



Brussels, 5 February 2021

NOTICE TO STAKEHOLDERS

1. LEGAL BASIS

1.1. Commission Implementing Regulation (EU) 2020/2254 of 29 December 2020 on the making out of statements on origin on the basis of supplier's declarations for preferential exports to the United Kingdom during a transitory period

Article 1

Notwithstanding Articles 61 and 62 of Implementing Regulation (EU) 2015/2447, for the purposes of the application of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, an exporter may until 31 December 2021 make out statements on origin for exports to the United Kingdom on the basis of supplier's declarations to be provided by the supplier subsequently on condition that by 1 January 2022 the exporter has the supplier's declarations in his or her possession. If the exporter does not have those supplier's declarations in his or her possession by that date, the exporter shall inform the importer on 31 January 2022 at the latest.

1.2. EU-UK Trade and Cooperation Agreement

Article ORIG.19: Statement on origin

1. A statement on origin shall be made out by an exporter of a product on the basis of information demonstrating that the product is originating, including information on the originating status of materials used in the production of the product. The exporter shall be responsible for the correctness of the statement on origin and the information provided.

Article ORIG.26: Denial of preferential tariff treatment

1. Without prejudice to paragraph 3, the customs authority of the importing Party may deny preferential tariff treatment, if (...):

(c) within 10 months after the date of a request for information pursuant to Article ORIG.25(2) [Administrative Cooperation]:

(i) no reply has been provided by the customs authority of the exporting Party;

or

(ii) the information provided by the customs authority of the exporting Party is inadequate to confirm that the product is originating.

1.3. UCC Implementing Act

Article 61.1. Supplier's declarations and their use

1. Where a supplier provides the exporter or the trader with the information necessary to determine the originating status of goods for the purposes of the provisions governing preferential trade between the Union and certain countries or territories (preferential originating status), the supplier shall do so by means of a supplier's declaration.

Article 62.1. Long-term supplier's declaration

1. Where a supplier regularly supplies an exporter or trader with consignments of goods, and all of those goods are expected to have the same originating status, the supplier may provide a single declaration covering multiple consignments of those goods (a long-term supplier's declaration).

2. GUIDANCE

2.1. Introduction

This guidance concerns the application in the EU of the requirement under Article 61 and 62 of the UCC Implementing Act regarding supplier's declarations.

The EU-UK Trade and Cooperation Agreement entered into provisional application on 1st January 2021. As the text of the Agreement could only be published on 31 December 2020, there was a very short period of time between the publication of the Agreement and the date on which it became provisionally applicable. As a consequence, EU exporters may face difficulties to obtain from their suppliers all relevant declarations in time to make out the statements on origin from 1.1.2021.

In order to facilitate the making out of statements on origin from the date of provisional application of the Agreement, Commission Implementing Regulation (EU) 2020/2254 of 29 December 2020 ('the Regulation') provides for a one year transitory period to allow exporters in the EU to make out statements on origin even if they do not have in their possession all the relevant supplier's declarations providing the information necessary to determine the originating status of goods for the purposes of the provisions governing preferential trade between the Union and the United Kingdom. The missing supplier's declarations shall nevertheless be in the possession of the exporter at the latest on 1.01.2022.

The Regulation however does not exempt exporters from their obligation to make out statements of origin in accordance with the provisions of the Agreement, and in particular that they shall be made on the basis of information demonstrating that the product is originating.

2.2. Scope of application of the Regulation

The Regulation applies only to the cases where the exporter in the EU makes out statements on origin based on supplier's declarations provided by the suppliers under Article 61 and 62 of the UCC Implementing Act. It does not apply in the cases where the EU exporter has information on the originating status of the products or the materials used in their production, by means other than supplier's declarations. For example, exporters may consider other supporting documents such as invoices by the suppliers together with the specification of the certain characteristics of the materials used in the production, description of concrete production processes, etc. that may be included in their contract with the suppliers, provided that they are sufficient to demonstrate that the product is originating.

2.3. Validity of the statement on origin

During the transitory period (the first year of application of the EU-UK Agreement), the validity of the statement on origin cannot be questioned because the exporter does not have all the relevant supplier's declarations on the basis of which he or she made out the statement.

If by 1.1.2022 the exporter does not have in his or her possession the relevant supplier's declarations and cannot demonstrate the originating status of the product by other means, the statement on origin cannot be considered valid. The normal rules in relation to the validity of the statement on origin apply at that moment.

2.4. Responsibility of the exporter

During the first year of application of the EU-UK Agreement, the exporter may make out statements on origin based on supplier's declaration that he or she does not have in his possession at the moment of making out the statement on origin but that he or she will have subsequently. Therefore, the exporter benefiting from the application of the Regulation is not bound, during that one year transitory period, to possess all the relevant supplier's declarations and he or she cannot be sanctioned because he or she does not possess them.

On 1.1.2022, however, the exporter should have the supplier's declarations on the basis of which the statement on origin was made out for the statement on origin be considered valid. Failing so, and if he or she cannot demonstrate the originating status of the product by other means, he or she will be considered not having fulfilled his/her obligations with regard to the possession of the information necessary to determine the originating status of the products. The situation is equivalent to the cases, outside the application of the Regulation, where the exporter realises, after having made out the statement on origin, that the product is not originating or he or she cannot demonstrate so.

In addition, according to the Regulation, the exporter has **one month to inform the importer** if at the end of the one year transitory period he/she does not succeed to possess all the relevant supplier's declarations.

Member States are however advised not to apply penalties to the exporter if, at the end of the one year transitory period, he or she does not have all the relevant supplier's declarations and the exporter has informed the importer accordingly.

2.5. Verification of the origin of the products

During the first year of application of the EU-UK Agreement, special rules apply in relation to the verification procedure as provided for in the EU-UK Agreement. These rules (footnote to Article 26.1.(c)) refer to a longer period (12 months instead of 10 months) for customs to reply to a request for verification addressed by the other Party within the first three months of application of the Agreement.

The longer period implies that the time for EU customs to reply a request for verification by the UK customs on the origin of a product exported from the EU will not finish before the end of the one-year transitory period provided for in the Regulation. Consequently, MS are advised not to reply before the end of the transition period in the case that they have difficulties to assess the origin of the products.

Since the flexibility provided for in the Regulation does not exempt exporters from the duty to issue statements of origin in accordance with Article ORIG.19 of the Agreement, the existence of flexibility or its application by the exporter does not constitute by itself a reason to doubt about the validity of statements of origin.