case, phytosanitary measures (e.g. import ban or treatment) on import are needed in third countries for that particular plant from the Netherlands.

The objective of veterinary measures is to ensure human and animal health by avoiding the spread of infectious diseases in a country. Veterinary measures ensure (as much as possible) the safety of food and feed (preamble 5 Regulation (EU) No 2017/625). As with phytosanitary measures, the place of

origin of the goods is also important with imposing veterinary measures. For example, if there is bird flu in a certain area, a country will, for example, impose an import ban on poultry originating from that particular area.

#### 4.3. Differences and similarities of the backgrounds

The backgrounds of the customs preferential origin compared with the phytosanitary and veterinary origin are totally different. The background of the customs preferential origin is economic. The preferential rules of origin in free trade agreements ensure that only goods originating in contracting parties of a free trade agreement will benefit preferential treatment. This leads to a positive impact on the economy of the contracting parties of the free trade agreement. The background of phytosanitary and veterinary measures is to protect human, animal or plant life or health. Nevertheless, also the economic impact plays a role in the case of phytosanitary and veterinary measures. Consequently, plant disease or animal disease will lead to impacts on international trade, like additional production costs, turnover losses and price changes.

## 5. Origin criteria

The criteria of the three origin concepts are discussed in this chapter. The criteria of customs preferential origin of veterinary and phytosanitary products are discussed in the first paragraph. Which documents can be supporting documents for proving the preferential origin is also included in the first paragraph. In the second paragraph the criteria of the phytosanitary origin is discussed. The criteria of the veterinary origin are discussed in the fourth paragraph. Whether veterinary or phytosanitary export certificates could be a base for customs preferential origin is elaborated on in the fifth paragraph. In these last paragraph the results of the cases are also given.

### 5.1. Customs preferential origin

Every trade agreement and origin protocol has an article including a list of products that shall be considered as wholly obtained in a contracting party when exporting to another contracting party. I have included an example of a list of the obtained products below. According to article 4 of the PEM:

*"1. The following shall be considered as wholly obtained in a Contracting Party when exported to another Contracting Party:*

- (a) mineral products extracted from its soil or from its seabed;*
- (b) vegetable products harvested there;*
- (c) live animals born and raised there;*
- (d) products from live animals raised there;*
- (e) products obtained by hunting or fishing conducted there;*
- (f) products of sea fishing and other products taken from the sea outside the territorial waters of the exporting Contracting Party by its vessels;*
- (g) products made aboard its factory ships exclusively from products referred to in (f);*
- (h) used articles collected there fit only for the recovery of raw materials, including used tyres fit only for retreading or for use as waste;*
- (i) waste and scrap resulting from manufacturing operations conducted there;*
- (j) products extracted from marine soil or subsoil outside its territorial waters provided that it has sole rights to work that soil or subsoil;*
- (k) goods produced there exclusively from the products specified in (a) to (j)."*

No further explanation about the criteria of wholly obtained products has been given in the rules of origin of the PEM or other trade agreements.

#### 5.1.1. Veterinary products

In all four trade agreements live animals and products from live animals are included as veterinary products. In all four selected trade agreements the criteria of wholly obtained is the same. Also, products obtained from slaughtered animals are included, except in the trade agreement between European Union and PEM. As wholly obtained in the European Union shall be considered:

- live animals born and raised in the European Union;
- products from live animals raised in the European Union;
- products obtained from slaughtered animals born and raised in the European Union.

In addition, live animals and products obtained from slaughtered animals shall still be considered as wholly obtained in the European Union when the animal is born in the European Union using imported semen from a third country and if the animal is raised in the European Union. Products from live animals shall also still be considered as wholly obtained in the European Union when the

animal is born using imported semen from a third country and if the animal is raised in the European Union (WCO, 2017, page 38).

### **Live animals**

Two conditions must be met for live animals to be considered as wholly obtained products. Firstly, the live animal must have been born in the European Union and secondly, the live animal must have been raised in the European Union.

### **Products from live animals**

There is no dual condition for products from live animals to be considered as wholly obtained products. The only condition that must be met is that the live animals must have been raised in the European Union. Examples of products from live animals may include eggs, raw milk and unprocessed wool.

### **Products obtained from slaughtered animals**

The double condition (as applicable for live animals) also applies to the products obtained from slaughtered animals to be considered as wholly obtained. This means the slaughtered animals must be born and raised in the European Union to be considered as wholly obtained. An example of products obtained from slaughtered animals is (unprocessed) meat.

#### **5.1.2. Phytosanitary products**

The phytosanitary products in the trade agreements are defined as vegetable products, plants, plant products and vegetables. Based on section II of the Combined Nomenclature, vegetable products are plants, plant products and vegetables. Examples of plant products are fruits, vegetables, cut flowers, leaves and seeds, so this includes vegetables. In fact, different words are used in the trade agreements for phytosanitary products, but they have the same meaning. In contrast to the criteria, harvested, grown, gathered, cultivated, or picked there. These criteria have their own definition, but none of these criteria are defined in the rules of origin in (one of) the trade agreements. The criteria of considered as wholly obtained for vegetable products differs per selected trade agreement. As wholly obtained in the European Union shall be considered:

- United Kingdom: Plants and vegetable products grown or harvested in the European Union (article 41 trade agreement European Union and United Kingdom).
- PEM-countries: Vegetable products harvested in the European Union (article 4 trade agreement European Union and PEM-countries).
- Canada: Vegetables, plants and plant products harvested or gathered in the European Union (article 4 trade agreement European Union and Canada).
- Japan: Plant or plant products grown, cultivated, harvested, picked or gathered in the European Union (article 3.3 trade agreement European Union and Japan).

As mentioned on the previous page, 'grown' is included in the trade agreement with United Kingdom and Japan. But, 'gekweekt' is included in the Dutch versions of these trade agreements. For that reason, I have conducted also the French and German versions. An overview of the different versions is included in the table below. The table below shows that 'grown' is translated differently, namely to grown or cultivated. Based on the English, German and French versions, in my opinion, grown should be (in Dutch) interpreted as 'geteeld'.

| Language version | Trade agreement United Kingdom  | Trade agreement Japan  |
|------------------|---|--|
| English          | plants and vegetable products grown or harvested there;                       | a plant or plant product, grown, cultivated, harvested, picked or gathered there;                        |
| Dutch            | aldaar gekweekte of geoogste planten en producten van het plantenrijk;        | aldaar gekweekte, geteelde, geoogste, geplukte of verzamelde planten of plantaardige producten betreft   |
| German           | dort angebaute oder geerntete Pflanzen und pflanzliche Erzeugnisse,           | dort angebaute, gezüchtete, geerntete oder gepflückte Pflanzen oder pflanzliche Erzeugnisse,             |
| French           | les plantes et les produits du règne végétal qui y sont cultivés ou récoltés; | d'un végétal ou d'un produit végétal qui y a poussé ou qui y a été cultivé, récolté, cueilli ou ramassé; |

TABLE 1

Overview language versions: wholly obtained plant products

Source: EurLex

In every trade agreement the criteria 'harvested' is included. Various discussions about the interpretation of harvested have taken place. For that reason, harvested is explained in more detail. In analogy with the interpretation harvested for non-preferential rules of origin, the previous stage of production of the plant are not relevant according to the European Commission. Once the plant has been separated from the soil or substrate in which they are grown should be interpreted as harvested (Customs Expert Group – Origin Section (CEG-ORI), 2018). This corresponds with the judgement of the Court of the European Justice in case C-686/17. The relevant second preliminary question is answered with:

*"The country of origin of cultivated mushrooms is their country of harvesting, irrespective of the fact that substantial stages of production took place in other EU Member States and the cultivated mushrooms were transported into the territory of harvesting only three days or less prior to the first harvest."*

It should be noted that this case was about applying the rules of origin of non-preferential origin for determining the country of origin for other purposes, namely to indicate the country of origin on the product for selling to consumers (based on Regulation (EU) No 1308/2013). Nevertheless, this interpretation also applies for the definition harvested for customs preferential origin.

