

EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION AND DOCUMENTS

2020/2163

L 431/55

COMMISSION IMPLEMENTING REGULATION (EU) 2020/2163 of 18 December 2020 on the implementation in the United Kingdom in respect of Northern Ireland of the rules of origin laid down in Union preferential trade arrangements

Submitted by Department for International Trade on

13/01/2021

SUBJECT MATTER

1. On 18th December 2020 the European Commission published a regulation that reaffirms the rules of origin required for EU trade partners to obtain EU preferential rates for their imports into Northern Ireland.
2. The regulation follows the decisions agreed by the UK and the EU in the Withdrawal Agreement Joint Committee (WAJC) establishing the criteria for considering that a good brought into Northern Ireland from outside the European Union (EU) is not at risk of subsequently being moved into the EU. This regulation clarifies the way rules of origin laid down in Union preferential trade arrangements will be applied to establish preferential origin of goods in Northern Ireland
3. In order to qualify for the preferential rates that the EU provides either unilaterally or in its bilateral free trade agreements (FTAs) the goods for which a trader is applying for that preferential rate must meet the relevant rules of origin. For unilateral preferences (e.g. Generalised Scheme of Preferences) this is set out by the European Commission. For bilateral preferences, including those with another economic community such as the South African Development Community, the rules of origin are described in the FTA.
4. This regulation sets out that the procedures for meeting the rules of origin in order to obtain EU preferences in Northern Ireland remain the same as in the EU. When importing into Northern Ireland the proofs of origin must indicate that they are for 'the United Kingdom in respect of Northern Ireland'.

OFFICIAL SENSITIVE

5. EU preferential tariff measures will not be granted in the United Kingdom in respect of Northern Ireland unless the third countries benefiting from the preferential tariff measures have undertaken measures to ensure compliance. The Commission will publish on its website the date on which an EU partner country is considered to have taken the measures necessary to ensure compliance with regards to rules of origin, so enabling traders to use the preferences in that partner's agreement. Preferences may, however, be suspended where there is failure of compliance on rules of origin. In such cases the EU will publish a notice in the Official Journal of the European Union. The UK is to communicate to the Commission all relevant information such as fraud, irregularities or failures to comply with rules of origin to enable the EU to suspend preferences under its preferential trade arrangements.
6. In addition, this regulation also mandates that Northern Ireland will not be considered a part of EU territory for goods moving from Northern Ireland to EU FTA partners. This means that while goods from Northern Ireland may be in free circulation within the EU customs territory, Northern Ireland goods will not be able to take advantage of cumulation with EU goods when being exported to EU FTA partners. Instead, Northern Irish goods will be able to take advantage of the UK's FTAs that have been agreed, such as the UK-Japan Comprehensive Economic Partnership Agreement, as well the future trade agreements the UK is in the process of negotiating.

SCRUTINY HISTORY

7. The Union Customs Code Regulation 952/2013 was subject to scrutiny as: 6784/12, COM(12)64: Proposal for a Regulation of the European Parliament and of the Council laying down the Union Customs Code which was provided to Parliament in an EM by HMRC dated 7 March 2012. The Commons European Scrutiny Committee reported on three occasions that the proposal raised issues of political importance (reports 64, 10-12, 35, 12/13 & 21, 13/14). Scrutiny was completed on 30 October 2013. The Lords EU Committee sifted it for examination to the Financial Affairs sub-committee (sift 1460) and scrutiny was completed following an exchange of correspondence with Ministers and the provision for further information to the committee on 14 May 2012.

MINISTERIAL RESPONSIBILITY

8. The Secretary of State for International Trade has primary responsibility for trade policy matters including negotiations on rules of origin. The Minister for the Cabinet Office has overall oversight of the devolution consequences of EU exit and leads on oversight of the Protocol. The Chancellor of the Exchequer has an interest through the implementation of rules of origin by HM Revenue and Customs. The Secretary of State for Environment, Food

and Rural Affairs has an interest in agricultural imports. The Secretary of State for Foreign, Commonwealth and Development Affairs and the Secretary of State for Business, Energy and Industrial Strategy have an interest from foreign and development, and business perspectives respectively. The Financial Secretary to the Treasury also has an interest given his responsibility for tariffs, trade, and customs policy.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

9. International Trade policy is an area of reserved competence for the UK government. The proposal does not cover any area subject to the common framework. However, as it relates directly to the flow of goods into, and out from, Northern Ireland the Northern Ireland Executive will have an interest in the regulation. The Northern Ireland Executive, in conjunction with the Welsh and Scottish devolved administrations, has therefore been consulted in the preparation of this EM.

