



BREXIT: Rules of Origin

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Introduction

Under the terms of the Agreement, where goods qualify as originating in the UK or EU, no customs duty will arise on import into either territory. This is known as the Rules of Origin and they are an intrinsic component of every free trade area. If the goods do not qualify as originating in the UK or EU, trade under World Trade Organisation rules will apply, which means tariffs will apply.

Rules of origin determine the 'economic nationality' of products when such products have been produced using materials or components in more than one country.

Rules of Origin

As part of the Brexit withdrawal agreement, an exemption from customs duty for goods which originate in either the UK or EU was agreed to minimise the restrictions and costs of trading between the UK and EU countries. These rules of origin are set out in the following paragraphs.

To qualify under the Rules of Origin and ensure that products benefit under the terms of the free trade agreement (zero tariffs and zero quotas), goods must be either wholly obtained from or manufactured in in the EU or UK or be substantially transformed/processed in the EU or UK, in line with the specific origin rules that apply to the product being exported. There is a limit set on the value of non-originating materials that can be used in order to benefit from the Agreement.

It is important to clarify that “origin” does not mean where the goods have been shipped from but rather where they have been produced or manufactured. For example, if a British clothing retailer imports textiles from China and then ships the textiles straight to the EU, tariffs would be due on that import into the EU as the textiles were not substantially transformed in GB. The import is not regarded as being from GB, rather from China.

Proving Origin

In order to benefit from no customs duties applying, the importer must declare that they hold proof that the goods comply with the Rules of Origin. A commercial invoice detailing same or other commercial documents that describe the goods should suffice. Otherwise, a self-declaration can be done. For example, in Ireland, where consignments exceed €6,000, EU exporters will need to be authorised by Revenue's Registered Exporters system (REX) to provide this export statement of origin.

Non-preferential origin

Non-preferential rules of origin are used to determine the country of origin of goods for the application of the most-favoured nation treatment (MFN) but also for the implementation of a number of commercial policy measures such as anti-dumping and countervailing duties, trade embargoes, safeguard measures and quantitative restrictions or tariff quotas. They are also used for trade statistics, public tenders and origin marking. The EU applies its own set of non-preferential rules of origin provisions, which may be different from those of any other third country.

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General aspects of non-preferential origin

There are two basic concepts to determine the origin of goods namely wholly obtained products and products having undergone a last substantial transformation. If only one country is involved in producing a good the wholly obtained concept will be applied.

In practice this will mostly be restricted to products obtained in their natural state and products derived from wholly obtained products. If two or more countries are involved in the production of goods, the concept of last, substantial transformation determines the origin of the goods.

Determination of non-preferential origin

- **Products wholly obtained in a single country**

When only one country is involved in the manufacture of a product, Article 60(1) UCC applies. This article provides that “goods wholly obtained in a single country or territory shall be regarded as having their origin in that country or territory”. Article 31 UCC-DA specifies the notion of “goods wholly obtained”. It enumerates an exhaustive list of goods which shall be considered as wholly obtained in a single country or territory.

- **Two or more countries are involved in the manufacture of the product**

When two or more countries are involved in the manufacture of the product, Article 60(2) UCC applies. This Article provides that “goods the production of which involves more than one country or territory shall be deemed to originate in the country or territory where they underwent their last, substantial, economically justified processing or working, in an undertaking equipped for that purpose, resulting in the manufacture of a new product or representing an important stage of manufacture”.

A distinction should be made between products which are included in Annex 22-01 UCC-DA and those which are not included there.

However, some provisions apply to all products, whether or not included in Annex 22.01 UCC-DA:

- Certain working or processes never confer non-preferential origin on a product obtained, even when the rule is fulfilled. These are known as minimal operations (Art.34 UCC-DA).
- Where the purpose of the processing or working operation carried out in another country or territory is to avoid the application of certain tariff measures, that operation shall be deemed not to be economically justified. In such circumstances, the country of origin is determined by application of the “residual rules” (Art. 33 UCC-DA).

- **Determination of origin for products which are included in the Annex 22-01 UCC-DA**

For particular goods, legally binding rules have been laid down in Annex 22-01 UCC-DA in order to determine the criteria to be fulfilled and/or the operations to be carried out on the product in the last country of production to confer non-preferential origin on the product.

The rules in the annex must be read in combination with the introductory notes describing how to apply the rules of Annex 22-01 UCC-DA which provides some clarifications on the use of Annex 22-01 UCC-DA). The list rules applicable to products covered by specific provisions in Annex 22-01 are represented in a highlighted manner in the table of "list rules".

When the list rule is not fulfilled in the last country of production, the country of origin is determined by application of the "residual rules" laid down at the beginning of each Chapter.