The other criteria are grown, cultivated, picked or gathered. It should be noted, this is not a double condition, because in the trade agreements the word 'or' is included instead of 'and'.

Mentioned in different (guidance)documents of the World Customs Organization and the European Commission, the criteria wholly obtained do not exclude imported elements, like seeds for growing vegetables. In addition to these guidance documents, this is also explicitly stated in certain

introductory notes in certain trade agreements, such as the trade agreements between European Union and Canada and European Union and United Kingdom. In annex 5 of the trade agreement between European Union and Canada the following note is included in section II Vegetable products:

*"Agricultural and horticultural products grown in the territory of a Party shall be treated as originating in the territory of that Party even if grown from seed, bulbs, rootstock, cuttings, slips, grafts, shoots, buds or other live parts of plants imported from a third country."*

Note 9 in the trade agreement between European Union and United Kingdom is similar as the above mentioned note (annex II, Introductory notes to product-specific rules of origin, note 9 trade agreement European Union and United Kingdom).

### 5.1.3. Supporting documents

A proof of origin is required to apply preferential treatment in the importing country. Based on all trade agreements (e.g. article 16 (3) and (7) PEM), the exporter should be able to submit all appropriate documents proving the preferential origin of the products concerned. According to Dutch Customs Handbook (8.00.00, paragraph 2.18), evidence could be recipes, production data based on exporter's accounts. Examples for proving the origin of materials are e.g. health certificates (meat) and auction lists (cut flowers). A mix of supporting documents that prove that the criteria of wholly obtained are met is also possible.

In the case of live animals and veterinary products evidence should be documents that prove where the animal is born and / or raised. Evidence showing where the plants or plant products were harvested, grown or gathered et cetera is needed to demonstrate that the plants or plant products are wholly obtained.

## 5.2. Phytosanitary origin

When the importing country requires a phytosanitary certificate for export, the authority in the country of export should issue the phytosanitary certificate for the exporting products (article 100 Regulation (EU) No 2016/2031). The phytosanitary certificate for export is based on international standards (preamble 53 Regulation (EU) No 2016/2031). The international plant protection convention (IPPC) has determined standards, in particular the International Standards for Phytosanitary Measures (ISPM). The template of the phytosanitary certificate for export is determined in annex VIII of Regulation (EU) No 2016/2031. This template is based on ISPM 12 'Guidelines for phytosanitary certificates'. In the European Union regulation no explanation is given about how to determine the place of origin. For that reason I have consulted ISPM to identify how the place of origin is determined for phytosanitary products.

The country where the plants were grown shall be indicated as place of origin on the export certificate. When products have been moved from the country of origin to another country for repacking, storage, processing or treatment, this (another) country should also be indicated as place of origin. All these countries should be noted, because the products may have been infested or contaminated by pest regulated by the importing country. The initial country of origin should be indicated between brackets on the export certificate. To clarify, specific countries shall be indicated as place of origin, such as The Netherlands, Germany or Italy. The European Union shall not be indicated as place of origin. Regarding imported products, the place of origin shall be the third country from which the products are imported (for phytosanitary purposes this can also be other

European Union Member States, like Germany). However, the place of origin can change. The origin of certain products can change if the plants have been grown for a specific period of time, on condition that the pest risk associated with them is affected only by that country of further growth. The place of origin of seeds, vegetables and ware potatoes cannot change, because the origin can only change through a period of growth. This specific period of time is depending on the specific plant, usually one growing season or more (ISPM 12 Phytosanitary certificates, p 14). The Dutch Food and Safety Authority has determined the specific time of growth for certain plants. Only the country of origin can change for plants mentioned in the table below, when the plants have been grown for the specific time of growth (NVWA, 2022, page 10).

| Product                                     | Time of growth     |
|---|--------------------|
| Vegetatively propagate propagating material | 4 weeks*           |
| Perennial herbaceous plants                 | 4 weeks            |
| Woody plants                                | 1 vegetative cycle |
| Plants of citrus, fortunella and poncirus   | 2 months           |
| Bonsai plants                               | 2 months           |
| Potted plants                               | 4 weeks            |

\*this period may be shorter

TABLE 2  
(Phytosanitary) Time of growth  
Source: NVWA, 2022, page 10

### 5.3. Veterinary origin

Based on international standards the country of origin of live animals, hatching eggs and products of animal origin shall be the country from which the live animals are being exported. The country of origin of products shall be the country where the finished product were produced, manufactured or packed. The place of origin shall be the (name and address of the) place from which the live animals or products are being exported. When required, the certificates includes also the official approval or registration number. The premises from which the products are to be dispatched shall be the place of origin for products of animal origin (chapter 5.10 of Terrestrial Animal Health Code).

The export of animals and products from the European Union to third countries shall take place in accordance with the provisions for the movement of animals and products between Member States, while taking into account the animal health status within the importing country. The export of animals and products can also take place in accordance with the provisions in force in the importing country if requested by the competent authority of the importing country or determined by legal and administrative procedures provided that such exports do not jeopardize public or animal health. When there is a bilateral agreement concluded between the Union and the third country, the export of animals and products should take place in accordance with the provisions in this agreement (article 243 Regulation (EU) No 2016/429).

#### 5.3.1. Binding certificates

When Dutch government or European Commission have agreed provisions with the government of the third country, these provisions shall be applicable (bilateral agreement). In that case a binding certificate is required for export<sup>3</sup>. The Dutch Food and Safety Authority has published the available

<sup>3</sup> <https://www.nvwa.nl/onderwerpen/export-dieren-dierlijke-producten/veterinaire-certificaten>  
Accessed 19 March 2023

binding certificates. The contents of the binding certificates differ enormously per country and type of animal or product. The Dutch Food and Safety Authority has published instructions for completing the binding certificate. The instruction describes the conditions that apply in the importing country. The country of origin is often not included on the binding certificate. However, the origin may be noticed from other information on the certificate. This information differs enormously per binding certificate. Hence, relevant information of a number of binding certificates are included in appendices 3 (live animals), 4 (products from live animals), and 5 (products obtained from slaughtered animals).

### 5.3.2. Request certificate

If there is no binding certificate for a particular export, the exporter needs to request the required attestations (e.g. animal health attestation) in the country of importation. The exporter informs the Dutch Food and Safety Authority about the required attestations. Subsequently the Dutch Food and Safety Authority issues a certificate which includes these required attestations. These certificates do not often include a country of origin. However, the origin may be noticed from the required attestations. The determination of the content of the request certificate is based on provisions in the country of importation and without (Dutch or European) government intervention<sup>4</sup>.

