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Montreuil, 29 December 2020

Memorandum to Operators

Object : EU-UK Trade and Cooperation Agreement

Ref. : Note aux opérateurs 20000975 du 29 décembre 2020

Encl. : - Technical fact sheet #1: Rules of preferential origin

- Technical fact sheet #2: Bilateral and full cumulation

This document is a courtesy translation of the official French note on the subject which is indicated in reference.

Following ten months of intense negotiations, the EU-UK Trade and Cooperation Agreement was reached on 24 December 2020 and will apply on a provisional basis as from 1 January 2021.

Given the volume and scope of our trade with the UK, the agreement will allow economic operators to avoid potentially steep additional costs associated with tariffs under both the EU's common external tariff and the UK Global Tariff.

1. Overview of the agreement

The agreement is the first of its kind for the EU, which had until now never negotiated the exit of a Member State representing such a high volume of trade. In 2019, French exports to the UK represented €34.37bn and imports topped €21.82bn.

Even though an agreement has been reached, customs declarations will be mandatory for all EU-UK trade from 1 January 2021.

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The agreement means the immediate elimination of customs duties from 1 January 2021, the date the agreement begins to apply on a provisional basis, for all products that comply with the agreement's rules on preferential origin.

The elimination of customs duties is not automatic: a claim for preferential tariff treatment must be made on the customs declaration. It is also conditional on whether goods are "originating" in one of the parties – preferential tariffs do not apply across the board to all trade between the EU and the UK.

The general provisions for determining whether a product is "originating" are set out in Chapter 2 of the agreement on rules of origin (pp 40–55). Added to these are the agreement's "ORIG" annexes (pp 440–485), which primarily detail product-specific rules of origin.

Products that do not meet rules of origin requirements will be subject to the common external tariff (for import into the EU) or the UK Global Tariff (for import into the UK). Note: There may still be a zero-tariff rate in some cases.

2. Main provisions on rules of origin

2.1 – Before claiming preferential tariff treatment

Before claiming preferential tariff treatment:

- Check the tariffs applicable for import into the UK under the UK Global Tariff: www.gov.uk/guidance/uk-tariffs-from-1-january-2021
- Check the tariffs applicable for import into the EU under the common external tariff: www.douane.gouv.fr/service-en-ligne/ouverture?code_teleservice=RITA_ENCYCLOPEDIE&sid=&app=38

You can also find more information about importing between the UK and the EU here: https://trade.ec.europa.eu/access-to-markets/en/content.

If the UK or EU common external tariff is zero, there is no need to claim preferential tariff treatment, which entails both financial and administrative costs (knowing how to determine preferential origin, establishing proof of origin, maintaining records, etc.).

If your product is subject to a common customs tariff and meets preferential origin requirements under the agreement, then you should claim a preferential tariff.

2.2 – Claiming preferential tariff treatment

For up-to-date information on the procedures and prerequisites for claiming a preferential tariff, see the FAQ on the France Customs website: www.douane.gouv.fr/fiche/brexit-vos-questions-les-plus-frequentes

For further information, here is a link to an FAQ by the European Commission's Directorate-General for Taxation and Customs Union: https://ec.europa.eu/taxation_customs/sites/taxation/files/2021-brexit-top-50-faq.pdf.

For assistance with customs procedures or help understanding the new agreement, the Economic Action Centres of the Regional Customs Directorates remain at your disposal. Find your local contact details here: www.douane.gouv.fr/les-cellules-conseil-aux-entreprises.

They can provide personalised support to help you find the best approach for your customs arrangements.

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Technical Fact Sheet #1

Subject: Overview of rules of preferential origin under the EU-UK Trade and Cooperation Agreement

The rules of preferential origin set out in the EU-UK Trade and Cooperation Agreement are similar to those found in recently concluded EU free trade agreements, notably the EU-Japan agreement.

What makes this agreement different will essentially be its implementation, given the high volume of trade involved and the lack of experience among operators with rules of preferential origin.

The rules of preferential origin are set out in Chapter 2 of the agreement. The purpose of this fact sheet is to provide operators with interpretation guidance for this chapter.

As a reminder, the agreement does not change the fundamental fact of Brexit that as of 1 January 2021, all British inputs (materials or processing operations) are no longer considered as originating in the EU for the determination of the origin of goods incorporating those inputs.

