

Rules of Origin for Chemical Chapters 28 to 40 in context of the EU-UK negotiations

Following the UK's departure from the European Union on 31st January 2020 and the transition period, both sides are now negotiating a future trade relationship. A priority in these negotiations is the conclusion of a trade agreement that will be the core of the future economic relationship.

Rules of Origin is a key issue for the chemical industry that should be addressed during the negotiations.

Rules of origin for chemical products should be as flexible and simple as possible, along the lines of the RoO agreed in the trade agreements with Japan and Mercosur.

Please find below the proposed approach for the RoO for Chemical Chapters in the context of the EU-UK negotiations :

Change of tariff sub-heading (CTSH) as the most widely accepted method to confer origin for Chapters 28-40: One of the methods for determining origin should be the rule of Change in Tariff Classification (Tariff Shift) on a heading (4-digit HS Code) or sub-heading level (6-digit HS Code). For Chapter 30 as in some important headings the CTSH criterion does not work, the rule should be “manufacture¹ from any heading.”

De Minimis Clause: Goods that do not undergo a change in tariff classification are nonetheless originating goods if the value of all non-originating materials that have been used in the production of the good, and do not undergo the applicable change in tariff classification, does not exceed 15% of the adjusted value of the good.

If companies are unable to qualify their product through the tariff shift rule, then the rules below (non-hierarchical order) may be considered as origin conferring processes.

Added-Value Rule:

Added-value criteria can be calculated with one of the following options:

- Value of all the non-originating materials used does not exceed 60% of the ex-works price of the product²; or
- Net Cost³ where the value of all non-original material does not exceed 70%; or
- Transaction value (CIF or FOB) of the imported goods or of identical or similar imported goods⁴ for the purpose of origin calculation. The value of all the non-originating materials used does not exceed 60%.

¹ “Manufacture” means any kind of working or processing, including assembly or specific operations that results in a new and different article of commerce.

² Ex-Works (EXW) as defined by Incoterms® 2010

³ Net cost: The net cost is the cost to produce a good. It excludes sales promotion costs, marketing and after-sales service costs, royalties, shipping and packing costs and non-allowable interest costs. Similarly to the transaction value method, the difference between the net cost of a good and the value of its non-originating materials is calculated as a percentage of the net cost in order to yield the good's regional value content.

⁴ The transaction value is the amount paid for the good adjusted to an FOB (Free On Board) basis

Chemical Reaction: A “chemical reaction” is a process (including a biochemical process) which results in a molecule with a new structure by breaking intramolecular bonds and by forming new intramolecular bonds, or by altering the spatial arrangement of atoms in a molecule.

The following processes should not be considered for purposes of origin:

- (a) dissolving in water or other solvents;
- (b) the elimination of solvents including solvent water; or
- (c) the addition or elimination of water of crystallization.

A chemical reaction as defined above is to be considered as origin conferring.

Mixtures and Blends: The deliberate and proportionally controlled mixing or blending (including dispersing) of materials, other than the addition of diluents, to conform to predetermined specifications which results in the production of a good having physical or chemical characteristics which are relevant to the purposes or uses of the good and are different from the input materials is to be considered to be as origin conferring.

Purification: Purification is to be considered as origin conferring provided that purification occurs in the territory of one or both of the Parties results in one of the following criteria being satisfied:

- (a) purification of a good resulting in the elimination of 80 percent of the content of existing impurities; or
- (b) the reduction or elimination of impurities resulting in a good suitable for one or more of the following applications:
 - (i) pharmaceutical, medical, cosmetic, veterinary or food grade substances;
 - (ii) chemical products and reagents for analytical, diagnostic or laboratory uses;
 - (iii) elements and components for use in micro-electronics;
 - (iv) specialized optical uses;
 - (v) biotechnical use (e.g., in cell culturing, in genetic technology, or as a catalyst);
 - (vi) carriers used in a separation process; or
 - (vii) nuclear grade uses.

