DIRECTIVE No. 15

RULES OF ORIGIN

Issued by the Agent of the Impôts on the 11th January 2021

1. Introduction

Rules of Origin are the criteria to determine the economic nationality (as opposed to the geographical nationality) of a given good.

Once the origin of a good is established, the correct rate of duty or tariff can be applied to that good when it crosses a border (customs union/customs territory).

The origin of a good can also be used to implement commercial policy such as anti-dumping duties and safeguard measures; for labelling and marking requirements; for government procurement purposes; or for gathering trade statistics.

There are no internationally agreed Rules of Origin and thus wide variation in practice.

Rules of Origin and procedures that govern it are complex and set out in each Free Trade Agreement (FTA).

Details of the UK (Customs Union) and EU FTA (TCA) is available here.

Annex 1 relates to the UK – EU TCA.

Non-EU FTA's are available here.

Traders both importing or exporting should refer to each FTA to understand the Rules of Origin and requirements that apply.

2. Content

This Directive includes the following sections: -

1. Introduction
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5. Rules of Origin criteria
6. Types of Rules of Origin
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3. Definitions

“CAESAR” means the Customs and Excise System for Administering Revenue.

‘’Customs Law’’ means the Customs and Excise (Jersey) Law 1999.

‘’Customs Arrangement’’ means the arrangement entered into between Jersey and the United Kingdom covering all trade in goods that includes the elimination between its members of customs duty on imports and exports, and the adoption of the UK Global Tariff in their relations with third countries; and requires the members of the customs union to keep their Customs Law correspondent with that of the United Kingdom.

“UK – CDs Customs Union” - means Jersey, UK, Guernsey and the Isle of Man.

“GST” means Goods and Services Tax.

‘’import duty” means:

- Customs duties that are not excise duty.
- Charges having equivalent effect to Customs duty.
- GST and Excise duty.

‘’TCA’’ means The Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part.

4. Legal basis

‘’Customs Law’’ means the Customs and Excise (Jersey) Law 1999.

‘’Customs Order’’ means the Customs and Excise (Customs Tariff and Import Duty) (Jersey) Order 2019.

‘’Customs Arrangement’’ means - The ‘’Arrangement’’ which is the arrangement entered into between Jersey and the United Kingdom covering all trade in goods that includes the elimination between its members of customs duty on imports and exports, and the adoption of the UK Global Tariff in their relations with third countries and requires the members of the customs union to keep their Customs Law correspondent with that of the United Kingdom.

5. Rules of Origin criteria

There are essentially two ways in which a product can be considered ‘originating’, these are:

- ‘Wholly obtained’
- Substantially transformed

Wholly obtained goods are, for example:

- Goods naturally occurring;
- live animals born and raised in a given country;
- plants harvested in a given country;
- minerals extracted or taken in a single country.

The definition of wholly obtained also covers goods **produced** from wholly obtained goods alone or scrap and waste derived from manufacturing or processing operations or from consumption.

Substantially transformed products fall under three basic rules. These are:

- **A change in UK Global tariff classification**

- A good is considered substantially transformed when the good is classified in a heading or subheading (depending on the exact rule) different from all non-originating materials used.

- This shift of tariff heading between the inputs to a product and the finished product is treated as representing sufficient transformation to confer origin. Rules of this kind will generally require either one change of tariff heading or two to reach sufficient transformation.

- **Value added (ad valorem percentages)**

- Regardless of a change in its classification, a good is considered substantially transformed when the value added of a good increases up to a specified level expressed by ad valorem percentage. The value-added criterion can be expressed in two ways, namely a maximum allowance for non-originating materials or a minimum requirement of domestic content.

- **Manufacturing or processing operations (technical requirement)**

- Regardless a change in its classification, a good is considered substantially transformed when the good has undergone specified manufacturing or processing operations.

6. Types of Rules of Origin

There are two types of origin: **preferential origin** and **non-preferential origin**.

Non-preferential rules of origin are usually set in national policy and legislation where there are no preferential trade arrangements in place between two or more countries.

Non-preferential rules of origin are used for the application of all kinds of non-preferential commercial policy measures, such as anti-dumping duties, countervailing duties, trade embargoes, safeguarding measures, origin marking requirements, quantitative restrictions or tariff quotas, government procurement and trade statistics.

Preferential rules of origin are those which have been agreed between two or more parties in a bilateral or regional trade agreement or customs union (e.g. UK/EU TCA) or for non-reciprocal trade preferences.

Preferential rules of origin are generally more restrictive than non-preferential rules in order to avoid “trade deflection” (for example where a good might be trans-shipped through a preference holding country, so it gets preferential treatment).

Restrictive rules of origin could also act as nontariff protectionist measure, if they set domestic production levels that are difficult to meet.