However, under the agreement, products originating in the EU or the UK – i.e. products that meet the conditions set out in the chapter on rules of origin – can benefit from preferential tariffs for import from one party to the other.

Before claiming preferential tariff treatment, operators should weigh the financial considerations in light of the customs duties at stake. If the applicable customs duty rate makes it worthwhile to claim preferential origin, then operators should check if their products are considered "originating" within the meaning of Chapter 2 and if they are able to meet the conditions below.

I. Conditions for determining preferential origin

The following articles relating to the rules of preferential origin use the **standard formulations** found in "new generation" agreements. Where relevant, clarification is provided. Otherwise, only the article number and title are indicated.

Article ORIG.2: Definitions

Article ORIG.3: General requirements

The first paragraph sets out three circumstances under which a product shall be considered as **originating in** the other Party to the agreement:

- The product is **wholly obtained** in that Party
- The product is produced in that Party exclusively from **originating materials** in that Party
- The product is produced in that Party **incorporating non-originating materials provided they satisfy the requirements set out in ANNEX ORIG-2 [Product-specific rules of origin]**

In all cases, the product must comply with the applicable provisions of Articles ORIG.4–ORIG.14.

Paragraph 3 deals with the principle of territoriality: The acquisition of originating status shall be fulfilled **without interruption** in the EU or the UK.

Article ORIG.4: Cumulation of origin

There are two types of cumulation:

- **Bilateral cumulation:** A material originating in a Party shall be considered as originating in the other Party provided it undergoes a working or processing in the other Party that goes beyond the "insufficient production" operations referred to in Article ORIG.7.

- **Full cumulation:** unlike the cumulation of materials, this type of cumulation, which is typically used for textiles under the Pan-Euro-Mediterranean Convention, allows for the cumulation of processing operations carried out in both Parties. A product resulting from a manufacturing process in the UK and the EU involving third-party products can be considered as originating in one of the Parties provided the successive workings undergone by the third-party products, carried out in each Party, together constitute sufficient processing under the specific rules for the product in question.

Both of these are covered in Technical Fact Sheet #2.

Article ORIG.4 also stipulates that operators using a statement on origin in an invoice to claim preferential origin on the basis of full cumulation can complete said statement on origin using:

- A supplier's declaration as provided for in Annex ORIG-3 [Supplier's declaration]
- An equivalent document that contains the same information describing the non-originating materials concerned in sufficient detail to enable them to be identified

Article ORIG.5: Wholly obtained products

Article ORIG.6: Tolerances

There is a usual degree of tolerance,[1] which varies by material:

- The total weight of non-originating materials used in the production of products classified under Chapters 2 and 4 to 24 of the Harmonised System, other than processed fishery products of Chapter 16, does not exceed 15% of the weight of the product.
- The total value of non-originating materials for all other products, except for products classified under Chapters 50 to 63 of the Harmonised System, does not exceed 10% of the ex-works price of the product.
- For a product classified under Chapters 50 to 63 of the Harmonised System, the tolerances set out in Note 7 and 8 of ANNEX-ORIG-1 shall apply [Introductory Notes to the Product-Specific Rules of Origin]

There is no tolerance for products wholly obtained in a Party within the meaning of Article ORIG.5. However, if ANNEX ORIG-2 [Product-specific rules of origin] requires that a material be wholly obtained, tolerance will be permitted.

Article ORIG.7: Insufficient Production

Unlike the usual agreement clauses, pickling, drying and smoking are not considered insufficient production operations.

Article ORIG.8: Unit of qualification

Article ORIG.9: Packing materials and containers for shipment

Article ORIG.10: Packaging materials and containers for retail sale

Article ORIG.11: Accessories, spare parts and tools

Article ORIG.12: Sets

Article ORIG.13: Neutral elements

1 So long as the maximum percentages for non-originating materials as specified in the requirements set out in ANNEX ORIG-2 are not exceeded.

Article ORIG.14: Accounting segregation

This article provides for notably broader use of accounting segregation than is usual in agreements. In addition to fungible materials, it is also possible for fungible products classified in the following chapters of the Harmonised System: 10, 15, 27, 28, 29, heading 32.01 to 32.07 and heading 39.01 to 39.14.

Note: in France, prior authorisation is required for an operator to use accounting segregation.

Article ORIG.15: Returned products

This is a standard relaxation of the principle of territoriality.

Article ORIG.16: Non-alteration

This is a standard relaxation of the principle of direct transport.

