3 Crossfield Chambers, Gladbeck Way, Enfield, EN2 7HF, United Kingdom
Tel: +44 (0)20 8367 3131 Email: noah@noah.co.uk
Website: www.noah.co.uk www.noahcompendium.co.uk

Registered in England No: 2145809

NOAH
Supporting the future of animal health

Representing the UK Animal Health Industry

NOAH Briefing: Rules of Origin under UK-EU Trade and Cooperation Agreement

Please note, this briefing should not be taken as legal clarification. Companies with complex supply chains should assess their needs and seek clarification from HMRC. This briefing reflects our understanding as of 22/01/2021, but guidance on these matters may evolve and change in the weeks and months ahead.

While the headline news of a "tariff-free, quota-free" trade deal, struck between the EU and UK on 24 December, was warmly welcomed by the UK agriculture sector, some of the deficiencies of this deal, when compared to UK-EU trade within the customs union and single market, have rapidly come to light. Aside from VAT, SPS and customs issues, so-called "rules of origin" which determine the eligibility of products traded between EU and UK to the preferential (zero) tariff negotiated under the Trade and Cooperation Agreement (TCA) have caused issues for some supply chains that were established under single market rules. Some pharmaceutical companies have already suggested these rules of origin could create challenges for their supply chains between UK and EU.

The principal aim of rules of origin is to prevent the circumvention of tariffs applicable to third country products by, for example one of the parties in the TCA, which has a lower import tariff than the other on a particular product, importing that product and re-exporting to the other party at zero tariff. For products which have a Most Favoured Nation (MFN) tariff of zero (as listed under the UK Global Tariff) an importer has no interest in claiming a preferential duty, so rules of origin, as far as determining the duty rate applicable, are not too important (unless there are anti-dumping or rebalancing duties in effect for imports from a particular origin). Some large manufacturers who export or import products with relatively low MFN tariffs (to/from EU) prefer to pay this low tariff, rather than proving originating status of their product in pursuit of the zero tariff. So, rules of origin under this agreement are principally relevant to all traders of products between EU and UK who wish to claim the zero tariff.

The general rules relating to proof of origin can be found on pages 27-41 of the TCA, which can be found here.

Originating products are defined as either those "wholly obtained" (defined in the TCA text) in the country of origin, or products which have been "substantially transformed" in line with the relative product-specific rule for that product. "Substantially transformed" can be defined on the basis of value-added, change of tariff classification or a specific process.

Bilateral Cumulation

For agricultural products, the MFN tariff in both the EU and UK is usually very high, and it will be in the interest of food and feed processors in these countries to prove originating status of their goods to benefit from the preferential (zero) tariff for trade between them. They can benefit

from **bilateral cumulation**, whereby a processor in the UK can use inputs from the EU and count them as originating, provided that "sufficient" processing of these materials takes place. "Insufficient" processing with regard to agri-products includes simple mixing, preserving, polishing/glazing of cereals and rice, sifting, screening, sorting, peeling, stoning, shelling, sharpening etc. In general, Defra advises that 'Simple' refers to operations that require neither special skills nor machines, apparatus or equipment specifically produced or installed to carry out those operations. The rule that processing must go beyond "insufficient" has affected some products for which UK has become a "sorting hub" for EU products imported into GB, then re-exported to the EU (especially Ireland).

Product specific rules

Under the TCA, you need to check carefully the specific rules of origin that apply to your products if you are going to claim the zero tariff on trade between EU and UK. Product specific rules under the TCA can be found on pages 415-486 of the TCA.
As an example, see Table 1 below, which shows the rules for products in Chapter 23 of the Harmonised System (the tariff classification scheme). This chapter includes most animal feeds. The third column of this table shows Defra guidance on what the rules mean. NOAH has available further help and guidance issued by Defra for specific chapters, headings, sub-headings and individual products as well as some worked examples if you are interested.

Tolerance

The TCA does have a tolerance for non-originating products in a processed product of 15% by weight (10% by value for fishery products). This does not however apply to inputs subject to weight or value restrictions under product specific rules, or inputs that do not undergo further processing (e.g. wheat under chapter 10).

How to claim preferential treatment

UK importers will declare origin on their customs declaration, and must have supporting evidence to show HMRC proof of origin. Proof of origin for imported goods can be either:

- a statement on origin completed by the exporter on a commercial document, or
- knowledge obtained and held by the importer that the goods are originating.

Retrospective claims are provided for, and these need to be made within 3 years of the date of importation and accompanied with a valid proof of origin. In those circumstances any duties would be repaid to the importer. Records showing proof of origin must be kept for a minimum of four years Further official guidance on claiming preferential duties and proving origin of your goods can be found here.

UK exporters must hold evidence that their goods meet the relevant rules of origin before issuing proof. This evidence can be supplied through supplier declarations. More information here.
You must provide the importer with one of the following as proof of origin:

- a statement on origin on a commercial invoice or other commercial document that describes the goods. The text of the statement would be included in the agreement

- supporting documents and records if your customer is claiming preference using their "importer's knowledge"

A statement on origin can be made to cover to cover multiple shipments of identical products supplied to a customer under the same contract over a 12-month period instead of separate statements for each individual consignment. There are also provisions for long-term supplier declarations (for goods with same originating status) which can be valid for 24 months. Records need to be maintained for a minimum of four years.

Accounting segregation

There are some provisions within the TCA for a method of accounting segregation for fungible materials (where imported and domestic products of same specification may be stored together, e.g. feed wheat). There are strict rules to avoid tariff circumvention and processors wishing to use this facility are advised to discuss with HMRC.