All goods have a non-preferential origin but may also have a preferential origin if a preferential arrangement exists.

7. Direct Transport rule and proof of preferential origin

To obtain preferential treatment, a proof of origin is not enough. The direct transport rule also needs to be fulfilled.

Direct transport is defined as a condition where the originating product must be transported **directly** from the country of origin to the destination country where the preferential origin is claimed without any interruption.

As a rule, if the goods have been cleared for free circulation in a third country en-route, the importer will not obtain preferential treatment for the goods when they arrive in the importing country, for example, UK-CD’s Customs Union.

An exception is made when the goods concerned transit though a third country that is part of a cumulation zone that includes both the country of origin and the destination country **or** through a third country **providing** a single transport document covers the entire flow and includes transit under customs supervision through the third country.

To evidence compliance with the direct transport rule covering the passage of the goods through the country of transit, a document that proves this customs supervision may be required, for example, a “non-manipulation certificate".

The only operation, other than loading/unloading, that are allowed in relation to the goods, is one that is designed to preserve their condition.

Temporary storage is allowed, but only where it is for transport reasons.

Goods that travel through another country must not be entered into any customs procedures of that country.

8. Cumulation

Cumulation is an important facilitation of FTA’s that allows originating products from one party (EU) to be treated as if they are originating in another party (Customs Union).

There are three main types of cumulation under preferential rules of origin:

1. Bilateral cumulation
2. Diagonal cumulation
3. Full cumulation

Bilateral cumulation

This means that any good originating in party A (EU) can be treated as being from party B (Customs Union) and vice versa, for trading purposes between the two.

Diagonal cumulation

Diagonal cumulation applies where **more than two** countries (or customs territories/unions) have FTA's with each other and where the same origin criteria are all met by each.

Where there is more than one country involved in the manufacture of a product, the final product will **adopt the origin of the country** in which the last processing took place (provided it was a 'substantial transformation').

Full cumulation

Full cumulation involves a greater degree of economic integration. Unlike bilateral or diagonal cumulation, it is not just originating goods that can be considered as input for cumulation purposes in another country. All processing stages within the 'zone' can be considered as conferring origin, regardless of whether the transformation is substantial enough to change the product origin or not.

It only requires that origin requirements are satisfied within the preferential trade 'zone' as a whole allowing the origin criteria to be distributed across any number of countries within a zone.

9. Rulings as to Origin

Rulings as to the origin of a good to be imported into Jersey are issued by the United Kingdom's HMRC, in accordance with paragraph 12 of the Customs Arrangement. Article 10 of the Customs Order ensures any rulings made by HMRC are binding in Jersey.

The rulings apply to all FTA's.

Mark Cockerham
Agent of the Impôts
11th January 2021

Annex 1 – UK – EU Trade and Cooperation agreement (''TCA'') - Rules of Origin and Product Specific rules of Origin

Introduction

This annex provides guidance on the rules of origin requirements under the TCA and explains the most important provisions which traders need to understand and comply with, in order to ensure that they pay zero tariffs when trading with the EU. This applies to both traders that wish to export goods to the EU at zero tariffs, as well as traders who wish to import goods from EU at zero tariffs.

This annex does not contain information or explanations for all rules of origin relevant to the TCA. Rather, this annex provides detail on the most important provisions, and traders should still refer to the full TCA rules of origin text to understand their full obligations should they wish to export or import goods between the Customs Union and EU and take advantage of the preferential treatment.

To benefit under the TCA, goods will have to be of Customs Union or EU origin. This means they must meet the TCA preferential rules of origin. These rules are set out in the TCA and determine the origin of goods based on where the products or materials (or inputs) used in their production come from. Their purpose is to ensure that preferential tariffs are only given to goods that originate in the Customs Union or EU and not from third countries (i.e. those apart from the Customs Union and the EU Member States).

Goods that do not meet the rules of origin can still be traded but they will not be able to benefit from preference under the TCA and may have to pay the standard ("Most Favoured Nation") tariffs that the EU and the Customs Union apply to imports through the respective tariffs. For exports to the EU, this will be their Common External Tariff. Likewise, for imports to the Customs Union, this will be the UK Global Tariff. For some goods, these Most Favoured Nation tariffs may be low or zero, but for many other goods they can be much higher. Traders will need to take a commercial decision on whether it is in their interest to meet (and prove that they meet) the rules of origin in order to benefit from the TCA's zero tariffs.

Claiming preferential treatment under the TCA

To benefit from preferential tariffs when importing into the Customs Union or EU, traders will need claim preference on their customs declaration and declare they hold proof that the goods meet the rules of origin.

A proof of origin is used by the importer to demonstrate that the goods qualify as originating and are eligible to claim preference. In the TCA this proof can take the form of:

- 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.