### 5.3.3. Provisions of the European Union

When no binding certificate and no request certificate can be used, the provisions for the movement of animals and products between Member States are applicable. In the case of exporting animals and products from the European Union to Switzerland, the provisions for the movement of animals and products between European Union Member States are applicable. The country of origin is explained as the country from which the animals or products originate (Implementing Regulation (EU) No 2020/2235 Annex I, chapter 2).

In the case of health certification for the entry in the Union, the country of origin is explained as follows (which corresponds with international standards):

- For products: the country where goods are produced, manufactured or packaged (labelled with the identification mark);
- For animals: country of residence during a required period based on European Union legislation;
- For registered horses re-entering the Union after temporary export for competition, races, or invited for specific cultural events in certain third countries: country from which they were last consigned (Implementing Regulation (EU) No 2020/2235 Annex I, chapter 4).

## 5.4. Veterinary and phytosanitary export certificates as a base for customs preferential origin?

The previous paragraphs in chapter 5 show how the origin of the goods is determined for veterinary, phytosanitary and customs purposes. In this paragraph first the analysis of the comparison of the customs preferential origin and the veterinary origin is included. Thereafter, the analysis of the comparison of the customs preferential origin and the phytosanitary origin is included. The differences and similarities of the different origin concepts shall be illustrated on the basis of the theoretical cases as included in paragraph 1.6.

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<sup>4</sup> <https://www.nvwa.nl/onderwerpen/export-dieren-dierlijke-producten/veterinaire-certificaten>  
Accessed 19 March 2023

#### 5.4.1. Customs preferential origin versus veterinary origin

The country of origin is not always included on the veterinary export certificate. When the country of origin is included, the criteria for determining the country of origin for veterinary purposes differs enormously, but none of the criteria completely corresponds with the criteria for customs preferential origin purposes. Just a veterinary export certificate shall not demonstrate whether the live animals are born and / or raised in the European Union. However, maybe for some animals or products the veterinary export certificate and another additional document can serve as evidence that proves the customs preferential origin. An example where this could be possible is the export of fresh beef, beef offal or pork from the Netherlands to Japan. One of the veterinary conditions for exporting beef or beef offal from The Netherlands to Japan is the following. The exporter must be able to demonstrate the country of birth and the origin of the animals for slaughter with a protocol. This protocol must be approved by the responsible veterinarian of the Dutch Food and Safety Authority. A protocol that demonstrates that the animals are born and raised in the European Union can serve as supporting document (I refer to appendix 4 number 5 and 8).

That the veterinary origin and customs preferential origin are not similar is shown in the results of case 1.

##### Case 1: origin of live animals

Company A, established in the United States, sells a calf born in the United States to Company B in the Netherlands. The calf is raised in the Netherlands and subsequently the cow is exported to Canada. 50 days before export, the cow remains in the holding of origin in the Netherlands. What is the origin of the cow that is exported from The Netherlands to Canada for customs and veterinary purposes? What is the origin for veterinary and customs purposes if the cow is exported to PEM-countries, Japan or United Kingdom?

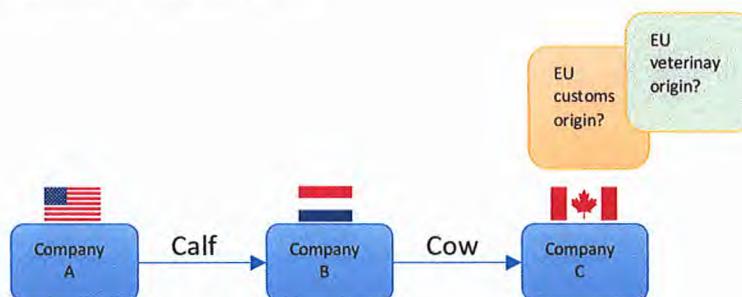


FIGURE 4  
Case 1: origin of live animals

The outcome for each country is shown in the table on the next page.

| Country           | Veterinary origin  | (Customs) European Union preferential origin?   |
|-------------------|--|---|
| United Kingdom    | The Netherlands, the animals have remained at least 40 days before dispatch in the holding of origin | No, cow has not been born in the European Union |
| PEM (Switzerland) | The Netherlands, (I suppose) the animals have remained during a required period in the EU.           | No, cow has not been born in the European Union |
| Canada            | The Netherlands, (I suppose) the animals have remained during a required period in the EU.           | No, cow has not been born in the European Union |
| Japan             | The Netherlands, (I suppose) the animals have remained during a required period in the EU.           | No, cow has not been born in the European Union |

TABLE 3  
Outcome of case 1: origin of live animals

#### 5.4.2. Customs preferential origin versus phytosanitary origin

The place of origin included on the phytosanitary export certificate indicates where the plant products have been grown. Some trade agreements have include also 'grown' as criteria, but there are also trade agreements which not. An overview is given in the table below.

| Trade agreement                 | Including grown as criteria?   |
|---------------------------------|--|
| European Union - United Kingdom | Yes, grown is considered as wholly obtained.   |
| European Union - PEM            | No, plants and plant product should be harvested in the European Union.              |
| European Union - Canada         | No, plants and plant products should be harvested or gathered in the European Union. |
| European Union - Japan          | Yes, grown is considered as wholly obtained  |

TABLE 4  
Overview trade agreements which include grown as criteria

Both origin provisions do not exclude imported elements (e.g. seeds) for obtaining the origin Netherlands or European Union. Based on the table above, a phytosanitary export certificate cannot serve as evidence that prove whether the plants or plant products have met the criteria of wholly obtained for customs preferential purposes, when products are exported to PEM-countries and Canada.

In the trade agreements with United Kingdom and Japan, grown is included as criteria. So, phytosanitary export certificates could demonstrate where the plants have been grown. However, in the trade agreement with United Kingdom 'grown' is included, but in the Dutch version the criteria 'gekweekt' is included. While grown for phytosanitary purposes is in The Netherlands explained as 'teelt' (reference is made to subparagraph 5.1.2). Another point of attention is that the phytosanitary origin of imported plants and plant products can change. The phytosanitary origin of imported products can change in The Netherlands, when the products have been grown for a specific period of time in the Netherlands. On the phytosanitary export certificate the place of origin can be indicated as The Netherlands, while the plants are also have been grown in other countries.

The place of origin of seeds, vegetables and ware potatoes cannot change, because the origin can only change through a period of growth. Nevertheless, when products are moved from the country of origin to another country for repacking, storage, processing or treatment, this country should also be indicated as place of origin. That being so, the possibility cannot be ruled out that the country of repacking, storage, processing or treatment is indicated as place of origin.

Because of the before mentioned reasons, a phytosanitary export certificate does not prove (with certainty) whether the criteria of wholly obtained products are met. Hence, a phytosanitary export certificate cannot serve as supporting document.

In the following two cases the differences and similarities of the two origin concepts are shown.

### Case 2: origin of roses

Company A, established in Kenya, sells seeds that originated from Kenya to Company B in the Netherlands. Roses have been grown from these seeds in the Netherlands, and harvesting of these roses takes place in the Netherlands. Subsequently, the roses are exported to the United Kingdom. What is the origin of the roses that is exported from the Netherlands to the United Kingdom for customs and phytosanitary purposes? What is the origin for phytosanitary and customs purposes if the roses are exported to PEM, Japan or Canada?

