VDA Verband der Automobilindustrie

Position

Rules of origin in the prospective EU-UK free trade agreement
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Ensure application of the rules of origin in the prospective EU-UK free trade agreement

The automotive industry is an essential part of the European economy and the United Kingdom (UK) has been an integral element for decades. In 2019, motor vehicles worth around €48 billion were traded between the European Union (EU) and the UK. About 80 percent of cars made in the UK were destined for export in 2019, of which more than half of the car exports went to the EU. For the German automotive industry, the UK is an essential export market as more German cars are exported to the UK than anywhere else. Bilateral trade in automotive parts between Germany and the UK accounted for €5 billion in 2019, and between the EU and UK for almost €15 billion. Any change to the deep economic and regulatory integration between the EU and the UK will have an adverse impact on automobile manufacturers with operations in the EU (and the UK), as well as for the European economy in general.

For this reason, an EU-UK free trade agreement (FTA) is of major importance to remove uncertainties in the automotive sector caused by Brexit and to ensure that trade frictions remain limited. The EU and the UK should agree to a FTA that provides for completely tariff-free trade in automotive goods (passenger cars, commercial vehicles, motorcycles, engines as well as parts and components) between the signatory states with entry into force of the agreement. In this context, the rules of origin (RoO) play the most important role. Complicated RoO that are associated with excessive bureaucracy and which cannot be satisfied must be avoided. Equal importance must be given to the implementation period, which for the automotive industry, easily requires more than six months. Anchoring simple and practicable RoO in the agreement is thus key to greatly improve its use rate.

Appeal 1: Phase-in period for vehicles

A phase-in period for vehicles (8703/8704) should be agreed on that temporarily allows for greater use of non-originating material to provide all manufacturers and suppliers with sufficient time to adapt systems, processes and contracts to the new trading relationship. This period shall not exceed the duration of two years. Until the final rule of origin described in Appeal 2 (50% NOM) can be applied, an initial percentage of 60% NOM at the beginning of the phase-in period shall be adjusted in two steps of 5 percentage points each.

Appeal 2: Rules of origin for motor vehicles

The preferential origin of vehicles (HS 8701 to 8707) should be determined on the basis of a defined maximum level of non-originating material (NOM). In order to take account of the ever-increasing globalization of international trade in goods, we consider the following percentage, which must be observed in order to achieve preferential origin: 50% NOM based on the ex-works (EXW) price.

Appeal 3: Rules of origin for automotive parts and components

We suggest to base the rules of origin for parts and components of the FTA between the EU and the UK on the revised rules of origin of the upcoming pan-Euro-Mediterranean Convention in order to minimalize the administrative burden with regard to the adaption of processes and IT systems.

These rules have already been thoroughly revised in the past and reflect a realistic view of the ever-growing globalization of the supply chain. Furthermore, they are a standardized catalogue for the majority of the FTAs the EU has concluded.

However, in a small number of cases, we suggest some amendments. Our proposal can be seen below.

HS Pos. 8407/08:
In addition to the value-added clause of 50% NOM, we suggest alternatively a change of tariff heading (CTH) in order to reach preferential origin.

HS Pos. 8414, 8415, 8512 and 8517:
A mere CTH will not suffice in order to reach preferential origin. This is why we would like to suggest a change of tariff classification on subheading level (CTSH) for these positions.

Appeal 4: Rules of origin for battery cells with focus on Lithium-ion cells

An exception to the above-mentioned rules of origin should be considered for trade in vehicles using low-emission technologies. Currently, there is extremely limited battery manufacturing capacity in the EU. The raw materials required for manufacturing the cells and the primary materials are currently not available in sufficient quantity or quality in the EU. This means that even if cells are produced in the EU, all the required production materials would have to be imported from countries outside of the EU. In addition, using the cells within the EU to manufacture high-voltage batteries cannot generate sufficient EU value to define a high-voltage battery as originating in the EU. At present, the EU value added is only as high as 20%. If more production steps were to be localized in the EU (starting with the manufacture of electrodes and going all the way to high-voltage batteries), the maximum possible EU value-creation would be 30%.

Considering the preferential status of the intermediate products and possible developments in the field of electrode production in the EU, a change of tariff classification for HS-tariff item 8507 90 should be introduced to ensure that an electrode can acquire the status of originating in the EU as soon as electrodes are produced with coating of foils in the EU.