If you are an importer, you must:

1. Have proof of the originating status of the product before claiming preference. This may be:

    a. a Statement on origin provided by the exporter on a commercial invoice or other commercial document that describes the goods. The text of the Statement would be included in the agreement. This is known as an invoice or origin declaration;
    b. supporting documents and records if you are claiming preference using your “importers knowledge”. If using importer knowledge, you must obtain sufficient evidence that the goods qualify as originating. This may involve the exporter providing a range of supporting documentation. If you cannot obtain that evidence, then the exporter may be able to provide a Statement on origin.

2. Claim for preference by completing the relevant part and declaring the proof of origin on your customs import declaration.

3. If requested by customs, provide the proof of origin to customs.

4. Maintain records for at least 4 years.

If you are an exporter, you must:

1. Hold evidence that the goods meet the relevant rules of origin before issuing a Statement on origin.

2. Understand whether a declaration from your supplier needs to be obtained. **For UK-EU trade, until 31 December 2021, businesses do not need supplier’s declarations from business suppliers in place when the goods are exported. Businesses may be asked to retrospectively provide a supplier’s declaration after this date.**

3. Provide your customer, the importer, with one of the following:

    a. 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. This is known as an invoice or origin declaration;
    b. supporting documents and records if your customer is claiming preference using their “importer’s knowledge”.

4. Maintain records for at least 4 years.

Origin Procedures: Providing Originating Status and Claiming preferential tariff treatment

The Origin Procedures in the TCA (Articles ORIG.18-28) set out the process by which goods prove their originating status and preference can be claimed. Summarised below.

Claiming preferential tariff treatment

Relevant TCA articles:

- *Article ORIG.18 Claim for preferential tariff treatment,*
- *Article ORIG.18a: Time of the claim for preferential tariff treatment;*
- *Article ORIG.23 Small Consignments;*
- *Article ORIG.27 Confidentiality*

Overview of how to claim preference

The customs authority of the importing party will grant preferential tariff treatment, based on a claim made by the importer, to goods that originate in the other Party that meet the conditions of the TCA. Under the TCA a claim can be made if the importer has one of the following proofs of origin:

(a) a Statement on origin that the product is originating made out by the exporter; or

(b) the importer's knowledge that the product is originating.

A claim for preference, and the "presentation" of the proof of origin, is normally included on the customs declaration to enter the goods into free circulation. However, a claim can alternatively be made after importation provided it is 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.

Rules for small consignments of goods

Some goods may be imported without the need for a formal proof of origin (a waiver), so long as they are declared to customs as meeting the origin rules.

For import into the Customs Union, this waiver applies **to any goods** valued under £1000, **regardless of whether they are imported for commercial or non-commercial purposes.**

For import into the EU, this waiver applies to goods valued under:

- €500 in the case of products sent in small packages, or
- €1,200 in the case of products forming part of a traveler's personal luggage.

For the EU this waiver does not apply to commercial imports.

These waivers do not apply if it is established that the import forms a series of importations that are being made separately **to avoid the normal requirements.**

Applying for preference using a Statement on origin

Relevant TCA articles:

- *Article ORIG.4 Cumulation of origin;*
- *Article ORIG.19 Statement on origin;*
- *Article ORIG.20 Discrepancies;*
- *Article ORIG.22 Record-keeping requirements;*
- *Article ORIG.26 Denial of preferential tariff treatment*

Statement on origin

One option for claiming preference is for the importer to use a 'Statement on origin' made out by the exporter.

A Statement on origin is not a document, but a prescribed text which the exporter added to the invoice or any other commercial document that describes the originating product in sufficient detail to enable its identification. The Statement/document may be in an electronic format.

An exporter making out a Statement on origin must hold information demonstrating that the product is originating, including information on the originating status of materials used in the production of the product. This may include declarations obtained from their suppliers.

A Statement on origin may apply to:

- a single consignment,
- or to multiple shipments of identical products within any period specified in the Statement on origin but not exceeding 12 months from the date of the first import.

If an exporter that has completed a Statement on origin becomes aware or has reason to believe that it contains incorrect information, they must immediately notify their customer in writing.

A statement may be made out in English or any of the other official languages used in the EU. However, it is best to use the same language as being used for the commercial document itself.

The text of the Statement on origin (Annex ORIG-4 the TCA) is reproduced in full in Annex 2.

Requirements on the exporter

The exporter:

a) must be located either in the Customs Union or EU.

b) can be any person (such as a producer or a trading company) as long as they fulfil the obligations under the TCA. It is not necessary that the exporter lodges the customs export declaration in respect of the products. They may appoint a Customs Agent to act on their behalf.

c) exports or produces the originating product and makes out a Statement on origin; and

d) is responsible for the correct identification of the originating products on the invoice or any other commercial document.