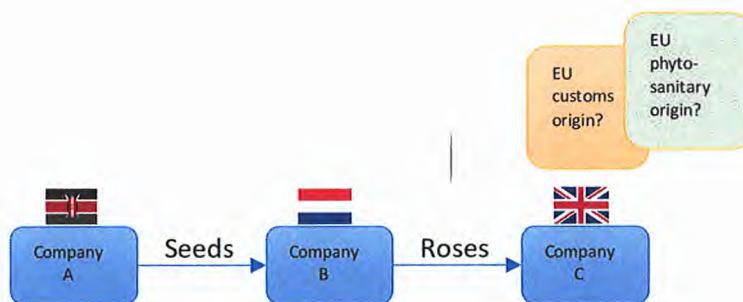


FIGURE 5  
Case 2: origin of roses

The outcome for each country is shown in the table below.

| Country        | Phytosanitary origin                                      | (Customs) European Union preferential origin?                     |
|----------------|---|---|
| United Kingdom | The Netherlands, grown has taken place in the Netherlands | Yes, grown and also harvesting has taken place in The Netherlands |
| PEM            | The Netherlands, grown has taken place in the Netherlands | Yes, harvesting has taken place in The Netherlands                |
| Canada         | The Netherlands, grown has taken place in the Netherlands | Yes, harvesting has taken place in The Netherlands                |
| Japan          | The Netherlands, grown has taken place in the Netherlands | Yes, grown and also harvesting has taken place in The Netherlands |

TABLE 5  
Outcome of case 2: origin of roses

**Case 3: origin of seedlings<sup>5</sup>**

Company A, established in the Netherlands, sells plants to Company B in Kenya. When young shoots have sprouted, these are cut from the mother plants in Kenya. The cuttings are placed in small fleece pots and then placed in a nursery plant pallet (tray). Subsequently these cuttings are exported to Company C in the Netherlands. In the Netherlands plants have been grown between 4 to 8 weeks, and as a result of which, the plants have formed roots. Subsequently, the seedlings (rooted plants) are exported from Company C in The Netherlands to Company D in Japan. What is the origin of the seedlings that are exported from the Netherlands to Japan for customs and phytosanitary purposes? What is the origin for phytosanitary and customs purposes if the seedlings are exported to PEM, Canada or United Kingdom?

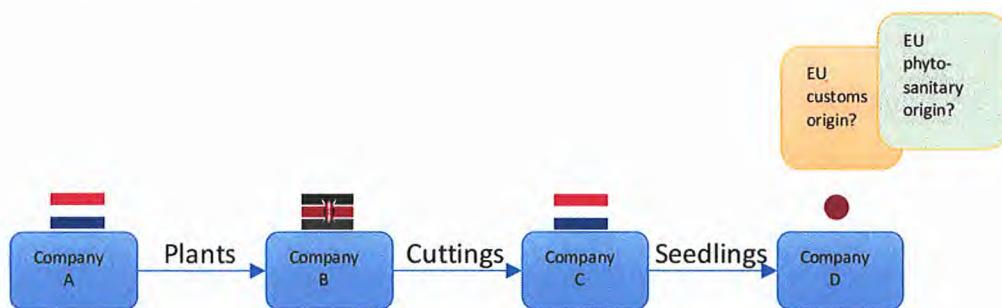


FIGURE 6  
Case 3: origin of seedlings

The outcome for each country is shown in the table below.

| Country        | Phytosanitary origin   | (Customs) European Union preferential origin?  |
|----------------|--|--|
| United Kingdom | The Netherlands, (required) grown has taken place in the Netherlands to change the origin to The Netherlands | Yes, grown of the seedlings has taken place in The Netherlands                       |
| PEM            | The Netherlands, (required) grown has taken place in the Netherlands to change the origin to The Netherlands | No, plants and plant product should be harvested in the European Union.              |
| Canada         | The Netherlands, (required) grown has taken place in the Netherlands to change the origin to The Netherlands | No, plants and plant products should be harvested or gathered in the European Union. |
| Japan          | The Netherlands, (required) grown has taken place in the Netherlands to change the origin to The Netherlands | Yes, grown of the seedlings has taken place in The Netherlands                       |

TABLE 6  
Outcome of case 3: origin of seedlings

<sup>5</sup> Case is based on discussion in Customs Expert Group – Origin Section Origin (TAXUD/1409266/18)

## 6. Contribution for research and practice

In the first paragraph the contribution for research is described and in the second paragraph the contribution for practice is described.

### 6.1. Contribution for research

No studies has found specifically focused on the research subject, but it is relevant because Dutch Chamber of Commerce approves origin certificates based on phytosanitary export certificates. While according to Dutch Customs, these certificates cannot serve as evidence for customs preferential origin. For that reason, on the one hand articles and guidance documents have been analyzed about rules of origin and on the other hand articles have been analyzed about the phytosanitary and veterinary origin. Articles and guidance documents about the rules of origin were about the rules of sufficient processed products and the origin procedure. In the articles and guidance documents, only reference were made to the list of wholly obtained products. This research indicates more insights about the criteria of wholly obtained veterinary and phytosanitary products. This research shows also the complexity how to prove that veterinary or phytosanitary products are wholly obtained. Articles about veterinary and phytosanitary measures were more focused about why phytosanitary and veterinary measures are necessary. Through this research it is indicated how the veterinary and phytosanitary origin should be determined.

On the whole, the research results show that the different origin concepts not corresponds with each other. The origin concepts based on another basis than customs preferential origin cannot be used for determining the customs preferential origin.

The backgrounds of the different origin concepts are totally different. The protection of human, animal or plant live or health are the reasons to apply veterinary and phytosanitary measures, whereby the origin of the goods is important. The focus is more on animal welfare, preventing diseases or preventing their spread. While preventing trade deflection is the reason why preferential origin rules for customs purposes is necessary. The consequences of wrong indication of the origin is different for veterinary or phytosanitary and customs purposes. In the case of veterinary and phytosanitary origin, the importing country can imposes unnecessary measures or less import measures which can lead to (new) pests and diseases in the importing country. In the case of customs preferential origin, in the importing country to much or few import duties are levied. Despite the total different backgrounds of the origin concepts, the research shows that there are also similarities. However, a veterinary export certificate can never serve as legally valid evidence for determining the customs preferential origin, because the country of origin for veterinary purposes corresponds not with country of origin for customs purposes. Even though the criteria of the phytosanitary origin can match with the criteria of the customs preferential origin, a phytosanitary export certificate cannot serve as legally valid evidence for determining the customs preferential origin. This because it is not certain whether the phytosanitary export certificate shows if the plants have been grown (only) in the European Union. Additional documents which proves that the criteria of wholly obtained are met are necessary, further research about this could be performed.

The outcomes of the three cases shows the differences and similarities between veterinary or phytosanitary origin and customs preferential origin. Furthermore, the outcomes of the three cases shows also some differences and similarities between the criteria of the customs preferential origin included in the four selected trade agreements.

## 6.2. Contribution for practice

The Dutch Chamber of Commerce assesses the application for origin certificates. The research results show that the Dutch Chamber of Commerce should not approve origin certificates based on just a phytosanitary or veterinary export certificate. Before this research performed, according to Dutch Customs such an export certificate cannot serve as evidence to demonstrate that veterinary or phytosanitary products have been wholly obtained. The research results have confirmed this.