As electrode production with foil coating is currently not carried out in the EU, and the creation of sufficient production capacities will take several years, we are in favor of a revised value-creation rule for lithium-ion accumulators of HS-tariff item 8507 60. In order to qualify as originating in the EU, the maximum permissible proportion of primary materials not originating in the EU should be set at 70%. However, in order to take possible future developments in battery research into account,

the value-added clause should not exclusively be considered for HS-sub-heading 8507 60 but also for HS-sub-heading 8507 80, HS-sub-heading 8507 50 and HS-sub-heading 8507 90. This allows for more flexibility with regards to the various parts for the different batteries and offers potential for the use of pro rata supplier's declarations in the future.

In order to effectively address the uncertainties associated with this forecast, the proportion of value-creation to be achieved should be reexamined either during the general evaluation of FTAs or at the earliest after 10 years.

Appeal 5: Bilateral, full & multilateral cumulation

As standard in FTAs, full bilateral cumulation should be included to allow intermediary goods manufactured in one party to the agreement count towards originating content when the final good is manufactured in the other party.

Full cumulation allows the parties to an agreement to potentially consider all the working or processing steps within the value-added chain in the respective partner states as originating.

To increase the flexibility of exporters, a full multilateral cumulation provision should also be included. Multilateral cumulation should be applied only if the following conditions are met:

a) Both the EU and the UK have an FTA with the third country.
b) The RoO protocols (incl. product specific RoO) are harmonized and the tariff dismantling is completed.

Appeal 6: Cascading

The existing EU FTAs allow for a so-called modular calculation in the determination of the preferential status of a product that is manufactured in several production stages in one company. As part of the modular calculation, the preferential origin of all intermediate products is determined according to the bottom-up principle up to the final product. If an intermediate product obtains the status of preferential origin, the non-originating materials contained therein no longer have to be taken into account in the preference calculations of the subsequent production stages. The intermediate product is included with its entire value as originating good in the preference calculation of the subsequent stage.

Cascading acquisition of origin ensures that companies with a high proportion of in-house production are not at a disadvantage compared to companies with a low proportion of in-house production from a preferential law perspective, provided that the production steps take place within a preference zone. To avoid distortions of competition, this gradual acquisition of origin should be included in the EU-UK FTA.

Appeal 7: Tolerance rule for tariff shift and location as defined by 15% of EXW price

In order to justify the preferential origin of goods, the EU's current FTAs stipulate that it is fundamentally detrimental to preferential origin if manufacturing steps are not carried out continuously within the preference zone. Only in exceptional cases is it possible to outsource manufacturing steps to countries outside the preference zone without damaging the origin, provided that the value-added outside the preference zone does not exceed a defined percentage of the EXW price of the finished product. In order to take account for of increasing globalization, we generally consider a tolerance of up to 15% of the EXW price of the product to be appropriate.

Tolerance rule for tariff shift and territoriality of 15%:

a) Tariff shift: Allows manufacturers to use non-originating materials up to a specific percentage of EXW in case of CTH clauses.
b) Territoriality: Tolerance for working or processing in a third country.

Appeal 8: Accounting segregation should be allowed

As a result of globalization, economic operators purchase both production materials and commercial goods which, although not different in nature, have different preferential origins. According to the principles of existing preferential arrangements of the EU, goods may in principle only be considered as preferential originating goods if they have not been mixed with non-originating goods. In practice, this principle requires both production materials and merchandise to be physically separated according to preferential status. Moreover, since the preferential status may vary due to the use of different FTAs, the correct use of preferential tariff advantages today in practice requires multi-storage, ensuring that, for example, similar goods with different preferential origins are stored physically separated per FTA. However, due to the increasing number of FTAs, this multi-storage is no longer feasible in practice. For example, when using three FTAs, a total of eight different forms of preferential origin are theoretically possible for a product – requiring eight different storage compartments. In practice, when using the preferential tariff advantages, a physical storage compartment would have to be created for each characteristic. Consequently, in order to be able to use the advantages of an FTA, VDA members believe it is absolutely essential to enable accounting segregation according to preferential origin for both production materials and commercial goods instead of the current physical separation.