They will usually be identified on the Statement on origin by their Exporter Reference Number (ERN). Where an Exporter's Reference Number has not been assigned the exporter may indicate its full address under the part "Place and date".

In the EU the ERN will be the exporters Registered Exporter (REX) number. These are allocated if the exporter exports consignments with a total value exceeding €6000.

In Jersey the ERN will be the Economic Operator Registration and Identification (EORI) number. If you do not have one, you can apply for an EORI number here.

There is a requirement that the Statement on origin must be made out by the exporter but there is no explicit requirement as to the identity of the person issuing the commercial document used for making out the Statement.

However, to avoid any potential confusion it is recommended that the exporter makes out the Statement on origin on a commercial document they have issued.

Validity of the Statement on origin

A Statement on origin may be made out before, at the same time as, or after the products to which it relates are exported. For imports to the Customs Union it will be valid for two years from the date it was made out. For exports to the EU it will be valid for 12 months.

The Statement on origin must be valid when the claim for preferential tariff treatment is made. This might be the time at which the import declaration in respect of the

originating products is accepted by customs, or at the time at which an application for repayment or remission of customs duties is submitted.

What is a commercial document?

The Statement on origin should be made out on an invoice or on any other commercial document that describes the originating product in sufficient detail to enable its identification.

There is no legal definition in the TCA of what constitutes a “commercial document”, which can be considered as a written record of a commercial transaction. Therefore, apart from the invoice itself, the term covers different types of documents such as a pro-forma invoice, or a shipping document (e.g. packing list, delivery note).

The only legal requirement for the invoice or any commercial document to be considered as the basis for a Statement on origin is that it shall contain a description of the originating products in sufficient detail to enable their identification. Other products, which may be included in the same invoice or other commercial document, shall be clearly distinguished from the originating products.

Where the “exporter” (producer or trader) is located in the exporting Party but the trader issuing the invoice is established in a non-Party country, the Statement on origin cannot be made out on that document. In these cases, the Statement on origin should be placed on a commercial document that is issued by the “exporter” (producer or trader other than the trader established in a non-Party country) in the exporting Party, such as a delivery note.

Supplier’s declarations

A supplier’s declaration is a declaration by which a supplier provides information to their customer concerning the originating status of goods with regard to the specific preferential rules of origin. Notwithstanding the invoicing, the supplier is the person who has control and the knowledge of the originating status over the delivered goods. By making out a supplier’s declaration, the supplier declares the originating status of the goods they provide to their customer who needs this information to make out a Statement on origin (the exported goods are either the finished product from the supplier or a product incorporating the delivered material).

When are Supplier’s declarations needed?

There are occasions where manufacture is not enough in itself to meet the origin rules and supplier’s declarations are required. For example, if:

- any materials do not change tariff heading
- the value of materials is over the specified limit, for example the origin rule may specify a percentage limit of 40% for non-originating materials, and the

total value of materials used is 45% of the ex-works price - you will then need declaration(s) to cover the value of materials in excess of the limit, that is, 5% of the ex-works price

- you manufacture using materials at a later stage of production than that specified, for example using bought-in fabric where the origin rule is manufacture from yarn
- the only processing which you carry out on a product is among the minimal processes listed in HMCR Notices 828, 830 and 832
- you buy and export goods in the same state

When are Supplier's declarations not needed?

If you are a manufacturer either exporting or supplying your goods, then there are certain circumstances where a declaration will not be necessary:

- an origin rule may specify that all non-originating materials must change tariff heading. If, during manufacture, all materials change tariff heading then the rule is met without the need for any supplier's declarations
- a percentage rule may specify a limit on the value of non-originating materials (30% or 40%), if the total value of all materials is within this limit, then the rule will be met
- an origin rule may specify manufacture from materials at a certain stage of production, for example manufacture from yarn, if you manufacture using materials at or before the specified stage (for example yarn or pre yarn) then the rule will be met automatically

A supplier's declaration may be made out to cover a single supply or to cover regular supplies made over a period of time (a long-term supplier's declaration).

Long-term supplier's declarations are one-off declarations valid for supplies delivered during a period up to a maximum of two years. A long-term supplier's declaration is valid for all the goods mentioned in the supplier's declaration that are delivered within the specified period. The making out of a long-term supplier's declaration requires that throughout the entire period of validity the originating status of the goods is ensured. The supplier shall immediately inform the customer of the goods, if the information provided in their long-term supplier's declaration is no longer applicable. A long-term supplier's declaration shall be made out for consignments dispatched during a period of time and shall state three dates:

- the date on which the declaration is made out (date of issue)
- the date of commencement of the period (start date), which may not be more than 12 months before or more than 6 months after the date of issue

- the date of end of the period (end date), which may not be more than 24 months after the start date.

