



## Information note: Rules of Origin and EU/UK Free Trade Agreements

### Introduction:

As part of the UK's withdrawal agreement from the EU, the UK is proposing a Free Trade Agreement (FTA) with the EU. The purpose of this FTA is to maintain the current trade and tariff arrangements and to allow goods to circulate freely around the EU27 and the UK.

The terms (protocol) of each FTA are agreed between the parties. However the requirement for goods to be **wholly originating** in any of the countries party to the FTA is a standard condition to prevent goods from outside an FTA being processed within a member country to take on a different country of origin status to gain favourable market access with the FTA<sup>1</sup>.

**Rules of Origin** detail the specific measures included in a FTA to limit how goods can be traded based on their origin. This Information Note:

- Discusses how fish caught in UK waters will likely be treated and the trade implication for seafood products manufactured in the UK but from imported products.
- Explains how Rules of Origin could work under a UK/EU FTA and their potential implications for UK production and trade.
- Discusses how these potential issues could be managed.

Note that Rules of Origin will only apply if the UK secures a FTA with the EU.

### Implications for seafood caught in UK waters:

Rules of Origin require that the goods are 'wholly originating' in the country of declared origin. For the majority of food products this will be the country in which they were produced. However, determining the origin of seafood is complicated by the fact fish are routinely caught in non-territorial waters and thus cannot use the geographical location of catch as an origin, as is generally the case with other products.

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<sup>1</sup> If a product is wholly obtained or produced completely within one country the product shall be deemed having origin in that country. If a product has been produced in more than one country the product shall be determined to have origin in the country where the last substantial transformation took place. Preferential rules of origin are part of a free trade agreement. The rules of origin determine what products can benefit from the tariff concession or preference, in order to avoid transshipment.

Currently, by virtue of its EU membership, seafood products caught in UK waters are treated as of 'EU' origin. Under a future EU/UK FTA new criteria will have to be agreed to allow the determination of the origin of the UK fish caught within the UKs EEZ as UK product. These criteria will likely be similar to those found in existing FTAs and would include:

1. A live animal born and raised in the UK e.g. fish farmed in the UK
2. A product of an animal raised in the UK e.g. UK farmed Mussels grown on from imported stock and harvested in the UK
3. Products obtained by fishing in the UK e.g. Farmed or wild caught fish from UK territorial waters
4. Products of sea fishing and other products taken from the sea outside the territorial waters of the UK by a UK registered vessel
5. Products made aboard UK factory ships exclusively from products referred to in (4)

This means that when fish is caught outside UK territorial waters, the origin of the vessel or factory ship will be key to determining the origin of the seafood. This would mean that product would only have UK origin if the vessel on which the fish is caught met the following criteria:

1. is registered in the UK;
2. sails under the flag of the UK;
3. is at least 50% owned by UK nationals, or by a company with its head office in the UK of which the manager or managers, Chairman of the Board of Directors or the Supervisory Board, and the majority of the members of such boards are UK nationals and of which, in addition, in the case of partnerships or limited companies, at least half the capital belongs to the UK or to public bodies or nationals of the UK;
4. has a master and officers that are nationals of the UK and at least 75 % of the crew are UK nationals.

#### **Implications for seafood products manufactured in the UK:**

The Rules of Origin requirements will also have an impact on seafood products manufactured in the UK which use imported products as an ingredient.

Deliver innovative products using our market insight information to support the seafood sector to drive increased consumption. The protocols for current FTAs with the EU, such as the EU-Canada Comprehensive Economic and Trade Agreement (CETA) and Pan Euro-Mediterranean Convention (PEM), require products to wholly originate in a country party to the agreement. If the terms of a UK/EU FTA reflect existing FTAs then products produced in the UK from non-UK originating material would not be considered to be a UK product and would not be permitted to trade freely.

The UK seafood sector operates as part of a global supply chain and it routinely imports raw material from a range of countries depending on price and availability. If an EU/UK FTA agreement were to follow the 'rules of origin' as set out in existing EU FTAs much of the UK's seafood production would not be eligible for preferential trade terms. This is because the EU/UK FTA would require all ingredients used in the manufacturing process to be wholly obtained in the UK.

This situation would mean that even with an FTA, tariffs would be applied when the product is imported into the UK and when the finished product is then exported.

*Table 1: Potential impact on trade scenarios*

| Trade   | Impact  |
|---|---|
| Businesses using non UK fish for further processing and placing on the UK market                  | No impact on trade in finished goods. There may be incoming tariffs on material sourced outside of the UK.  |
| Businesses using non UK fish for further processing and placing on the EU27 market under a UK FTA | In addition to incoming tariffs, the finished product would not meet the 'wholly originating criteria' of the FTA and would be subject to tariffs in the importing country which will be passed on the purchaser. |
| Businesses exporting UK seafood to the EU market (with or without further processing)             | Not affected as would meet 'wholly originating' criteria.   |
| Businesses exporting UK seafood to EU businesses for export to a non EU country under a FTA       | EU businesses cannot use UK material as this would not meet the criteria of the FTA. This will result in loss of market share for UK business.  |

## Proposed Options for Rules of Origin in an EU-UK FTA:

In March 2018 the Food & Drink Federation, on behalf of its members, commissioned Global Counsel<sup>2</sup>, specialists in business, politics and policy making to assess the impact of applying the CETA and PEM protocols to a range of processed food products.

