

The implication of the EU-UK Trade and Cooperation Agreement (TCA) for the automotive sector

On 24 December 2020, the European Union (“EU”) and the United Kingdom (“UK”) agreed to a [Trade and Cooperation Agreement](#) (the “TCA”), which is provisionally applied from 1 January 2021. Following the UK’s withdrawal from the EU on 31 January 2020 and the end of the transition period under the Withdrawal Agreement on 31 December 2020, the UK is no longer a member of the EU single market or the EU customs union. While the TCA does not change this fact, it forms the basis of the new bilateral relationship between the EU and the UK (together the “Parties”, individually the “Party”).

The withdrawal of the UK from the EU and the terms of the TCA have changed the way in which goods are traded between the EU and the UK. For an industry that is as integrated as the automotive sector, these changes are significant. This Client Alert expands on our Client Alert [“Implications of the EU-UK Trade and Cooperation Agreement on trade in goods”](#), by focusing on the TCA’s provisions relevant to the automotive sector.

TARIFF-FREE TRADE

The TCA establishes a free trade area between the EU and the UK.¹ Subject to exceptions, the TCA prohibits customs duties on all goods originating in either Party.² In order to benefit from the preferential tariff treatment upon importation to the UK or the EU, motor vehicles and their parts will need to have either UK or EU origin pursuant to the rules of origin provided in the TCA.

The importer needs to claim the preferential tariff treatment in the importing party.³ In principle, this claim is included in the customs import declaration.⁴ However, subject to certain conditions, the claim may also be made no later than three years after the date of importation or even later if that is possible under the domestic laws of the importing Party.⁵ Currently this period is three years for the EU⁶ and the UK⁷.

The claim for preferential tariff treatment is based on a statement on origin or the importer’s knowledge.⁸ The statement on origin is made out by the exporter on the invoice or any other document that describes and identifies the products.⁹ By using the statement on origin, the exporter confirms that the goods are originating in the UK or the EU. If a claim for the preferential origin of the products is based on the importer’s knowledge,¹⁰ the importer must be in possession of sufficient information to determine the origin of the products.

¹ TCA, Article OTH.3.

² TCA, Article GOODS.5.

³ TCA, Article ORIG.18.1.

⁴ TCA, Article ORIG.18a.1.

⁵ TCA, Article ORIG.18a.2.

⁶ Article 121 [Union Customs Code](#).

⁷ Article 59 [The Customs \(Import Duty\) \(EU Exit\) Regulations 2018](#)

⁸ TCA Article ORIG.18.2.

⁹ TCA Article ORIG.19.2. The TCA offers a template of the statement on origin in ANNEX ORIG-4.

¹⁰ TCA, Article ORIG.21.

If the importer seeks to rely on bilateral cumulation between the two parties, the exporter completing the statement on origin must obtain a supplier's declaration from its suppliers, or an equivalent document, clearly describing the non-originating materials concerned.¹¹

The purpose of the rules of origin laid down in the TCA is to ensure that preferential tariff treatment only applies to products that have UK or EU preferential origin, and not to goods originating in third countries. Products that do not meet the TCA's rules of origin are subject to the UK or EU external tariff upon importation into the UK and the EU, respectively. For imports into the EU, this is the [Common Customs Tariff](#). For imports into the UK, this is the UK [Global Tariff](#).

In order not to have to pay customs duties on the importation of motor vehicles and their parts to the EU and the UK, the automotive industry should seek to claim either EU or UK origin for its products, where practicable. The following sections explain how motor vehicles and their parts might attain originating status under the TCA.

GENERAL PREFERENTIAL RULES OF ORIGIN

To qualify for preferential tariff treatment under the TCA, goods need to obtain either EU or UK originating status. The TCA sets out three situations in which goods can be considered as originating in a Party, namely, (i) the products are wholly obtained in that Party; (ii) the products produced in that Party are exclusively made from originating materials in that Party; and (iii) the products produced in that Party incorporating non-originating materials satisfy the product-specific rules of origin.¹² Importantly, the acquisition of originating status must be fulfilled in the UK or the EU without interruption.¹³

With respect to the third situation, it is important to note that even if a product does not satisfy the product specific rules of origin requirements due to the use of a non-originating material in its production, it may still be considered as originating under certain circumstances. These are the tolerances rules.¹⁴ Subject to certain exceptions, this would apply to final manufactured products, if the total value of non-originating materials does not exceed 10% of the ex-works price of the product.¹⁵

In order to provide manufacturers with greater flexibility in sourcing inputs and parts for the production of goods while continuing to be able to claim originating status, the TCA provides for cumulation of origin between the Parties.¹⁶ Subject to the rules that apply in respect of insufficient production, a product originating in the EU is to be considered as originating in the UK if that product is used as a material in the production of another product in the UK (and vice versa).¹⁷ This is known as material cumulation. The TCA also goes one step further and provides for the cumulation of value added through processing in the EU or the UK even when the initial input is a non-originating material.¹⁸

¹¹ TCA, Article ORIG.4.4.