Bilateral cumulation and supplier's statements

An exporter making out a Statement on origin for a product that has benefitted from bilateral cumulation may also be required to provide a Supplier's declaration. For example, where a product has obtained its originating status through cumulating production carried out in the EU on non-originating materials, the exporter of those goods must obtain a declaration from the supplier of those materials.

This declaration could either be in the form set out in Annex ORIG-3 [Supplier's declaration] of the TCA or an equivalent document that contains the same information, describing the non-originating materials concerned in sufficient detail for their identification. As with supplier's declarations in the context of intra Customs Union supply chains, a supplier's declaration to cover production carried out in the EU may be made out to cover either a single supply or regular supplies made over a period of time.

Where the exported product has obtained its originating status through the cumulation of originating materials, the exporter must hold a Statement on origin from the supplier based in the EU.

Record keeping requirements for a Statement on origin

An importer making a claim for preferential tariff treatment must keep the Statement on origin made out by the exporter for four years from the date of importation.

An exporter who has made out a Statement on origin must keep, for four years from the date it was made out, a copy of the Statement on origin and all other records demonstrating that the product satisfies the requirements to obtain originating status, e.g. supplier's declarations, invoices etc.

In both cases, these records can be stored in an electronic format.

Multiple shipments

A Statement on origin can be made 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.

A Statement on origin for multiple shipments shall indicate three dates:

- the date on which it is made out (date of issue – which shall be no later than the start date)
- the date of commencement of the period (start date)

- the date of end of the period (end date), which may not be more than 12 months after the date it was made out.

A Statement on origin for multiple shipments of identical products may be used as a basis for preferential tariff treatment only for those import declarations that are accepted on or between the start date and the end date indicated in the Statement.

The importer shall keep the commercial documents for the subsequent consignments imported within the validity period for which preferential tariff treatment is claimed on the basis the Statement on origin for multiple shipments.

The commercial documents for such subsequent consignments do not need to contain a Statement on origin.

A Statement on origin for multiple shipments must be withdrawn by the exporter if the conditions for its use are no longer fulfilled. The withdrawal must be documented in connection with the original Statement on origin for multiple shipments. Once the withdrawal is documented, a new Statement on origin must be made out if the delivered products are again originating products.

Applying for preference using importer's knowledge

Relevant TCA articles:

- *Article ORIG.4 Cumulation of origin;*
- *Article ORIG.21 Importer's knowledge;*
- *Article ORIG.20 Discrepancies;*
- *Article ORIG.22 Record-keeping requirements;*
- *Article ORIG.26 Denial of preferential Tariff treatment*

'Importer's knowledge' is an option that allows the importer to claim preferential tariff treatment based on their own knowledge about the originating status of imported products. It can be used as an alternative to a Statement on origin provided by the exporter.

As the importer is making a claim using their own knowledge, the exporter or producer does not need to take any action to officially state the originating status of the goods.

As this option requires the importer to have knowledge that the products meet the relevant rules of origin, the exporter or producer may have to provide information about the production to the importer. This may be in addition to other information, such as supporting documents or records, which may already be in the possession of the importer.

Such information might include:

- The HS code of the product and origin criteria used
- a brief description of the production process
- if the origin criterion was based on a specific production process, a specific description of that process
- if applicable, a description of the originating and non-originating materials used in the production process
- if the origin criterion was 'wholly obtained', the applicable category (such as harvesting, mining, or fishing; and the place of production)
- if the origin criterion was based on a value method, the value of the product as well as the value of all the non-originating and/or originating materials used in the production
- if the origin criterion was based on weight, the weight of the product as well as the weight of the relevant non-originating and/or originating materials used in the product
- if the origin criterion was based on a change in tariff classification, a list of all the non-originating materials including their tariff classification number under the Harmonized System (in 2, 4 or 6-digit format depending on the origin criteria); or
- the information relating to the compliance with the provision on non-alteration (if applicable), for example a certificate of non-manipulation from the Customs Authority in the country of transit.

In the case that the importer cannot obtain the information above, including circumstances where the exporter or producer does not provide the information because it is deemed commercially sensitive, preferential tariff treatment may still be claimed if the exporter issues a Statement on origin.

An importer making a claim for preferential tariff treatment must keep all records that demonstrate that the product is eligible for preference for four years from the date of importation. These records must be stored in an electronic format.

Verification of claims for preferential treatment

Relevant TCA article:

- *Article ORIG.24 Verification*
- *Article ORIG.25 Administrative cooperation*

In order to verify whether a product imported under preference is originating, the importing customs authority may conduct a verification. This may include a request for information from the importer who made the claim for preferential tariff treatment.

Verification may be conducted before or after the release of the goods.