The final report recommended that 8 changes would need to be made to the existing FTA protocol to enable the current trade to continue<sup>3</sup>. These can be summarised as follows:

1. *A 10% tolerance margin by value for non-originating inputs.*
2. *Full bilateral cumulation<sup>4</sup> arrangements:* This would ensure that UK foodstuff exports produced from EU-originating inputs would qualify for preferential tariff treatment in EU-UK trade if not wholly originating in the UK. This would allow material from the UK and EU to be classed as wholly originating in these countries.
3. *Full diagonal cumulation with EU FTAs:* This would ensure that UK and EU food and drink exports produced from originating inputs from EU FTA partners would qualify for preferential tariff treatment in EU-UK trade. This would allow material from the UK, the EU, and countries with a trade agreement with the EU such as Vietnam to be classed as wholly originating in these countries.
4. *Product-specific exemptions of inputs from origin calculation:* Where the UK and the EU apply the same external tariff on an incoming product these could be excluded from any origin calculations. This would be a new concept in trade agreements and if agreed would need further detail on how it might work. It is only likely to be used on an exceptional basis.
5. *Transitional foodstuff Tariff Preference Level (TPL):* This would be used to mitigate potential short-term disruptions to the UK food and drink sector supply chains while diagonal cumulation is agreed. A foodstuff TPL would create diagonal cumulation, for a limited quantity of specific products. This would be time limited allowing permanent agreements to be reached. This is likely to apply to goods for further processing rather than finished products.

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<sup>2</sup> [www.global-counsel.co.uk](http://www.global-counsel.co.uk)

<sup>3</sup> The report, which contains detailed explanation of these recommendations, can be found at <https://www.fdf.org.uk/rulesoforigin-eu-uk-fta.aspx>.

<sup>4</sup> Cumulation is a concept used in preferential trade agreements, which essentially widens the definition of originating products and helps manufactured goods to meet the relevant origin rule. It can only be applied between countries operating with identical origin rules.

6. *A joint EU-UK exemption of all originating imports from Least Developed Countries (LDCs):*<sup>5</sup> This would ensure that UK foodstuff exports produced from LDC originating inputs would qualify for preferential tariff treatment in EU-UK trade.
7. *Recognition of premium production and brand equity in value calculation:* Where the value of a finished product includes a premium for the transformation process or branding, the value of this input should be included in the origin calculation along with the value of the raw material. It is proposed that origin calculation can be carried out using final value or weight.
8. *Simplified origin determination documentation and processes.*

Having identified these 8 potential discrepancies, Global Counsel, at the request of Defra and the FDF, subsequently produced a draft protocol of the 'Rules of Origin' for a future EU/UK FTA. The terms of this draft protocol would ensure existing trade could continue in its current form. Seafish contributed funding to this project and has been working with Global Counsel to provide data and knowledge on the trade in seafood.

#### **How the proposed draft protocol would apply to seafood:**

The draft protocol, prepared by Global Counsel, uses fish fingers as a case study to help assess how the protocol would work for seafood products.

Under international trade rules, the origin of a fish finger would normally be the country of its production regardless of ingredient origin. However, product-specific rules of origin written into most EU trade agreements require that the ingredients be "wholly obtained" in the UK. This means if you make a fish finger in the UK with Russian fish, the fish finger remains of Russian origin for the purposes of tariff duties. To solve this problem the protocol recommends a range of solutions to ensure existing UK seafood trades would be covered by a future EU/UK FTA.

1. *Bilateral cumulation:* This would allow fish sourced in the EU (Germany, Poland and Denmark) and used to make fish fingers in the UK to be originating in the UK.
2. *Diagonal cumulation:* This would allow fish sourced from countries with which the EU has an FTA and used to make fish fingers in the UK to be originating in the UK. This would allow fish fingers made in the UK with fish from EEA countries or Vietnam to be deemed to have originated in the UK.

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<sup>5</sup> This is a UN list <https://www.un.org/development/desa/dpad/least-developed-country-category/ldcs-at-a-glance.html>

3. *Product Specific Exemptions*: This would allow for raw material from countries which are not party to any EU FTA (for example China, Russia and the US) to be used in fish finger production. In order for fish fingers made in the UK to be made of these raw materials and still be considered as originating in the UK, there needs to be some sort of specific exemption.
4. *Transitional Origin Relief Quotas (TORQs)*: These are transitional arrangements which would, for a limited time, exempt all inputs originating in EU FTA partners from origin calculations. These are limited in quantity to that necessary to maintain current trade levels. This is to allow the EU and the UK time to seek and formalise 'diagonal cumulation' arrangements with those partners. In the absence of such cumulation agreements, these TORQs would fall away at a specified time.

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**Seafish: December 2020**