Customs has gathered knowledge about veterinary origin, phytosanitary origin and customs preferential origin. That is why Dutch Customs should consult with the Dutch Chamber of Commerce, Dutch Food and Safety Authority and the Ministry of Agriculture, Nature and Food Quality. Dutch Customs should share and discuss the research results with the aforementioned parties. It is recommended that Customs requests Dutch Chamber of Commerce to adjust their approval procedure of origin certificates of veterinary and phytosanitary products, to prevent wrong approvals of origin certificates. Customs' can substantiate it's request on the basis of the research results.

To prevent wrong approvals of origin certificates, Dutch Chamber of Commerce could request (additional) supporting documents that proves that the exported products are wholly obtained. Additional documents, should prove that the criteria of wholly obtained are met. For veterinary products, this shall be a document that proves where the animals are born and raised. For phytosanitary products, this shall be a document that proves whether the plants have been grown in the European Union only. Customs could request input from the Dutch Food and Safety Authority and the Ministry of Agriculture, Nature and Food Quality about which documents in the veterinary and phytosanitary sector can serve as evidence that the products are wholly obtained.

Exporters may issue a statement on origin on a commercial document (self-certification). No intervention take place by Dutch Chamber of Commerce or another government organization. Now, it cannot be excluded that exporters issue origin statements while they cannot demonstrate if the products are wholly obtained. For that reason it is also recommended to inform exporters with these research results, to prevent wrongly issued proof of origins by exporters.

In addition, Dutch Customs can also use the research results during the verification requests. If Dutch Customs receives a verification request, Dutch National Origin Team will instruct Client Management to verify the origin certificate. Client Management shall verify whether the exporter can prove the origin with supporting documents. Dutch National Origin Team could make an instruction for Client Management using the research results. The instruction should include that just a veterinary or phytosanitary export certificate cannot serve as evidence for determining the customs preferential origin. The instruction can be added with examples of additional supporting documents that will be accepted by Dutch Customs (after further research is performed). This makes the verification request more efficient.

The exporter applies for an origin certificate at Dutch Chamber of Commerce. Dutch Chamber of Commerce assesses the application. After approval, Dutch Customs validates the proof of origin, without checking supporting documents and without checking whether the criteria of wholly obtained are met. Because of these research results, Dutch Customs could change their own procedure. In the case of wholly obtained phytosanitary or veterinary products, Customs could requests for supporting documents before validating the proof of origin.

## 7. Conclusions

Chapter 7 includes the conclusions of the research performed.

The exporter must prove that the products are wholly obtained products for determining customs preferential origin. In practice, the phytosanitary export certificates were already approved as sufficient evidence by Dutch Chamber of Commerce, while according to Dutch Customs phytosanitary and veterinary certificates are insufficient evidence. That was the reason to research whether these certificates prove that the products are wholly obtained for (preferential) customs purposes. This has led to the following research question:

*Can a veterinary or phytosanitary export certificate serve as the only legally valid evidence for wholly obtained goods for determining customs preferential origin, allowing a preferential proof of origin to be issued for the goods?*

To answer this research question, 8 sub-questions have been formulated. First, these sub-questions are answered. Based on the answers of the sub-questions, the research question can be answered.

*1) What is the background of the origin rules for veterinary products?*

Veterinary measures ensure (as much as possible) human and animal health through avoiding spread of infectious diseases in a country. Countries can impose import measures, these measures are applicable on animals or products from a particular country or area.

*2) What is the background of the origin rules for phytosanitary products?*

Phytosanitary measures avoid (as much as possible) the entry, establishment and spread of pests of plants that do not exist or are not widely present in a country. These measures are needed to safeguarding the country's biodiversity and environment and protect and ensure the quality of plants and plant products and safety of food and feed made from plants. Similar with the answer on the first sub-question, import countries can impose import measures. These measures are applicable on phytosanitary products from a particular country or area.

*3) What is the background of the preferential origin for customs purposes?*

Countries can provide preferential treatment and which is granted only to products originating in the contracting parties of the trade agreement. The (preferential) origin of the products should be indicated to prevent the possibility of preferential treatment for non-originating products.

*4) What are the differences and similarities of the above mentioned backgrounds?*

The background of the customs preferential origin is economic. The preferential rules of origin in trade agreements ensure that only goods originating in contracting parties of a trade agreement may benefit preferential treatment. This leads to a positive impact to the economy of the contracting parties of the trade agreement. The background of phytosanitary and veterinary measures is to protect human, animal or plant life or health. Nevertheless, also the economic impact plays a role in the case of phytosanitary and veterinary measures. Consequently plant disease or animal disease shall have impact for international trade, like additional production costs, turnover losses and price changes.

5) *When are phytosanitary and veterinary products wholly obtained products and thus of European Union preferential origin for customs purposes?*

The criteria of wholly obtained veterinary products in all four selected trade agreements are:

- Live animals born and raised in the European Union;
- Products from live animals (such as eggs) raised in the European Union;
- Products obtained from slaughtered animals (such as meat) born and raised in the European Union

However, in the trade agreement between the European Union and PEM products obtained from slaughtered animals are not included in the list.

In addition, veterinary products will still be considered as wholly obtained in the case of used imported elements, such as imported semen.

Per trade agreement, the criteria of wholly obtained phytosanitary products are:

- European Union and PEM-countries: plants and plant products harvested in the European Union;
- European Union and United Kingdom: plants and plant products harvested or grown in the European Union;
- European Union and Canada: plants and plant products harvested or gathered in the European Union;
- European Union and Japan: plants and plant products grown, cultivated, harvested, picked or gathered in the European Union.

An important point is that previous stages of production of the plant are not always relevant. E.g. to meet the criteria of harvested, the plant shall be considered as wholly obtained where the plant has been separated from the soil or substrate in which it is grown. Where the plant has been grown is not relevant. The same applies for the other criteria, phytosanitary products shall still be considered as wholly obtained even if grown from imported elements, such as imported seeds, bulbs, rootstock, cuttings, slips, grafts, shoots, buds or other live parts of plants. As long as the activity (e.g. grown) take place in the European Union, the phytosanitary products shall be considered as wholly obtained in the European Union.

6) *What are the conditions, for determining the place of origin for phytosanitary purposes?*

The country where the plants were grown shall be indicated as place of origin on the export certificate. This is still the case if plants are grown using imported seeds. Also countries can be indicated on the certificate where repacking, storage, processing or treatment has taken place.

The origin of imported plants can change in Dutch origin, when the plants have been grown in The Netherlands for a specific time, on condition that the pest risk associated with them is affected only by that country of further growth (=The Netherlands). The origin of phytosanitary products can thus be The Netherlands, even though the plants have also been grown in a third country. The place of origin of seeds, vegetables and ware potatoes cannot change, because the origin can only change through a period of growth.

The specific time of grown per plant is shown in the table below.

| Product                                     | Time of grown      |
|---|--------------------|
| Vegetatively propagate propagating material | 4 weeks*           |
| Perennial herbaceous plants                 | 4 weeks            |
| Woody plants                                | 1 vegetative cycle |
| Plants of citrus, fortunella and poncirus   | 2 months           |
| Bonsai plants                               | 2 months           |
| Potted plants                               | 4 weeks            |

\*this period may be shorter

TABLE 2  
(Phytosanitary) time of grown  
Source: NVWA, 2022, page 10

*7) What are the conditions, for determining place of origin for veterinary purposes?*

On the binding certificates and request certificates no country of origin is often indicated. When the country of origin is indicated on the binding certificate, the interpretation is given in the instruction of the binding certificate. The interpretation differs per binding certificate. This could also be the country of exportation.