If conducting a verification before release of the goods, the customs authority may suspend the granting of preferential tariff treatment pending the results. In such circumstances release of the products shall be offered to the importer subject to a security or guarantee to cover the difference between the preferential and full tariff.

For claims based on a Statement on origin made out by the exporter in the exporting Party verification consists of the following two steps:

Step 1: The importing Party's customs authority requests the Statement on origin from the importer. If the importer has any additional information supporting the fulfilment of origin criteria it can be provided.

Outside of any contractual obligations between the importer and the exporter, there is no obligation for the exporter to provide any further information to the importer. However, if an exporter, confronted with a request from the importer, prefers to provide information at this stage of the verification process, they can choose to do so either to the importer or to the importing Party's customs authority directly. By providing information following the request during Step 1 of the verification process, the exporter may avoid being requested for the information by their own customs authority following a request for administrative cooperation as part of Step 2.

Step 2: Where the importing customs authority needs to further verify the Statement on origin or the originating status of the goods, they may request administrative cooperation from the customs authority in the exporting Party. The exporting Party's customs authority must conduct checks on the exporter's records and processes, which may involve visiting the exporter, and confirm the goods' eligibility to preferential tariff treatment in a written report back to the importing customs authority within 10 months of the request.

A request for administrative cooperation is only possible in case the claim for preferential tariff treatment is based on a Statement on origin.

For claims based on importers knowledge, verification consists of the following two steps:

Step 1: The importing Party's customs authority requests from the importer no more information than that supporting fulfilment of origin criteria, which is:

(i) "wholly obtained": the applicable category (such as harvesting, mining, fishing) and place of production

(ii) based on change in tariff classification: a list of all the non-originating materials including their tariff classification (in 2, 4 or 6-digit format, depending on the origin criterion in the list rules)

(iii) based on a value method: the value of the final product as well as the value of all the non-originating materials used in the production;

(iv) based on weight: the weight of the final product as well as the weight of the relevant non-originating materials used in the final product;

(v) based on a specific production process: a description of that specific process.

The importer must respond within 3 months and may add any other information that they consider relevant for the purpose of verification.

Step 2: Where importing Party's customs authority needs more information to determine the originating status of the product and following step 1, they may request the importer to provide additional information.

The importing Party's customs authority cannot request administrative cooperation from the exporting Party's customs authority as no Statement on origin has been raised by the exporter. Therefore, the importer must be able to demonstrate that the product is originating and qualifies for preferential tariff treatment.

This does not necessarily mean that all information shall be readily available in the records of the importer at the time the claim for preferential tariff treatment is made, but the importer must be able to supply the necessary information within time period (3 months under this agreement) of the request for additional information.

Denial of preferential tariff treatment

Under specific circumstances, a claim for preferential tariff treatment maybe denied by either Party's custom's authority.

A claim for preferential tariff treatment may be denied:

- if the importer does not provide information when requested
- where a request for verification is sent to the exporting customs authority and a reply is not received within 10 months or the report does not contain enough information to determine origin

Provided that it does not cause doubt as to the origin of the goods, a claim for preferential tariff treatment will not be rejected due to minor errors or discrepancies in the Statement on origin or for the sole reason that an invoice was issued in a non-Party country.

General provisions

The general provisions set out the general rules for determining the origin of products traded under the agreement. They need to be read alongside the Product-Specific Rule for a given product. General provisions cover the basic concepts of origin and how origin should be determined in specific instances, such as when a product has accessories or is part of a set, or how packaging and materials used in production should be treated.

While it is important that traders are familiar with all the general provisions from the text of the FTA, this annex explains some of the most important and more complex elements including, Cumulation of Origin, Wholly Obtained Products, Insufficient Production, Tolerance, and Accounting Segregation.

There are further provisions that are not covered in this annex; see the full TCA text for information on all the general provisions.

Cumulation of Origin

Relevant TCA Articles:

- *Article ORIG.4 Cumulation of Origin*
- *Article ORIG.7 Insufficient Production*

Cumulation is an important facilitation found in modern free trade agreements, which – at the most basic level – provides a system that allows **originating products from one party to be treated as if they are originating in another** when determining whether a good is able to meet a Product-Specific Rule.

For example, this means products or materials originating in the EU can be considered as originating in the Customs Union if those products are further processed in the Customs Union or incorporated into another product prior to re-export to the EU.

Under the TCA arrangements, exporters are not only able to cumulate originating materials or products, as set out above, but also **processing or production carried out on non-originating materials** (”full bilateral cumulation”). This means that **all operations carried out in the Customs Union or EU are taken into account** when determining whether a good is able to meet a Product-Specific Rule.

Full bilateral cumulation applies to both specific production processes (e.g. ’combing’ or ’making up’ in the manufacture of textiles products) and the value associated with such processing (e.g. in Product-Specific Rules with value-add requirements).

