

BRIEFING PAPER

Customs Duties – the importance of preferential origin in the context of the UK and EU ‘Trade and Cooperation agreement’

The United Kingdom agreed a trade and cooperation agreement with the European Union, effective from 11pm on 31 December 2020. Under the trade and cooperation agreement, EU preferential origin goods can be imported into the UK as can UK preferential origin goods be imported into the EU without customs duty being due. The preferential rate of duty could provide a cost saving over standard duty rates under the UK Global Tariff. Preferential ‘origin’ of the goods is key to demonstrating if the preferential duty rate can be claimed. This briefing note focusses on the importance of preferential origin in the context of the United Kingdom and European Union trade and cooperation agreement.

What’s the issue?

Importers will need to make sure that origin can be suitably evidenced to claim preferential rates of duty under the UK and EU ‘trade and cooperation agreement’ (“TCA”), or for any other agreements. Origin defines where goods are either wholly produced or sufficiently transformed. Once origin is evidenced, relevant preferential duty rates can be claimed to provide a cost saving over standard tariff rates.

The current position

From 11pm on 31 December 2020, the United Kingdom left the customs union of the European Union.

The United Kingdom and European Union have signed a TCA effective from 11pm on 31 December 2020. Under the TCA, EU preferential origin goods can be imported into the UK with no UK customs duties applied. Likewise, UK preferential origin goods can be imported into the EU with no EU customs duties applied. This will offer a cost saving for many imports, where the rate of duty would otherwise not be nil. UK rates for customs duties are set within the UK Global Tariff and apply to all imports to the UK (unless a preference is claimed).

Further consideration is required if a supply chain involves Northern Ireland.

Trade preferences and free trade agreements

Free trade agreements allow goods to be imported at a lower or nil rate of duty, by applying preferential tariffs or ‘preferences’ to goods originating from certain countries known as ‘preference countries’. Goods may also benefit from reduced tariffs when originating in certain developing countries that benefit from the “Generalised Scheme of Preferences”.

The UK and EU TCA applies a zero rate of duty to products that are of qualifying preferential origin.

Where tariffs are zero under UKGT (e.g. household refrigerators – 84182151), preferences offer no further benefit. The biggest potential savings under preference will occur where higher standard duty rates apply.

The United Kingdom continues to negotiate trade agreements with other trading countries and regions across the world, however the terms of each trade agreement would likely vary.



Origin

There are two distinctive concepts with origin: non-preferential and preferential origin.

Non-preferential origin is used with reference to anti-dumping measures and for statistical purposes.

Preferential origin under the UK and EU TCA offers the ability to qualify for nil duty rates. The UK and EU TCA has no quota limit for the amount of preference that can be claimed.

Determining the origin of goods is key to benefiting from preferential duty rates under any free trade agreement, including the UK and EU TCA.

Determining origin

Origin is usually where the last significant processing was undertaken not where the goods were last shipped from. Origin is usually where goods are wholly produced or significantly processed.

The first step to determining origin is to understand if the processing taken place in the country where a preference is claimed which should be more than 'minimal processing'. Minimal processing may include operations such as mixing, labelling, screening, diluting, peeling or assembly, and as such these processes are unlikely to confer origin onto the product. If only minimal processing is taking place or the goods are not wholly obtained, the preferential origin cannot be conferred.

Provided that more than a minimal process is taking place, the relevant rule under the TCA should be followed for the commodity code of the product being traded. Some sectors including for example electric cars, textiles and textile articles have product specific origin rules in the TCA that must be followed. Otherwise, the commodity code will state the origin rule that should be applied, and where more than one rule is offered, an importer can choose the rule to apply.

Three different rules are likely to apply (depending on the commodity code) which may include whether;

- The goods are wholly produced – this is where the goods are typically grown, mined or reared.
- There is a change of tariff heading (first four digits of the commodity code) or tariff sub-heading (first six digits of the commodity code) to a different heading / sub-heading from non-originating constituent materials as a result of the sufficient transformation.
- The value of non-originating material is less than a certain percentage. Cumulation is used to understand which material can be included in this percentage calculation.