Based on the European Union provisions for the movement of animals and products between Member States, the country of origin is the country from which the animals or products originate. This description is not very clear. The country of origin for the entry in the Union is explained as:

- For products: the country where goods are produced, manufactured or packaged (labelled with the identification mark);
- For animals: country of residence during a required period based on European Union legislation;
- For registered horses re-entering the Union after temporary export for competition, races, or invited for specific cultural events in certain third countries: country from which they were last consigned (Implementing Regulation (EU) No 2020/2235 Annex I, chapter 4).

*8) In which cases can export certificates serve as supporting document for European Union preferential origin for customs purposes and which not?*

Veterinary products

A veterinary export certificate cannot serve as supporting document for European Union preferential origin, because the country of origin on a veterinary export certificate does not correspond with the country of origin for customs preferential purposes. Moreover, mostly no country of origin is indicated on a binding and request certificate. This answer applies to export of veterinary products to PEM-countries, United Kingdom, Canada and Japan.

A veterinary export certificate can be a supporting document, when additional documents available that proves that the animals have been born and raised in the European Union.

### Phytosanitary products

For export to PEM-countries and Canada, phytosanitary export certificates can never serve as supporting document for determining European Union preferential origin. A phytosanitary export certificate only indicates where the products have been grown, and not where the products have been harvested or gathered. Even though the place of origin indicates where the products have been grown, also for export of phytosanitary products to Japan and United Kingdom, a phytosanitary export certificate cannot (only) serve as supporting document for determining European Union preferential origin. The reason for this is that the place of origin could also indicate that the plants have been grown in the Netherlands for a specific time. The phytosanitary export certificate does not indicate if the plants have only been grown in the Netherlands.

The place of origin of seeds, vegetables and ware potatoes cannot change, because the origin can only change through a period of growth. Nevertheless, when products are moved from the country of origin to another country for repacking, storage, processing or treatment, this country should also be indicated as place of origin. That being so, the possibility cannot be ruled out that the country of repacking, storage, processing or treatment is indicated as place of origin.

Based on the answers of the sub-questions, the research question should be answered as follows.

***Can a veterinary or phytosanitary export certificate serve as the only legally valid evidence for wholly obtained goods for determining customs preferential origin, allowing a preferential proof of origin to be issued for the goods?***

Based on the answers on the sub-questions, the differences between the veterinary or phytosanitary origin concept and the customs preferential origin concept are too significant, hence a veterinary or phytosanitary certificate cannot serve as the only legally valid evidence for wholly obtained products for determining customs preferential origin. The issuing of proof of origins on the basis of a veterinary or phytosanitary export certificate should therefore not be allowed.

Veterinary export certificates can never serve as the only legally valid evidence for wholly obtained goods for determining customs preferential origin, because the origin criteria of veterinary origin and customs preferential origin does not correspond.

Phytosanitary export certificates can never serve as the only legally valid evidence for wholly obtained goods for determining customs preferential origin, when product shall be exported to Canada and PEM-countries, because the origin criteria of phytosanitary origin and customs preferential origin does not correspond.

Phytosanitary export certificates cannot serve as the only legally valid evidence for wholly obtained goods for determining customs preferential origin, when product shall be exported to United Kingdom or Japan, even though it seems that the origin criteria of phytosanitary origin corresponds with customs preferential origin. There are still differences, with just a phytosanitary export certificate it is not certain that the criteria of wholly obtained products are met for customs purposes.

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## Appendices

Appendix 1: Meeting notes – expert in the field of veterinary products

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## Appendix 1: Meeting notes – expert in the field of veterinary products

Datum: 1 maart 2023

Gesproken met een Coördinerend Specialistisch Inspecteur Export, werkzaam in het team Import & Export bij de Nederlandse NVWA

Na een voorstelrondje en een korte introductie, starten we het inhoudelijke gesprek.

Voor invoer zijn de regels duidelijk vastgelegd in de EU-wetgeving. De regels die van toepassing zijn bij uitvoer zijn enorm divers, omdat die regels (vaak) zijn gebaseerd op de eisen van het derde land. Als het derde land geen eisen stelt aan goederen die vanuit Nederland worden geëxporteerd, dan zijn de voorwaarden van toepassing zoals opgenomen in de EU-wetgeving.

De achtergrond van de veterinaire wetgeving is het waarborgen van dierengezondheid, dierenwelzijn en voedselveiligheid. Het land van invoer stelt eisen waaraan de dieren of producten aan moeten voldoen om in dat land de dieren of producten te kunnen invoeren. Indien aan de gestelde voorwaarden van het land van invoer wordt voldaan, kunnen de dieren of producten worden geëxporteerd.

Er worden een aantal voorbeelden gegeven inzake visserijproducten. Ik heb aangegeven dat mijn onderzoek zich richt op levende dieren en dierlijke producten, met uitzondering van visserij producten. Daarom wordt vervolgens niet meer ingegaan op de visserijproducten.

De NVWA is bevoegd om controles uit te voeren voor veterinaire goederen die Nederland binnenkomen en uitgaan. Als bijvoorbeeld een zending met rundvlees uit een andere EU-lidstaat Nederland binnenkomt en vervolgens vanuit Nederland wordt uitgevoerd naar een derde land, wordt de rundvlees vervoerd (door NVWA aangeduid als 'geëxporteerd') uit Duitsland naar Nederland. Duitsland zal een pre-exportcertificaat afgeven voor die zending. Stel, op dat certificaat staat oorsprong Duitsland, dan zal – indien enkel opslag heeft plaatsgevonden in Nederland – op het veterinaire exportcertificaat de oorsprong Duitsland staan.

Of dieren die geslacht worden in Nederland, geboren en gehouden zijn in Nederland is lastig te beoordelen. In beginsel moet bekend zijn welk land van oorsprong de geslachte dieren hebben. Echter, het land van oorsprong van een dier, kan ook worden gegeven indien het dier een bepaalde periode in het land waar het dier wordt geslacht is gehouden.

Er zijn verschillende criteria hoe het land van oorsprong wordt bepaald. Er zijn in beginsel drie verschillende veterinaire exportcertificaten, namelijk:

- Bindende certificaten: certificaten waarbij afspraken zijn gemaakt tussen het derde land en Nederland, of tussen het derde land en de Europese Commissie (in het laatste geval zal als land van oorsprong EU (kunnen) worden afgegeven). Deze certificaten zijn van toepassing voor de gehele branche.
- Verzoekcertificering: er zijn geen afspraken, de exporteur doet een verzoek aan het land van invoer welke eisen zij stellen (eventueel met behulp van branche organisaties). Deze eisen worden met de NVWA gedeeld, aan de hand van die eisen geeft de NVWA een export certificaat af. Dit certificaat is voor die specifieke zending van toepassing en enkel geldig voor diegene die het aanvraagt. Vaak staat op dit certificaat geen land van oorsprong.

- EU-wetgeving: indien er geen bindend certificaat beschikbaar is of verzoekcertificering is niet mogelijk, dan is EU-wetgeving van toepassing.