Cumulation and insufficient production

Importantly, whether seeking to cumulate originating materials or production carried out on non-irrigating materials, an **exporter may only apply cumulation where the working or processing carried out in their party has gone beyond the**

operations deemed 'insufficient' under the TCA's Insufficient Processing article.

Procedure for applying full Cumulation

Where an exported good has obtained its originating status through the application of full bilateral cumulation (e.g. where a Customs Union exporter has met a Product-Specific rule through counting production carried on non-originating materials in the EU), **the exporter of those goods must obtain a 'Supplier's declaration' from the supplier** of the non-originating materials.

This declaration **could either be in the form set out in Annex ORIG-3 [Supplier's declaration] of the TCA, or an equivalent document** that contains the same information, describing the non-originating materials concerned in sufficient detail for their identification.

Wholly obtained

Relevant TCA article:

- *Article ORIG.5 Wholly Obtained Products*

Wholly obtained products are products obtained entirely in the territory of a party without the addition of any non-originating materials.

Wholly obtained products automatically qualify for preferential treatment. These products are specified under the wholly obtained article, and traders should refer to Article ORIG.5 to understand stand which products are eligible for wholly obtained status.

Insufficient production

Relevant TCA articles:

- *Article ORIG.7 Insufficient Production;*
- *Article ORIG.4 Cumulation of origin*

The trade agreement includes a list of processes that, if carried out on non-originating materials, are considered such minor processing that they do not on their own confer originating status. Even if a product meets its product specific rule, if the only processing carried out on non-originating materials is listed as 'insufficient', that product will not obtain originating status.

Cumulation does not apply for these purposes, i.e. if the only processing carried out on a product in the Customs Union is insufficient, it will not meet the rules of origin even if the processing was carried out on EU-originating materials or if further processing (beyond insufficient) had previously been carried out in the EU.

The full list of processes which do not confer originating status for the purposes of the TCA is available in Article ORIG.7 Insufficient Production. Completion of one or any combination of the included processes is insufficient to confer originating status.

For example, ‘simple painting and polishing operations’ or ‘peeling, stoning and shelling, of fruits, nuts and vegetables’ are not considered to be significant manufacturing and as such do not confer originating status by themselves.

Interpretation of the term “simple”

Some of the listed operations can be clearly identified as insufficient operations, such as the affixing of a label on the product. However, there are also some operations that need to be assessed further as they contain the term “simple”, e.g. “simple assembly”.

Operations are considered “simple” if neither special skills nor machines, apparatus or equipment especially produced or installed are needed for carrying out those operations.

Tolerance

Relevant TCA articles:

- *Article ORIG.6 Tolerance*
- *ANNEX ORIG-2 [Product-specific rules of origin]*
- *ANNEX ORIG-1 Notes 7 and 8 [Textiles Tolerances in the Introductory Notes to Product Specific Rules of Origin]*

Tolerance is a relaxation of the rules of origin under certain conditions. It provides that, even if a product does not meet its PSR, it can nevertheless be originating if only a limited amount of non-originating materials are used in the production of that product.

Tolerance can only be applied to certain types of PSR.

- For example, tolerance can be applied when using a ‘Change in Tariff Heading’ rule – this rule typically prevents the use of non-originating material from within the same Tariff Heading (at 4-digit level) as the final product. Applying tolerance means a small amount of non-originating content of the same heading can be used and the product will be considered originating, as long as the total amount of non-originating material used in the product does not exceed the limits set out below.
- If a PSR requires the final product to be wholly obtained, or requires a value threshold to be met, then tolerance cannot be applied in addition. However, if a rule requires that materials used in the production of the final product must be wholly obtained, tolerance can apply to those materials (i.e. a small amount of those materials could be not wholly obtained).

The TCA allows a tolerance of 15% by weight of the final product for agri-food goods and 10% by value of the value the final product for manufactured goods (except clothing and textiles).

Textile and clothing products classified under HS50-63 are subject to specific tolerance thresholds, which are detailed in Notes 7 and 8 of Annex ORIG-1 [Introductory Notes to the Product-Specific Rules of Origin].

Accounting segregation

Relevant TCA article:

- *Article ORIG.14 Accounting Segregation*

Originating and non-originating fungible materials may be used in the production of a product without being physically separated during storage, if an accounting segregation method is used.

Fungible materials are materials that are of the same kind and commercial quality, with the same technical and physical characteristics, and which cannot be distinguished from one another for origin purposes.

An example of a fungible material is sugar. 'Originating' and non-originating sugar are fungible and as such can be stored together, and the volumes used in the production of a final product managed through accounting methods. This is particularly helpful if businesses need to keep their non-originating materials to a certain threshold.