Bilateral cumulation has been agreed in the TCA. This allows material originating in the UK or EU to be included within the percentage calculation to establish preferential origin.

Consideration of the specific rules related to each commodity code is key to ensuring compliance. Whilst this briefing note focusses on the TCA between the UK and EU, these concepts may be included in other free trade agreements. Trade under each relevant agreement must be considered.

An example of origin

To illustrate the importance of origin, we consider a fictitious example, based on applying the TCA.

A UK ceramics manufacturer is making a new teacup with matching teaspoon. Components are imported into the UK from both the EU and outside of the EU.

Under the commodity code, the relevant rule is the change of tariff heading basis. For the commodity code, to confer origin all of the materials must have a different heading compared to that of the finished teacup. The EU components under the TCA in this example do not have to change heading for the purpose of the calculation as in the calculation the EU components can be considered as UK originating.

Protecting preferential origin

Careful consideration is needed to protect 'preferential origin'. For example, after goods are exported from the EU, and entered UK free circulation (with the goods being ultimately re-exported to the EU), the goods have lost EU preferential origin status once they initially left the EU. Consideration should be given to the following;

- Protecting EU origin status by using relevant customs procedures.
- Undertaking significant processes to confer UK preference origin status.

This would be especially relevant if the goods are then re-destined for the EU.

Where goods do not have a preferential UK status, when they enter the EU, the goods will be subject to the EU Common External Tariff. When goods enter the UK, which do not have any preferential status, the goods are subject to the UK Global Tariff.

The UK Government continues to negotiate trade agreements with countries across the world, and the position should be regularly reviewed.

Evidencing origin

Evidence of origin is needed to claim preference under the UK and EU TCA.

In certain circumstances, an importer can use a 'statement of origin,' made out by the exporter. The statement should be placed on an invoice or other commercial document and confers that the goods are of a specific origin. Specific

text should be used for the origin statement. The document (typically an invoice or other commercial document) must also have sufficient description in detail to enable the identification of the product.

The statement of origin must contain an exporters reference number. For UK issued statements on origin, a UK EORI number should be stated as the exporters reference number. For EU issued statements on origin, a Registered Exporter Number (REX number) should be stated as the exporters reference number.

A long-term supplier declaration (“LTSD”) should be obtained to evidence the origin of goods. A LTSD is valid for shipments over a prescribed period and covers all the goods mentioned on the suppliers declaration within the specific period.

Claiming the preferential rate of duty under the UK and EU TCA agreement should be through the customs declaration. The responsibility for a correct declaration is that of the importer.

Advanced Origin rulings

An advanced origin ruling (formerly known as a Binding Origin Information ruling) will provide an importer with certainty of the origin of goods. These rulings can be helpful where it is difficult to confer origin, or the value of goods makes a ruling commercially attractive. Rulings remain valid for three years from the date of issue.

Other considerations

Whilst the responsibility of claiming preference is that of the importer, the whole supply chain has a role to play in assisting with the determination of origin as this has a direct impact on the cost of imported goods. Origin should not, however, be viewed in isolation, other factors needing consideration include classification, valuation, compliance, and customs procedures.

Grant Thornton

Grant Thornton has a national team of VAT and Customs specialists. We have a wealth of experience advising on cross-border trade, international transactions, and supply chains.

Following the end of the transitional period on 31 December 2020, the United Kingdom’s future trading relationship with the European Union is heavily dependent on the TCA. Businesses should understand their obligations under the agreement, to ensure cost savings and that relevant procedural steps are followed.

Businesses should also upskill their staff, including those completing customs declarations and the wider finance team. Grant Thornton can assist with training to assist with customs compliance and to maximise customs opportunities.

If you wish to discuss any aspect of these briefing, please contact your usual Grant Thornton advisor.

Any questions? Get in touch



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