Casus 1 is voorgelegd, welke oorsprong heeft de koe voor veterinaire doeleinden?

Voor de gestelde eisen wordt geadviseerd om de NVWA Export Assistant te raadplegen, te raadplegen via: <https://www.nvwa.nl/onderwerpen/export-dieren-dierlijke-producten/landeneisen-en-exportprocedures-dieren-dierlijke-producten-diervoeder#/zoek?PRODUCT=518268&LAND=CH&TYPE-BEZOEKER=BEZ-PART>

Circa 190 landen hebben export eisen. De export certificaten zijn ook verschillend. De eisen verschillen enorm en zijn afhankelijk van wat voor soort dieren of producten worden geëxporteerd en naar welk land. Voorbeeld: vers vlees wordt van Nederland naar Canada geëxporteerd. Uit het bindende exportcertificaat blijkt dat de oorsprong het land is waar vandaan wordt geëxporteerd. In het geval van vers vlees dat wordt geëxporteerd vanuit Nederland naar Canada, is de oorsprong van vers vlees dus Nederland, terwijl de koe wellicht niet is geboren en/of is gehouden in Nederland.

## Appendix 2: Meeting notes – expert in the field of phytosanitary products

Datum: 6 maart 2023

Gesproken met een Senior Officer Plant Health, werkzaam bij de Nederlandse NVWA

Na een voorstelrondje en een korte introductie, starten we het inhoudelijke gesprek.

Voor invoer zijn de regels zoals opgenomen in de EU-wet- en regelgeving van toepassing. Bij uitvoer zijn de landeneisen van het derde land van toepassing. In deze landeneisen staan onder andere onder welke voorwaarden een fytosanitair product kan worden ingevoerd in dat derde land.

De achtergrond van de fytosanitaire wetgeving is het voorkomen van het brengen van ziekten en plagen naar een regio die vrij is van die ziekten en plagen. Voorkomen dat die ziekten en plagen wereldwijd gaan. Eilanden (Australië / VK) hebben vaak strenge eisen, kunnen ze beter beheren. Het betekent niet dat een plant met een bepaalde ziekte in alle gevallen niet meer mag worden geëxporteerd naar een bepaald land. Als die ziekte al in het bepaalde land is, kan het zijn dat dat land planten met die ziekte toestaat. Of als een bepaalde ziekte geen risico vormt voor het land van invoer, zal het land van invoer geen invoermaatregelen nemen.

Het land van oorsprong wordt bepaald aan de hand van de voorwaarden zoals opgenomen in de ISPM. Op een fytosanitair export certificaat wordt (voor zover bekend) maar één land/plaats vermeld als plaats van oorsprong. De oorsprong van bepaalde producten kunnen onder voorwaarden wijzigen, ik ontvang hiervoor het document 'Waarmerken fytosanitair certificaat'.

De SPS Agreement van de WTO is relevant, net als de ISPM. Het exportcertificaat dat wordt gebruikt is het fytocertificaat model 1, gebaseerd op ISPM.

Waar de teelt plaatsvindt, is voor de bepaling van de fytosanitaire oorsprong van belang. Er zijn producten waarvan de oorsprong niet kan wijzigen, zaaizaad is daar een voorbeeld van. Stel, zaaizaad komt vanuit Kenia (en ook oorsprong Kenia) in Nederland. De zaden worden opgeslagen in Nederland. De oorsprong van de zaden blijft Kenia, want er heeft geen teelt in Nederland plaatsgevonden.

Casus 2 is voorgelegd, welke oorsprong hebben de rozen voor fytosanitaire doeleinden?  
Uit de zaden groeit een plant en de teelt van de plant vindt plaats in Nederland, dan is de oorsprong van de plant; Nederland.

Ter aanvulling: als uit een plant (die geteeld is in Nederland) nieuwe zaden komen, dan hebben die zaden ook de oorsprong Nederland. De periode van teelt is dus van belang, hoe lang de periode van teelt moet zijn, is afhankelijk van de soort plant.

Casus 3 is voorgelegd, welke oorsprong hebben de zaailingen voor fytosanitaire doeleinden?  
Als er teelt (voor vastgestelde periode) heeft plaatsgevonden in Nederland, dan is dat oorsprongsverlenend en dus zal de oorsprong Nederland zijn.

Ter aanvulling, ik heb na afloop nog de volgende vragen per mail gesteld (cursief) en die zijn als volgt beantwoord:

**Vraag 1**

*In artikel 100 van Verordening 2016/2031 wordt verwezen naar bijlage VIII voor het fytosanitaire certificaat. In die bijlage staat: "Plaats van oorsprong", gevolgd door de plaats of de plaatsen van oorsprong van de planten, plantaardige producten of andere materialen in de zending waarvoor het certificaat wordt afgegeven. De naam van het land of de landen van oorsprong moet altijd worden vermeld".*

*Een verwijzing naar een bepaling hoe het land van oorsprong moet worden vastgesteld is er niet (kan ik in ieder geval niet vinden). Is dit er inderdaad niet, of is er een bepaling (in een andere verordening of NL-wet) waar dit verder staat uitgewerkt?*

Vermeld is de naam van het land waar de planten zijn gegroeid. Tab 21-07 Checklist invullen en waarmerken fytosanitair certificaten.

Dit is er niet, of iig mij niet bekend. Gebeurt voor zover mij bekend op basis aangeven door de exporteur, controle op basis van kennis van de inspecteur, in geval van twijfel kan de inspecteur vragen om vermelde oorsprong aan te tonen.

**Vraag 2a**

*In de werkinstructie staat dat de origine van een product kan wijzigen na een teeltperiode in Nederland. Waar is deze lijst op gebaseerd? Is dit in de wet terug te vinden, zo ja: waar en in welke wet?*

Niet in een wet vastgesteld. In een grijs verleden zo vastgesteld, criteria mij niet bekend, maar waarschijnlijk op basis van de tijdsduur, dat de NL fytosanitaire risico's belangrijker worden dan die van de oorspronkelijke oorsprong, i.c.m. teeltduur van het product en de veldinspectiefrequentie door de keuringsdiensten.

**Vraag 2b**

*Of is de lijst gebaseerd op de gangbare teeltperiode van een specifieke plant in Nederland? Dus de gangbare teeltperiode van een potplant is 4 weken?*

Zie 2a. Geïmporteerde potplanten (dus geen stekken van potplanten) staan inderdaad niet lang op een kwekerij (als ze al op een kwekerij terecht komen)

**Vraag 2c**

*Is deze teeltperiode ook afhankelijk van het land waar naar toe wordt geëxporteerd? Of wordt enkel gekeken naar het specifieke product, dus bijvoorbeeld potplanten = 4 weken en Bonsai planten = 2 maanden etc. en dat de planten worden geëxporteerd naar Canada of het Verenigd Koninkrijk doet niet ter zake voor de wijziging van de origine?*

Tot op heden is er geen onderscheid tussen verschillende landen (hoewel er momenteel wel discussie over is, m.n. m.b.t. Israël)

**Vraag 2d**

*Zijn deze vastgestelde teeltperioden gebaseerd op internationale, EU of nationale standaarden?*

Nee, maar er wordt wel aangegeven dat na bepaalde tijd de oorsprong kan veranderen:

ISPM 12:

If plants were imported into or moved within a country and have subsequently been grown for a specific period of time (depending on the commodity concerned, but usually one growing season or more), these plants may be considered to have changed their country or place of origin, provided that the pest risk associated with them is affected only by that country or place of further growth.