Additionally, TCA allows fungible products of HS10, 15, 27, 28, 29, headings 3201 through 3207, and headings 3901 through 3914 to be stored in a Party before exportation without being physically separated if an accounting segregation method is used. Fungible products may be exported without any further processing, provided the stock of originating materials is sufficient to cover the quantity of product exported.

Custom Union manufacturers have to ensure that the amount of materials or product that is receiving originating status through accounting segregation does not exceed the amount that would receive originating status through physical segregation.

Accounting segregation involves applying an inventory management system which should:

- Verify compliance and ensure that no more materials receive originating status than would have if the materials were physically separated.
- Specify the quantity of originating and non-originating materials, including dates when they were purchased.
- Specify the quantity of products using fungible materials that are supplied to customers.

Product-Specific Rules

For every product traded under the FTA there is a corresponding product-specific rule (PSR) that must be met to demonstrate the product originates in the free trade area and qualifies for preferential tariff treatment. Each rule describes the nature or value of processing that must be carried out on any non-originating materials so that the final product meets the origin requirements. The rules agreed by the UK and the EU are set out in ANNEX ORIG-2 [Product-specific rules of Origin] of the TCA.

There are four types of rule that a product may be required to meet (on their own or in combination) in order to confer origin.

The types of rule are as follows:

- Wholly obtained
- Change of tariff code
- Value added/percentage rule; and
- Specified processes.

Traders should determine the correct tariff code for the exported product to find the relevant rule in the TCA product-specific rules list.

Once a product has gained originating status, it is considered 100% originating. This means that if that product is further used in the production of a further product, its full value is considered originating and no account is taken of non-originating materials within it.

Note that many product specific rules provide manufacturers with the choice of several different rules. It is the decision of the manufacturer to select which rule to apply to their exported product.

Wholly obtained requirement

If a product-specific rule of origin requires that a product is wholly obtained, the product must be made only from Customs Union or EU materials that are further processed.

Change in tariff classification (HS Code)

If a product-specific rule of origin requires a change from any other chapter **(2-digit** level of the Harmonized System), heading (**4-digit** level of the Harmonized System) or subheading (**6-digit** level of the Harmonized System), any non-non-originating material used in the production of the product must be classified in a chapter,

heading or subheading other than that of the final product. There are no limits on the amount of originating material businesses can use, regardless of their HS code.

To demonstrate the rule has been met, Traders will need to know the HS code of their exported product, all of its inputs, and the origin of the inputs.

Change of chapter (CC)

Any non-Customs Union or non-EU originating materials or components used in the product must be classified in a different HS chapter (**2-digit** HS code).

Change of tariff heading

Any non-Customs Union or non-EU originating materials or components used in the product must be classified in a different HS heading (**4-digit** HS code).

Change of tariff subheading

Any non-Customs Union or non-EU originating materials or components used in the product must be classified in a different HS subheading (**6-digit** HS code).

Manufacture from materials of any heading, including other materials of the same heading

If a product-specific rule of origin allows production from non-originating materials of any heading, the product can include non-originating materials of the same heading. This means that a change of heading does not need to take place. However, processing of non-originating materials does need to be more than insufficient.

Value and weight limit for non-originating materials

Under a value limitation rule, the value non-Customs Union or non-EU originating materials may not exceed a given percentage of the ex-works price of the product. Sometimes, the limit might apply only to the value of specific types of inputs to a product. If the use of an ingredient, material or component is limited by value, the rule concerning tolerance cannot be relied upon in addition to the threshold.

Note 4 of Annex ORIG-1 [Introductory Notes to Product Specific Rules of Origin] sets out the definition of ‘ex-works price’.

Specified operations

Specified operations are particular to certain specialised industries or products. Rules may include the re-treading of tyres to take place in the Customs Union for a tyre to be originating, or a chemical reaction to take place for chemical products. As well as the chemicals sector, such rules are common in textiles and clothing and may

specify that the weaving and cutting of fabric to make garments must take place in the free trade area for the product to be originating.

Combinations of several rules

Different product-specific rules can be combined to make a rule whereby all the listed conditions must be fulfilled.

Exclusions

A product-specific rule may include a restriction on certain materials and components being used in the production of a product.

Treatment of packaging materials

Packaging materials are generally not considered when determining the origin of your product. See Article ORIG.10 [Packaging materials and containers for retail sale] of the TCA.

There are limited exceptions, for example if a product specific rule limits a non-originating material by value of the final product or value tolerance is applied, the value of originating packaging materials can be taken into account when determining the value of the good.

Annex 2 – Statement on origin Text

The text of the Statement on origin (Annex ORIG 4 of the TCA) is reproduced below:

(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(4) [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 if the information is contained on the document itself.