Article ORIG.17: Review of drawback of, or exemption from, customs duties

The agreement does not have a clause prohibiting duty drawback.

II. Claiming preferential tariff treatment

To claim preferential tariff treatment for import into the EU, code 300 must be indicated in Box 36 (Preference) of the single administrative document (SAD).

“GB” must be indicated in Box 34 (Country-of-origin code).

Box 44 (Documents) must be completed with the following details, depending on the supporting documentation for your claim for preferential tariff treatment:

- Code **U116** for a **statement on origin**
- Code **U117** for an **importer’s knowledge statement**
- Code **U118** for statements on origin for multiple shipments

Like the EU-Japan agreement, the EU-UK agreement provides for the following two **procedures for claiming preferential tariff treatment** (Article ORIG.18):

- A **statement on origin** made out by the exporter
  or
- The **importer’s knowledge** that the product is originating

If preferential tariff treatment is not claimed on an originating product at the time of importation, a claim can be made after the fact but no later than three years after the date of importation.

A) Statement on origin (Article ORIG.19)

The provisions on the statement on origin are modelled on the EU-Japan agreement, but have been simplified in one respect: **no mention of origin criterion is required.**

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

The statement on origin must be made out using one of the language versions set out in ANNEX ORIG-4 [Text of the statement on origin] in an invoice or on any other document that describes the originating product in sufficient detail to enable the identification of that product.

The exporter is responsible for providing sufficient detail to allow the identification of the originating product. The importing Party shall not require the importer to submit a translation of the statement on origin.

Only an English version (see below) is available for the time being.

(Period: from .....to.....[1])

The exporter of the products covered by this document (Exporter Reference No ....[2]) declares that, except where otherwise clearly indicated, these products are of ... [3] preferential origin.

..... [4]

(Place and date)

.....

(Name of the exporter)

[1] If the statement on origin is completed for multiple shipments of identical originating products within the meaning of point (b) of Article ORIG.19 [Statement on origin] of this Agreement, indicate the period for which the statement on origin is to apply. That period shall not exceed 12 months. All importations of the product must occur within the period indicated. If a period is not applicable, the field may be left blank.

[2] Indicate the reference number by which the exporter is identified. For the Union exporter, this will be the number assigned in accordance with the laws and regulations of the Union. For the United Kingdom exporter, this will be the number assigned in accordance with the laws and regulations applicable within the United Kingdom. Where the exporter has not been assigned a number, this field may be left blank.

[3] Indicate the origin of the product: the United Kingdom or the Union.

[4] Place and date may be omitted is the information is contained on the document itself.

The provisions on the Registered Exporter System (REX) set out in Article 68 of Commission Implementing Regulation (EU) 2017/989 of 8 June 2017 apply to **EU exporters**. For consignments valued at more than €6,000, EU exporters must indicate their REX number in the space next to “Exporter Reference No.”. If the consignment is valued at €6,000 or less, this field can be deleted or left blank.

Important: If you are already a registered exporter, there is no need to modify your registration to add the UK. You can use your existing REX number, which is valid for the UK without any modification.

Upon exportation from the UK to the EU, for all consignments, regardless of value, **British exporters** must issue a statement on origin that includes their exporter number. British authorities have not set up a specific registration system for their exporters. The number has the same format as an EORI number.

A statement on origin is valid for 12 months from the date it was made out or for up to two years if extended by the importing party.

A statement on origin may apply to:

- A single shipment of one or more products imported into a Party
  or
- Multiple shipments of identical products imported into a Party within the period specific in the statement on origin, which shall not exceed 12 months

The customs authority of the importing Party shall not reject a claim for preferential tariff treatment due to minor errors or discrepancies in the statement on origin. For example, an obvious clerical error such as a typo should not result in the rejection of the statement on origin, as long as the error does not raise doubts about the accuracy of the statement.

<u>B) Importer’s knowledge (Article ORIG.21)</u>

This system for claiming preferential tariff treatment was first introduced in the EU-Japan agreement and will likely become standard for rules of origin in EU agreements being negotiated/renegotiated.

The importer’s knowledge that a product is originating in the exporting Party must be based on information demonstrating that the product is originating and that it satisfies the requirements provided for in Chapter 2 on

rules of origin. It is therefore important for the exporter and importer, as part of their commercial dealings, to establish that all information demonstrating that the goods are originating are to be made available to the importer as soon as the claim for preferential tariff treatment is made.

