Deloitte.

Global Trade Bureau – a guide on:

Rules of Origin

An introduction to the rules of origin

The key principle of Customs origin rules is to determine the economic nationality of a specified good. There are several mandatory legal or administrative requirements to observe when goods are traded on the international market. This is necessary for the implementation of various trade policy instruments such as imposing import duties, allocating quotas or for collecting trade statistics. Rules of origin are also necessary for the purposes of "*made in...*" labels that are attached to products. This is further complicated by the globalisation of supply chains and the way a product can be processed in several countries before it is ready for a commercial sale.

Non-preferential rules of origin

Non-preferential rules of origin are those which apply in the absence of any trade preference, that is, when trade is conducted on a most-favoured nation basis.

Non-preferential rules of origin are applied for certain types of trade policy measures, such as:

- tariff quotas;
- anti-dumping duties;
- quantitative restrictions;
- government procurement;
- trade statistics; or
- origin marking, i.e. "made in" labels that require a determination of origin and, therefore, the application of non-preferential rules.

Preferential rules of origin

Preferential rules of origin are applied when goods are eligible for preferential treatment upon importation (i.e. reduced or zero customs duty). To be eligible, the goods must meet agreed criteria to make sure that only originating goods benefit from this preferential treatment.

Agreements comprising preferential rules of origin can be in the form of reciprocal agreements (i.e. regional trade agreements or customs unions), in which case, the parties grant each other respective preferences i.e. the benefits enjoyed by one party are the same for the other. However, they can also be autonomous arrangements with tariff preferences granted only by the importing country without reciprocity (i.e. preferences in favour of developing countries or LDCs, such as the Generalised System of Preferences).

There are several methods and criteria for determining the origin of a product. Goods naturally occurring in a country are deemed originating as "wholly produced", while processed goods have to undergo a substantial transformation to be originating. The substantial transformation criterion is universally recognised and can be described as a change of tariff classification, a specific value addition or specific manufacturing or processing operations.

Rules of Origin with the Trade and Cooperation Agreement

The EU-UK Trade and Cooperation Agreement (TCA) came into provisional effect on 1 January 2021 and provides for zero tariffs and zero quotas on the movement of goods between the UK and the EU, whereby the products comply with the appropriate rules of origin. If so, a preferential rate of duty can be claimed.

To claim preferential rates of duty under the EU-UK TCA, goods will have to be of UK or EU origin (as the exporting country). In order to be considered originating in either the UK or the EU, the products must be:

- wholly obtained in the UK or EU (please see Appendix A for what constitutes a wholly obtained product);
- produced in either the UK and the EU exclusively from originating materials; or

- produced in either the UK or the EU incorporating non-originating materials, provided they satisfy the

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 EU-UK TCA and as a result may be subject to the standard 'Most Favoured Nation' ("MFN") tariffs that the EU and UK apply to imports. For exports to the EU, this will be their Common External Tariff. For imports to the UK, this will be the UK Global Tariff ("UKGT"). For some goods, these MFN tariffs may be low or zero, but for many other goods they can be much higher.

Supply chain specific flows

Supply Chain 1: EU origin goods, exported from EU free circulation into the UK

As the goods are of EU origin and are being exported from EU free circulation, they can be imported into the UK subject to the terms of the TCA as per Article ORIG.3.

Resultingly the goods can be declared as a preferential consignment and therefore Customs duty will not be due on introduction.

Supply Chain 2: Finished Chinese Origin goods, exported from China to the EU, then subsequently exported to the UK

When goods are exported from a territory that has no preferential agreement with the EU; such as China, customs duty is payable upon entry into the EU in the event that the respective commodity attracts a positive rate of duty.

The subsequent movement of these goods from the EU into the UK now triggers a second duty point as a result of the UK leaving the EU Customs Union. This is because the goods do not satisfy the general requirements set out in Article ORIG.3 of the agreement which requires that a party can only apply a preferential tariff on goods which are exported from and originate in the other party.