¹² TCA, Article ORIG.3.1.

¹³ TCA, Article ORIG.3.3.

¹⁴ TCA, Article ORIG.6.

¹⁵ TCA, Article ORIG.6.1.

¹⁶ TCA, Article ORIG.4.

¹⁷ TCA, Article ORIG.4.1 and Article ORIG.4. 3.

¹⁸ TCA, Article ORIG.4.2.

The TCA does not, however, permit diagonal cumulation of origin. This means that the TCA does not allow products originating in third countries with which both the EU and the UK have concluded preferential trade agreements, to be considered as originating products for the determination of origin under the product-specific rules of origin of the TCA. For example, even though both the UK and the EU have concluded a free trade agreement with Japan, Japanese components in motor vehicles will be considered as non-originating material value when applying the TCA's rules of origin to the products in which they have been incorporated. The absence of diagonal cumulation in the TCA thus has important implications for third-country car manufacturers with production facilities in the EU or the UK, which trade finished cars between the EU and the UK.

PRODUCT-SPECIFIC PREFERENTIAL RULES OF ORIGIN RELEVANT TO THE AUTOMOTIVE SECTOR

As explained above, one set of circumstances in which goods are considered having originating status under the TCA is if the product produced in either the EU or the UK incorporates non-originating materials satisfying the product-specific rules of origin.¹⁹ Annex ORIG-2A of the TCA sets out the product-specific rules of origin. The product-specific rules most relevant to the automotive industry are as follows.

Products classified under heading 85.07 of the Harmonised System ("HS") – electric accumulators and parts thereof

- Accumulators containing one or more battery cells or battery modules and the circuitry to interconnect them amongst themselves, often referred to as "battery packs", of a kind used as the primary source of electrical power for propulsion of vehicles of headings 87.02, 87.03 and 87.04 (hereinafter, "battery packs"), are considered originating if:
 - (i) any non-originating material used in the production of the battery pack is classified under a HS heading other than 85.07, except for non-originating active cathode materials; **OR**
 - (ii) the maximum value in terms of the ex-works price ("EXW") of non-originating materials does not exceed 30% of the battery pack.

- Battery cells, battery modules and parts thereof, intended to be incorporated into an electric accumulator of a kind used as the primary source of electrical power for propulsion of vehicles of headings 87.02, 87.03 and 87.04 (hereinafter, "battery cells"), are considered originating provided that:
 - (i) Any non-originating material used in the production of the battery cell is classified under a HS heading other than 85.07, except for non-originating active cathode materials; **OR**
 - (ii) the maximum value of non-originating materials (EXW) does not exceed 35% of the battery cell.

¹⁹ TCA, Article ORIG.3. 1.

- All other products listed under heading 85.07 of the HS, are considered as originating provided that:
 - (i) any non-originating material used in the production of the product is classified under a HS heading other than 85.07; **OR**
 - (ii) the maximum value of non-originating materials (EXW) does not exceed 50% of the product.

Products classified under headings 87.02 to 87.04 of the Harmonised System – motor vehicles designed for the transport of persons and goods

- Vehicles with both internal combustion piston engine and electric motor as motors for propulsion capable of being charged by plugging to external source of electric power (hereinafter, “plug-in hybrid vehicles”), are considered originating if:
 - (i) the maximum value of non-originating materials (EXW) does not exceed 45% of the plug-in hybrid vehicle; **AND**
 - (ii) the battery packs classified under heading 85.07 of the HS of a kind used as the primary source of electrical power for propulsion of the plug-in hybrid vehicle is originating.
- The conditions for plug-in hybrid vehicles also apply to vehicles with only an electric motor for propulsion (hereinafter, “electric vehicles”).
- All other products listed under headings 87.02 to 87.04 of the HS, such as vehicles with internal combustion piston engines, are considered originating if:
 - (i) the maximum value of non-originating materials (EXW) does not exceed 45% of the product.

Transitional product-specific rules for electric accumulators and electrified vehicles

In view of the limited production in the EU and the UK of battery packs and battery cells for use in electrified vehicles, Annex ORIG-2B of the TCA sets out a transitional period whereby the conditions for acquiring originating status, outlined above, are phased in over a period of six years.²⁰ This is intended to provide automotive manufacturers established in the EU and the UK with more time to adjust to the stricter rules for acquiring originating status for their electrified vehicles. It is also designed to incentivise automotive manufacturers to shift their battery supply chains from the more predominant Asian markets towards the European market. In the coming years, the battery industries in the EU and UK are hence likely to attract strong investment.