LEGAL AND PROCEDURAL ISSUES

10.i. Legal basis

Treaty on the Functioning of the European Union and Regulation (EU) no. 952/2013 of the European Parliament and of the Council of 9 October 2013.

ii. Voting procedure

There was no vote on the regulation.

iii. Timetable for adoption and implementation (or expected next steps for non-legislative documents)

This regulation entered into force on the 19th December 2020 and applied from the 1st January 2021.

iv. Does the proposal affect the substance of EU law that will remain in effect under the Northern Ireland Protocol or is it likely to be the subject of a request by the EU to be added to the Protocol under Article 13(4) thereof?

The Northern Ireland Protocol provides that limited areas of EU law as referenced in the Protocol and its Annexes will continue to apply to and in the UK in respect of Northern Ireland. This EU regulation applies in Northern Ireland pursuant to Article 5(3) and Annex 2 of the Protocol, which provide that Regulation (EU) No 952/2013 (the Union Customs Code) as well as obligations stemming from international agreements concluded by the Union, or by its Member States acting on its behalf or jointly with it, insofar as they relate to trade in goods between the Union and third countries, apply to and in the United Kingdom in respect of Northern Ireland.

Consequently, the Commission is unlikely to seek its addition to Annex 2 of the Protocol under Article 13(4) of the Protocol.

v. *Do JHA opt-in, Schengen opt-out issues arise?*

There are no issues within the regulation relating to either the Justice and Home Affairs or Schengen opt-outs.

POLICY IMPLICATIONS

11. The Joint Committee Decision of 19 December establishes a system for determining when goods brought into NI are “at risk” of onward movement into the EU. Goods brought into Northern Ireland directly from countries outside of the EU and the UK are not ‘at risk’ where the applicable UK tariff is equal to or higher than the applicable EU tariff; alternatively, traders can use the UK Trader Scheme (UKTS) to declare goods “not at risk”. The goods may be declared “not at risk” if the applicable UK Tariff is no more than 3% lower than the applicable EU Tariff and the goods are for sale to, or use by end consumers in Northern Ireland.
12. As importers will need to prove compliance with EU rules of origin in order to be eligible for the EU preferential tariffs, traders importing directly from the UK’s continuity FTA partners to NI will need to provide evidence to demonstrate they meet both EU and UK rules of origin for their goods to be deemed not at risk and access preferences immediately (without resort to the UK’s waiver mechanism). The origin documentation is needed to determine the tariff rates that are to be used to calculate tariff differences and establish the not at risk/at risk status, rather than the goods’ at risk status being determined first, and then origin documentation being required:
 - a. If they have the origin documentation required for the EU preferential rate but not the UK’s the UK tariff would be higher and they would have to pay the UKGT.
 - b. If they have the origin documentation needed for the UK preferential rate but not for the EU’s, the comparison of the rates will in many cases result in the good being considered at risk of onward movement into the single market and the EU MFN rate would apply. Traders may in some circumstances still be able to declare their goods not “at risk” through the UK Trader Scheme. The Government will also establish a reimbursement scheme for goods that pay the EU tariff, but which can subsequently be shown to have remained in the UK Customs territory..
13. With a few exceptions, such as imports under the UK-Turkey Trade Agreement, this will be a very minor administrative change as all the information would already be provided. There is also a 12 month grace period

for traders under the UK-EU TCA and UK-RoW FTAs whereby traders will not need to have all origin documentation when claiming preference and older EU documentation will be acceptable.

14. Northern Ireland is part of the UK's customs territory and therefore Northern Ireland will benefit from the trade agreements the UK will negotiate and deliver. Therefore, as affirmed by the regulation, for the purpose of applying preferential trade arrangements, third countries with which the Union has preferential trade arrangements cannot consider Northern Ireland to be part of the Union.
15. This regulation the EU has brought forward confirms that NI inputs in EU (primarily Irish) finished products would not be considered 'originating' when exported to EU FTA partners and some EU exports would as a result not benefit from preferential tariffs. Producers may change where they export their products to, or change their supply chains in order to avoid breaching rules of origin thresholds for FTAs they currently access.

CONSULTATION

16. We are not aware of any consultation by the European Commission in relation to this regulation and the Commission has previously stated that they would not be willing to approach third countries on international trade issues affecting Northern Ireland's exports.
17. The UK government has not carried out any consultation with stakeholders that will be affected by this regulation. Guidance on the movement of goods on gov.uk will reflect the regulation.

FINANCIAL IMPLICATIONS

18. There are no financial implications from this regulation. The Withdrawal Agreement Joint Committee's at risk decision determined the criteria for goods that will be charged EU and UK tariffs, this simply confirms the preferences provided to those goods that are charged the EU tariff.

MINISTERIAL NAME AND SIGNATURE



The Rt. Hon. Greg Hands MP

Minister of State for Trade Policy

Department for International Trade