The provisions of Annex 22-01 (including its introductory notes) only apply to goods specifically listed at least 4 HS digit level in this Annex .

- **Determination of origin for products not included in the Annex 22-01 UCC-DA**

For goods not listed in Annex 22-01 UCC-DA the origin is determined on a case-by-case basis by evaluating any process or operation in relation to the concept of the last substantial processing or working as defined in Article 60(2) of the UCC. No legally binding rules exist for those products. In an effort to increase the harmonised interpretation of the basic principle of 'last substantial transformation' for goods not listed in Annex 22-01 UCC-DA, specific non-legally binding guidance for those products has been elaborated.

In this respect, the definitions and the rules of the introductory notes to the table of list rules apply, equally in a non binding way. The guidance for those products is added to the table of list rules in a non highlighted manner.

The application of the non-legally binding rule may not contradict the principle established in Article 60(2) UCC. When the list rule is not fulfilled in the last country of production, the country of origin is determined by application of the "residual rules" laid down at the beginning of each Chapter.

Checking the declared origin and proof of origin

The non-preferential origin of the goods is a mandatory element of the declaration for release for free circulation.

The declarant is responsible for the correct origin determination and should hold the information on the processing that has taken place in the last country of production of the goods declared for release for free circulation in the EU.

Proof of origin is all evidence submitted to support the declared origin. Customs authorities should not request a non-preferential certificate of origin issued in a third country as a proof of the origin. The only exception is a certificate of origin for products subject to special non-preferential import arrangements as referred to in Articles 57-59 UCC-IA and laid down in Annex 22-14- UCC-IA, where this is specifically requested in the legislation for example to benefit from a certain quota.

Preferential Origin

Preferential rules of origin determine whether goods qualify as originating from certain countries, for which special arrangements and agreements apply. Where all the requirements are met, goods with preferential origin are eligible to be imported with lower duty rates or at zero rate, depending on the preferential tariff treatment provided for.

General aspects of preferential origin

- **Introduction**

Preferential origin is conferred on goods from particular countries, which have fulfilled certain criteria allowing preferential rates of duty to be claimed.

- **Common provisions**

While the provisions of the individual arrangements may vary in certain details, most preferential origin arrangements have a number of common provisions.

- **Legal framework(s) for preferential origin**

Each individual arrangement has its own legal base.

- **List Rules**

List of working or processing required to be carried out on non-originating materials in order that the product manufactured can obtain originating status.

- **New developments**

Introduction to the Commission communication on the future of rules of origin in preferential trade arrangements and its follow-up.

- **Arrangements list**

This list contains useful links to the various arrangements, their relevant origin provisions and provisions on cumulation.

- **Generalised System of Preferences**

Facility granted unilaterally to developing countries including the 'Everything but arms initiative' for Least Developed Countries.

- **The system of Pan-Euro-Mediterranean cumulation and the pan-Euro-MED Convention**

The system of Pan-Euro-Med cumulation of origin allows for the application of diagonal cumulation between its contracting parties. It is based on a network of Free Trade Agreements having identical origin protocols.

Those origin protocols are being replaced by a reference to the Regional Convention on pan-Euro-Mediterranean preferential rules of origin (PEM Convention). A single Convention will facilitate the on-going revision of the PEM rules of origin aiming at modernising and simplifying them.

- **The Countries of Africa, the Caribbean and the Pacific (ACP)**

Trade preferences available to the African, Caribbean and Pacific States having concluded WTO-compatible agreements with the EU.

- **The Overseas Countries and Territories (OCT)**

The EUC grants unilateral trade preferences to the OCTs. These are constitutionally linked to four of the Member States (Denmark, France, the Netherlands and the United Kingdom).

- **South Africa**

The bilateral Trade Development and Co-operation Agreement establishes a free trade area between the EUC and South Africa.

- **Latin America**

Agreements with Mexico and Chile.

- **Ceuta and Melilla**

This page summarises the specific provisions that apply in trade between the EU and Ceuta and Melilla as well as between Ceuta and Melilla and other countries having free trade agreements with the EU.

- **Canada**

Binding origin information

BOIs are decisions by the competent authorities, which are binding on the holder and on the customs authorities in all Member States in respect of goods imported or exported after their issue, provided the goods and the circumstances determining the acquisition of origin are identical in every respect to what is described in the BOI.

The BOI decisions are normally valid for three years from the date of issue. It is to be noted that the holder of a BOI is not exempted from presenting the necessary proof of origin in order to be granted a preferential duty rate. In the international context BOI decisions are referred to as advance rulings on origin.


A list of BOI decisions issued by the competent authorities, indicating the publicly available details is updated on a regular basis.

If you have any further queries on Rules of Origin, please contact Darren Crilly at our Dundalk office.

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