Appeal 9: Use of approved exporter/registered exporter (REX) system and origin verification

In general, we support the application of the Registered Exporter (REX) system to facilitate import and export procedures within the free trade with the United Kingdom. However, the implementation of the REX system in recent FTAs has been linked to a new procedure as regards the origin verification. The shift in recent EU FTAs to a verification process carried out by the importing authority has created concerns regarding confidentiality of data and the potential for arbitrary denial of preferences.

Regarding origin verification within the framework of administrative assistance, we would like the EU and the UK to agree to a procedure where the ultimate decision on whether or not a good is originating is exclusively taken by the customs authority of the exporting country. The Approved Exporter standard has not only promoted a high-quality level of compliant customs processes within the companies but also a confidential relationship between the exporting companies and their local customs authorities. The confidential relationship towards their local authorities as well as the authorities' knowledge of the companies' processes are the main reasons why we request that the exporting party's customs authorities should reserve the right to decide whether an origin statement was correct or not in case of origin verification.

Appeal 10: Indication of preferential origin

As proof of preferential originating status, we adhere to the preferential proofs of origin known from the FTAs of the EU, the movement certificate EUR.1 and the declaration of origin on the invoice or on other commercial documents. This is an established proof system which should be maintained.

In addition, we suggest the possibility to use long-term proof of origin as in CETA or the EU-Japan EPA to simplify the proof of origin for goods. Such a proof could be used to confirm origin for reoccurring shipments of the same kind of goods over a certain time period.

For reasons of simplification and harmonization, we consider it imperative that the EU-UK FTA provides the possibility to issue preference certificates as long-term declarations with a validity of up to two years.

Appeal 11: Single standard for supplier declarations in EU and UK

There should be a single standard for the use of the supplier's declaration (i.e. document format/ document validity/ guidelines) in the EU and the UK in order to keep administrative burden and issues of incompatibility to an absolute minimum.

Appeal 12: Possibility to retrospectively prove origin for a period of up to 36 months

The existing EU FTAs provide for the option of granting preferential tariff advantages retrospectively but only in justified exceptional cases. Within this framework, a refund of customs duties already paid can be applied for within the statutory limitation periods, if proof can be provided that the imported goods were of preferential origin.

We suggest that preferential tariff advantages can be generally claimed retrospectively within a uniform three-year limitation period. Such retrospective validity supports producers on both sides, especially during the transitional period of establishing the administrative procedures for the FTA. For such a retrospective claim, it is essential that the customs authorities of each party to the agreement establish clear and understandable procedures that allow the importer to request the refund without having to face too many bureaucratic obstacles.

Appeal 13: Duty drawback to be allowed

Overall objective of the EU-UK FTA is to promote trade between the partners by reducing duty burden. Without a clause allowing for duty drawback, the total net duty benefit is reduced, depending on the overall import content and the MFN import duty rate on intermediate products. In line with several recent EU trade agreements, including the EU-Japan EPA, duty drawback should therefore be allowed. To address possible concerns of the parties on allowing duty drawback, a review mechanism can be agreed based upon the model of the EU-Korea FTA.

Appeal 14: Non-alteration principle for transit

We suggest maintaining the principle of non-alteration for the transit of goods. According to this, goods would keep their originating status irrespective of the transport route, provided that at the point of importation into the partner country, it can be proven that the goods have not undergone any alterations during transport. Compliance with the non-alteration principle is considered satisfied unless the customs authorities have reason to believe otherwise. In such cases, the customs authorities may request evidence of compliance by means of additional documents that prove the unaltered status of the goods for verification purposes (e.g. bill of lading, shipment documents).

Appeal 15: Averaging across model range

The preferential origin of the same product can be subject to fluctuations due to factors like different variations of the same product, the selection of the calculation period or different manufacturing locations within the EU. Thus, in addition to the individual preference calculation, we propose an alternative option to be established in which an average preference calculation can be conducted in order to facilitate proof of origin. According to this approach, one would be able to calculate a referential product as representative for all its variations.

Appeal 16: Calculation on the basis of average material prices

The possibility of an optional average material price calculation should be considered in the EU-UK FTA, as it is a significant simplification in determining the preferential status of goods. In particular, in cases where the material costs are subject to price fluctuations due to exchange rate or commodity exchange effects, it must be possible to make a preferential calculation based on average prices. In this case, the average price paid for a component in the calculation period can be used for the determination of origin.

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