**Vraag 2e**

*Indien een product (bijvoorbeeld zaaiinden) niet in het lijstje staat, kan in dat geval de origine nooit wijzigen? Kun je meer voorbeelden noemen (naast zaden) waarvan de origine niet kan wijzigen? Er staan namelijk enkel planten genoemd, betekent dit dat bijvoorbeeld groenten, aardappelen en bloembollen niet van origine kunnen wijzigen?*

Origine veranderd door teelt, dus zaden, groenten en consumptieaardappelen veranderen niet van origine.

Pootaardappelen en bloembollen vallen onder Vegetatief vermeerderd voortkwekingsmateriaal. NB Er moet hierbij wel sprake zijn van een in Nederland uitgevoerde teelt (dus niet alleen opslag in bijvoorbeeld een koelcel).

**Vraag 2F**

*Bij vegetatief vermeerderd voortkwekingsmateriaal staat in beginsel een teeltperiode van 4 weken. Maar er mag van worden afgeweken, teeltperiode mag ook 'iets korts' zijn. Is dit per geval afhankelijk? Wat wordt verstaan onder 'iets korts'?*

Is inderdaad geen harde grens aangegeven, kan per geval verschillen. In de praktijk kan dit enkele dagen tot een week korter zijn.

## Appendix 3: Information binding certificates – live animals

| Overview: Live animals |                   |               |  |                              |   |
|------------------------|-------------------|---------------|--|------------------------------|---|
| No                     | Animal            | Export to     | Available binding certificate  | Including country of origin? | Other relevant information for indicating the origin  |
| 1.                     | Bovine            | Great Britain | Domestic bovine animals intended for breeding and/or production                    | No                           | Origin of the animals: animals have remained since birth or at least 40 days before dispatch in the holding(s) of origin  |
| 2.                     | Bovine            | Canada        | None   | X                            | X   |
| 3.                     | Bovine            | Japan         | None   | X                            | X   |
| 4.                     | Ovine and caprine | Great Britain | Domestic ovine animals and domestic caprine animals for breeding and/or production | No                           | Same as 1   |
| 5.                     | Ovine and caprine | Canada        | None   | X                            | X   |
| 6.                     | Ovine and caprine | Japan         | None   | X                            | X   |
| 7.                     | Pigs              | Great Britain | Domestic pigs for breeding or production   | No                           | Same as 1   |
| 8.                     | Pigs              | Canada        | Pigs for breeding  | No                           | General condition II.1.3: the animal(s) intended for export were born on the premises of origin. Or under conditions, piglets under age 30 days have been born on other premises and raised on the premises of origin. The premises of origin is defined as the last premises on which the pigs resided for at least 40 days before entering the pre-export quarantine premises |
| 9.                     | Pigs              | Japan         | Swine  | No                           | There are specific requirements for the premises of origin and exported swine, but no requirements for born or a specific time raised in the exporting country  |

Source: NVWA Export assistant, via <https://www.nvwa.nl/onderwerpen/export-dieren-dierlijke-producten/landeneisen-en-exportprocedures-dieren-dierlijke-producten-dervoeder#/>

## Appendix 4: Information binding certificates – products obtained from slaughtered animals

| Overview: Products obtained from slaughtered animals |         |               |  |  |   |
|--|---------|---------------|--|--|---|
| No   | Product | Export to     | Available binding certificate  | Including country of origin?   | Other relevant information for indicating the origin  |
| 1.   | Beef    | Great Britain | Fresh meat   | No   | Animal origin, meat origin and product origin. The country where the animal is raised (at least the last three months before slaughter) = animal origin. The country where the animal is slaughtered = meat origin. The country where the last action was taken on the product to be exported occurred (is labeled with the identification mark) = product origin.  |
| 2.   | General | Great Britain | Meat preparations  | No   | Meat origin and origin product. The country where the animals were slaughtered (meat origin). The country where the last handling of the product to be exported took place (is labeled with the identification mark) = origin product.  |
| 3.   | General | Great Britain | Meat products and treated stomachs, bladders and intestines  | No   | Same as 2   |
| 4.   | Beef    | Canada        | Fresh bovine meat  | Yes, but country of origin is the country from which the export take place |   |
| 5.   | Beef    | Japan         | Fresh beef and beef offal  | No   | The exporter must be able to demonstrate the country of birth and the origin of the animals for slaughter with a protocol. This protocol must be approved by the responsible veterinarian of the NVWA   One of the conditions in the binding certificate is that the cattle, which is slaughtered for the production of the exported beef and beef offal, should be born and raised in the Netherlands, or when the cattle is directly imported to the Netherlands from countries eligible for export of beef and beef offal to Japan the cattle should be raised in the Netherlands. Also imported beef and beef offal in the Netherlands may under conditions be exported to Japan. |
| 6.   | Pork    | Great Britain | Meat of domestic porcine animals   | No   | Same as 1   |
| 7.   | Pork    | Canada        | Fresh swine meat   | Yes, but country of origin is the country from which the export take place |   |
| 8.   | Pork    | Japan         | Meat and viscera derived from pigs and sausages, ham and bacon made the said meat and viscera as raw materials | No   | The exporter must be able to demonstrate the country of birth and the origin of the animals for slaughter with a protocol. This protocol must be approved by the responsible veterinarian of the NVWA   Pigs, which have been slaughtered for the production of the exported pig meat, to Japan shall have been born and raised only in the Netherlands, or shall have met additional requirements. The same applies for pig meat, the pig meat shall have originated from pigs which have been born and raised only in the Netherlands, or shall have met additional requirements.   |

Source: NVWA Export assistant, via <https://www.nvwa.nl/onderwerpen/export-dieren-dierlijke-producten/landeneisen-en-exportprocedures-dieren-dierlijke-producten-dervoeder#/>

## Appendix 5: Information binding certificates – products from live animals

| Overview: Products from live animals |               |               |   |                              |  |
|--------------------------------------|---------------|---------------|---|------------------------------|--|
| No                                   | Product       | Export to     | Available binding certificate               | Including country of origin? | Other relevant information for indicating the origin   |
| 1.                                   | Hatching eggs | Great Britain | Hatching eggs of poultry other than ratites | No                           | Come from flocks which have been kept for at least six weeks immediately prior to import to Great Britain in the establishment(s)  |
| 2.                                   | Hatching eggs | Canada        | None  | X                            | X  |
| 3.                                   | Hatching eggs | Japan         | Day-old chicks and hatching eggs of poultry | No                           | Premises of origin means premises in which the breeding flocks of the exported day-old chicks and hatching eggs are housed and/or the hatchery to which the hatching eggs from the breeding flocks of the exported day-old chicks are consigned. |
| 4.                                   | Wool          | Great Britain | None  | X                            | X  |
| 5.                                   | Wool          | Canada        | None  | X                            | X  |
| 6.                                   | Wool          | Japan         | None  | X                            | X  |

Source: NVWA Export assistant, via <https://www.nvwa.nl/onderwerpen/export-dieren-dierlijke-producten/landeneisen-en-exportprocedures-dieren-dierlijke-producten-diervoeder#/>