It is possible to mitigate these duty points by importing the goods into a Customs Warehouse in the EU, as the payment of duty and import VAT would be suspended upon physical introduction into the EU territory. Given the goods are then discharged from the Customs Warehouse via an export the Customs duty and import VAT will never become due in the EU (provided the operation of the warehouse is compliant with the authorisation and carried out correctly). The use of a Customs Warehouse therefore provides the opportunity for a supply chain such as the above continues to be a 'single-duty-point supply chain' as it was prior to 1 January 2021.

Supply Chain 3: Finished EU origin goods, exported from the EU into the UK and then returned to the EU

As per Supply Chain 1 the TCA allows for the first movement of finished goods which attain EU origin to be exported from the EU to the UK and imported subject to tariff preference.

The second movement however does not satisfy the general requirements of Article ORIG.3 as the goods do not originate in the party of export. As a result, the finished goods which have an EU customs origin cannot move back into the EU subject to preferential duty.

Entering the goods into a customs warehouse in the UK would not be an appropriate action in order to retain the EU preferential status of the goods when outside of the EU customs territory the goods as preferential status is lost once the export declaration is lodged in the EU.

The European Commission recently issued some guidance about the use of 'distribution centres' which confirmed this position.

That said, there is the opportunity to import finished goods that were manufactured in the EU and once in EU free circulation by applying Returned Goods Relief (RGR) at the point of re-introduction into the EU. This is provided for in Article ORIG.15.

To enable a successful claim to RGR the EU importer must be able to prove that the goods subject to re-import were in EU free circulation no longer than 3 years before the date of re-introduction and that the goods have not been altered in any way while outside of the EU.

The importer must be able to provide evidence to substantiate a claim to RGR, evidence can be in the form of:

- The Original export documents
- A Returned goods information sheet (INF3)
- Alternate evidence i.e. transport documentation, commercial documentation

Supply Chain 4 – Intermediate EU origin goods, exported to the UK for further processing and then returned to the EU

Again, the first movement in this supply chain meets the general requirements of Article ORIG.3 and therefore would qualify for preferential treatment under the terms of the TCA.

In regard to the second movement, further processing takes place in the UK, the impact of this processing on the origin of the goods could be as follows:

i. If the raw/intermediate goods used in the production process are of EU or UK origin, then Cumulation enables the origin to be determined at this point and therefore, the Product Specific

   Rule of origin would be disregarded. The goods would be deemed to originate in the UK as long as the processing operation is deemed sufficient. While there is no definition of sufficient processing in the TCA, Article ORIG.7 does set out operations that are considered to be 'Insufficient Production'.

ii. If the raw/intermediate EU goods are added into a production process in the UK with goods of non-UK/EU origin then the final product will need to meet the Product Specific Rule of origin set out in Annex ORIG.2 of the TCA.

In the event that the intermediate goods imported into the UK adhere to either fact pattern set out above they would be deemed to originate in the UK subject to Article ORIG.3 of the TCA and therefore would qualify for preferential treatment upon re-introduction into the EU.

Supply Chain 5 – Japan / South Korean origin goods, exported from Japan / South Korea to the UK and then exported to the EU

If the goods originate in a non-party such as Japan or Korea that has a Free Trade Agreement with the UK then those goods may be imported into that territory subject to no import duty if the terms of that respective agreement are met and evidenced according to the specific regulations.

However, once the goods enter UK free circulation, the principle of territoriality states that it has 'lost' its preferential origin for subsequent movements, therefore the second movement of the goods would be dutiable regardless of the fact that it has a non-preferential origin of a country whom has a FTA with the importing territory (i.e. Japanese origin goods being imported into the EU from a non-party to the EU-Japan Economic Partnership Agreement (UK)).

In some circumstances, where the FTA has a non-manipulation clause this can potentially be mitigated through the use of a Customs Warehouse. The non-manipulation clause allows goods that originate in a preference giving country to be stored in a non-party subject to the goods remaining under Customs supervision at all times. This is the case in the EU-Japan FTA.

Conversely, there are other FTA's which have a direct transport clause within them which requires goods to move under a single transport document from the preference giving country to the territory of export. This clause exists in the EU-Korea FTA, and therefore any transport that results in the goods entering the UK, be it a Customs Warehouse to Free Circulation would break the Direct Transport regulation and deem the goods dutiable consignments upon entry into the EU.