Easements

Defra informs us that there are a couple of easements in place on origin procedures to begin with. These are:

- For **importers**, goods moving from the EU to the UK between 1 Jan 2021 and 30 June 2021, traders will have up to six months to submit a full customs declaration and pay any necessary tariffs. This also includes declaring any proof of origin.
- For **exporters**, until 31 December 2021 for goods moving into the EU from the UK or into the UK from the EU, traders do not need a supplier's declarations from business suppliers at the time the goods are exported.

Please contact NOAH if you would like the full DEFRA guidance on rules of origin for agri-products under the EU-UK TCA, and/or for the DEFRA presentation showing worked examples for agri-products. Official UK government business guidance on rules of origin for trade between UK and EU can be found here.

Table 1: product-specific rules of origin for goods in Chapter 23 of the Harmonised System, with DEFRA comment shown in 3rd column. CTH: Change in Tariff Heading.

Column 1: Harmonised System Tariff Classification	Column 2: Product-Specific Rules of Origin	What does this mean for business looking to export to the EU?
Chapter 23	**Residues and waste from the food industries; prepared animal fodder**	
23.01	CTH	*Any ingredient that comes from a different heading can be imported and used in the product. This means imported flours, meat, fish, aquatic invertebrates and rice can be used in the final product.*

23.02-2303.10	CTH, provided that the weight of non-originating materials of Chapter 10 used does not exceed 20% of the weight of the product.	*Any ingredient that comes from a different heading can be imported and used in the product.* *However, the use of non-originating cereals is limited by weight.*
2303.20-23.08	CTH	*Any ingredient that comes from a different heading can be imported and used in the product.*
23.09	CTH, provided that: - all the materials of Chapters 2 and 4 used are wholly obtained; - the total weight of non-originating materials of headings 1001 to 1004, 1007 to 1008, Chapter 11, and headings 23.02 and 23.03 used does not exceed 20% of the weight of the product; and - the total weight of non-originating materials of headings 17.01 and 17.02 used does not exceed 20% of the weight of the product.	*Any ingredient that comes from a different heading can be imported and used in the product.* *However, all meat used must be obtained from a slaughtered animal born and raised in the UK or EU and all dairy, eggs and honey used must be obtained from animals raised in the UK or EU.* *The use of EU inputs is provided for through bilateral cumulation.* *Additionally, there are weight restrictions on cereals in chapter 10 (except for rice and maize where there are no restrictions), products of the milling industry, starches and residues from within this chapter, and sugar.*

Northern Ireland

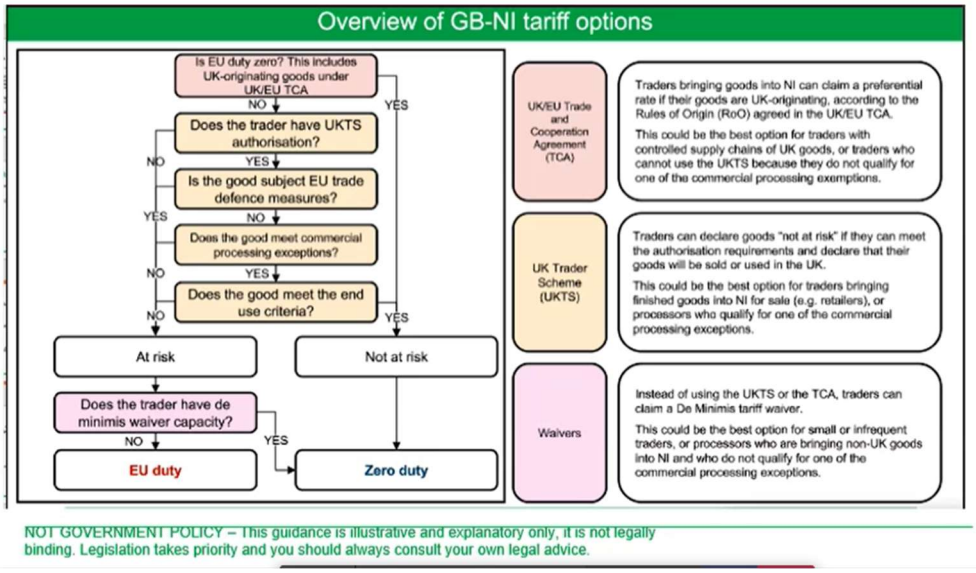
Since Northern Ireland is effectively part of the EU customs union, rules of origin may apply for products moving from GB to NI, especially if they are "at risk" of moving to the rest of the EU. This again is an issue for certain agri-food products, but will not be an issue for goods which are MFN zero rated in the EU. Trade in goods between GB and NI is regulated by the Northern Ireland Protocol, and the agreement on its implementation, which was reached in December and can be found here

While goods considered "at risk" of moving over the border in ROI may be subject to EU tariffs (which are repayable on proof that the final processed goods were consumed in NI), the UK government negotiated exemptions for this for e.g. processors of animal feed (who bring in the raw materials themselves for final use at their premises (feed the finished product themselves)

and also for “direct health and care provision” (it is currently unclear whether this applies to veterinary medicines). The UK Trader Scheme is also designed to help manufacturers bring goods into NI from both GB and non-EU countries (whereby the goods will not be considered “at risk” of moving to EU if the UK tariff applied on NI imports is no more than 3% less than the EU MFN tariff).

The UK is planning to implement a system in the second half of 2021 for “qualifying traders” in NI to ensure unfettered access (“free of checks, controls and tariffs”) for goods movements from NI to GB.

A flow diagram, produced by DEFRA, shows the steps that traders from GB to NI need to consider with regard to rules of origin:



Traders in Northern Ireland are strongly advised to discuss with the customs authorities their supply chains for both raw materials and finished products if they are concerned.

As a reminder, the official guidance on trade in veterinary medicines can be found here.

22/01/2021