Important: As a transitional measure while the agreement is being implemented, importers have a one-year period to collect this information.

Reminder: If the importer elects the "importer's knowledge" option, no statement on origin is required. Upon request by customs authorities, the importer must be readily able to provide documentation proving that the imported product is originating.

C) Record-keeping requirements (Article ORIG.22)

The record-keeping periods are the same as in the EU-Japan agreement:

- For the importer, three years after the date of importation. They must keep either the statement on origin or, if the claim is based on the importer's knowledge, all records demonstrating that the product satisfies the requirements for obtaining originating status.
- For the exporter, four years after the statement on origin is made out. They must keep a copy of the statement on origin and all other records demonstrating that the product satisfies the requirements to obtain originating status.

The records may be held in electronic format.

D) Small consignments (Article ORIG.23)

The conditions are the same as in the EU-Japan agreement, including the value limit for imports into the EU.

Pursuant to Article ORIG.23, the following products are considered originating in the UK upon arrival in the EU and are exempt from the procedure for claiming preferential tariff treatment (statement on origin or importer's knowledge):

- A product whose value does not exceed €500 sent in a small package from private persons to private persons
- A product whose value does not exceed €1,200 forming part of a traveller's personal luggage

These products must not be imported by way of trade and must be declared as being originating with no doubts as to the veracity of that declaration.

Upon entry in the UK, products whose value does not exceed £1,000 will be exempt from the procedure for claiming preferential tariff treatment. This provision applies to both trade and non-trade imports.

E) Confidentiality (Article ORIG.27)

This article relates to the Parties' confidentiality of information requirements.

F) Transitional provisions (Article ORIG.30)

This article sets out transitional provisions for goods that, on the date of entry into force of the agreement, have not yet been released for free circulation and are either still in transit from the exporter to the importer or under customs control (for instance in a customs warehouse).

These goods can benefit from preferential tariff treatment if a claim is made to the importing customs authority within 12 months of the date of entry into force of the agreement.

To establish a statement on origin on a date after the agreement comes into force, the exporter can add the statement to a copy of the invoice or other trade document (delivery note) with a subsequent date. This means there will be two dates on the trade document: the date the document itself was established and the date the statement on origin was added.

Technical Fact Sheet #2

Subject: Bilateral and full cumulation under the EU-UK Trade and Cooperation Agreement

I. <u>Bilateral cumulation</u> (Article 4.1)

Bilateral cumulation concerns cumulation only between two parties to a trade agreement. This type of cumulation exists in all preferential agreements signed by the EU.

With bilateral cumulation, materials originating in Party A that undergo processing in Party B are considered as originating in Party B if the finished product is to be exported to Party A, on the condition that the processing carried out in Party B goes beyond the operations deemed “insufficient”. (Under the EU-UK agreement, these operations are listed in Article 7 of Chapter 2 on rules of origin.) However, since these materials are no longer considered third-party materials, they no longer have to undergo “sufficient” working or processing.

The objective of bilateral cumulation is to further economic integration between both partners.

II. <u>Full cumulation</u> (article 4.2)

With full cumulation (cumulation of processing operations), the rule of origin is satisfied if all of the cumulated operations carried out successively in parties to the agreement constitute sufficient processing. The operation carried out in the final country of processing must go beyond an operation deemed “insufficient”. (Under the EU-UK agreement, these operations are listed in Article 7 of Chapter 2 on rules of origin.) In these cases, a supplier’s declaration is generally used between the countries involved in the cumulation of processing operations.

Full cumulation is currently in effect within the European Economic Area (EU, Norway, Iceland, Liechtenstein); between the EU and Algeria; between the EU, Morocco and Tunisia; and between the EU and Canada. Full cumulation is also found in bilateral agreements that do not include the EU.

Full cumulation applies in cases where the rule of origin has a double-transformation requirement, as with textiles: yarn to fabric to garment.

<u>Example</u>: Determination of origin for shirts classified under heading 62.05 within the European Economic Area

<u>Manufacturing process</u>:

Cotton yarn is manufactured in Pakistan.
The yarn is imported to Iceland where it is woven into fabric.
The fabric is imported to the EU where it is sewn into shirts.

The origin rule for fabric requires it to be manufactured from fibre. The rule is not met.

With full cumulation, the succession of processing operations (weaving, sewing) can be taken into account.

On the basis of full cumulation, the shirts have EU origin.