Change in Particle Size: The deliberate and controlled modification in particle size of a good, other than by merely crushing or pressing, resulting in a good having a defined particle size, defined particle size distribution or defined surface area, which is relevant to the purposes of the resulting good and having different physical or chemical characteristics from the input materials is to be considered as origin conferring.

Standard Materials: Standard materials (including standard solutions) are preparations suitable for analytical, calibrating or referencing uses having precise degrees of purity or proportions which are certified by the manufacturer. The production of standard materials is to be considered as origin conferring.

Isomer Separation: The isolation or separation of isomers from a mixture of isomers is to be considered as origin conferring.

Biotechnological Processes:

- (a) Biological or biotechnological culturing, hybridization or genetic modification of:
 - (i) micro-organisms (bacteria, viruses (including phages) etc.) or
 - (ii) human, animal or plant cells; and
- (b) Production, isolation or purification of cellular or intercellular structures (such as isolated genes, gene fragments and plasmids) are to be considered as origin conferring;
- (c) Products shall be as originating if:
 - (i) products of Chapter 30 are obtained by using cell cultures;
 - (ii) products are obtained by fermentation.

Minimal Operations or Processes not Sufficient to Confer Origin: Below minimal operations and/or processes which are not sufficient to confer origin are the following. Note that these operations are a combination of rules already enforced by EU or UK:

- a) unloading, reloading or any other operation necessary to maintain the good in good condition during transport and storage
- b) application of preservative or decorative coatings, including lubricants, protective encapsulation, preservative or decorative paint, or metallic coatings and polishing operations
- c) washing, Cleaning, including removal of rust, dust, grease, paint, or other coatings;
- d) mere dilution with water or another substance that does not materially alter the characteristics of the good; simple mixing of products, whether or not of different kinds
- e) trimming, filing, sharpening, simple grinding, simple cutting
- f) testing, sorting, or grading; sifting, screening, classifying, matching (including the making-up of sets of articles); marking, affixing or printing marks, labels, logos and other like distinguishing signs on products or their packaging
- g) simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations; breaking-up and assembly of packages
- h) simple assembly of parts of articles to constitute a complete article or disassembly of products into parts

Verification of origin: For an industry driven by innovation, the protection of intellectual property rights and the protection of confidential business information has the highest priority.

Therefore, the verification of origin shall be carried out by the customs authorities or the competent governmental authority of the exporting Party only. Through administrative cooperation the exporting party communicates the verification results providing only a statement if the goods are originating or not as well as a brief and general justification. Under no circumstances should the exporting party exchange the following sensitive data with the importing party: Description of manufacturing processes, list or descriptions of the raw materials used in production, value or weight of the raw materials, information about the raw materials suppliers etc.

The new model, introduced in the EU-Japan EPA, is not acceptable, because it put at stake the protection of confidential business information:

The list of information elements in § 2 of art. 3.21 of the EU-Japan EPA can be requested from importers especially if they have claimed for preference under the Importer's knowledge process.

If the importer does not have the answers to these questions, or does not have the ability to provide them under the internal organization of the company, the proofs of preferential origin are on the exporter's side.

Besides the issue of confidentiality, the new model generates also a high additional administrative burden and cost to provide such information to a foreign customs office, which may prevent the exporter to use the benefit of the EPA.

In addition, the scheme of verification of preferential origin by the authority of the importing country leads the exporter to face many authorities instead of having one single customs point of contact.

Country of Origin Marking: Whether marking is optional or imposed by the regulation of the importing country, these above rules of origin have the preference to any other rule relating to the establishment of the country of origin.

Records Retention: The UK and EU agree to fix the time period for records retention in the agreement to five years from the date of entry in the customs territory (import declaration date).

Duty Drawback: Duty drawback and duty deferral rights should be permitted.

EU-UK Joint Customs Cooperation Working Group: CIA and Cefic call for the establishment of a working group on rules of origin to ensure both UK and EU customs offices are implementing and reinforcing common practices on rules of origin and to enhance transatlantic customs cooperation.