The first phase of the transitional period starts from the entry into force of the TCA and expires on 31 December 2023.²¹ The second phase starts on 1 January 2024 and expires on 31 December 2026.²² As from 1 January 2027, the conditions for acquiring originating status, outlined in the section above, become

²⁰ TCA, Annex ORIG-2B.

²¹ TCA, Annex ORIG-2B section 1.

²² TCA, Annex ORIG-2B section 2.

applicable. This is the reverse of the gradual phasing-in of more generous rules of origin for vehicles, as provided under the EU-Japan Economic Partnership Agreement (“JEPA”), for example.²³ However, for many goods, the eventual product-specific rule which will be applicable at the end of the phasing-in period under the TCA, is broadly similar to the respective rules for the same goods under other trade agreements concluded by the EU.

During the first part of the transition phase (*i.e.*, from the entry into force of the TCA until 31 December 2023) the following conditions for acquiring originating status apply only to the products listed below:

- Battery packs are considered originating if:
 - (i) any non-originating material used in the production of the battery pack is classified under a HS subheading²⁴ other than that of the battery pack’s sub-heading; OR
 - (ii) the battery pack is assembled from non-originating battery cells or battery modules in either the EU or the UK; OR
 - (iii) the maximum value of non-originating materials (EXW) does not exceed 70% of the battery pack.

- Battery cells are considered originating if:
 - (i) any non-originating material used in the production of the battery cell is classified under a HS heading other than 85.07; OR
 - (ii) the maximum value of non-originating materials (EXW) does not exceed 70% of the battery cell.

- Vehicles with both internal combustion engine and electric motor as motors for propulsion other than those capable of being charged by plugging to external source of electric power (hereinafter, “hybrid vehicles”)²⁵ are considered originating if:
 - (i) the maximum value of non-originating materials (EXW) does not exceed 60% of the hybrid vehicle.

- The conditions for obtaining originating status applicable to hybrid vehicles also apply for plug-in hybrid vehicles and electric vehicles.

During the second part of the transition phase (*i.e.*, from 1 January 2024 until 31 December 2026) the following conditions for acquiring originating status apply only to the products listed below:

- Battery packs are considered originating if:²⁶

²³ JEPA, Annex 2-A-2.

²⁴ Note that this is different to a “heading” of the HS, which requires a change at the 4-digit level. A “sub-heading” only requires a change at the 6-digit level.

²⁵ Note that by 1 January 2027, hybrid vehicles are subject to the conditions applicable to “all other products” listed under headings 87.02 to 87.04 of the HS.

²⁶ Note that these conditions could be amended subject to a potential review by the Trade Partnership Committee. TCA, Annex ORIG-2B section 3.

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- (i) any non-originating material used in the production of the battery pack is classified under a HS heading other than 85.07, except for non-originating active cathode materials; OR
 - (ii) the maximum value of non-originating materials (EXW) does not exceed 40% of the battery pack.
- Battery cells are considered originating if: ²⁷
 - (i) any non-originating material used in the production of the battery cell is classified under a HS heading other than 85.07; OR
 - (ii) the maximum value of non-originating materials (EXW) does not exceed 50% of the battery cell.
- Hybrid vehicles, plug-in hybrid vehicles and electric vehicles are considered originating if:
 - (i) the maximum value of non-originating materials (EXW) does not exceed 55% of the product.

The table provided below illustrates the product-specific rules applicable at each phase of the transitional period.

²⁷ Note that these conditions could be amended subject to a potential review by the Trade Partnership Committee. TCA, Annex ORIG-2B section 3.

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Product (according to HS classification)	Entry into force of TCA to 31 December 2023	1 January 2024 to 31 December 2026	From 1 January 2027
85.07			
Battery packs: Accumulators containing one or more battery cells or battery modules and the circuitry to interconnect them amongst themselves, often referred to as “battery packs”, of a kind used as the primary source of electrical power for propulsion of vehicles of headings 87.02, 87.03 and 87.04	CTSH; ²⁸ Assembly of battery packs from non-originating battery cells or battery modules; OR MaxNOM ²⁹ 70 % (EXW ³⁰)	CTH ³¹ except from non-originating active cathode materials; OR MaxNOM 40 % (EXW)	CTH except from non-originating active cathode materials; OR MaxNOM 30 % (EXW).
Battery cells: Battery cells, battery modules and parts thereof, intended to be incorporated into an electric accumulator of a kind used as the primary source of electrical power for propulsion of vehicles of headings 87.02, 87.03 and 87.04	CTH; OR MaxNOM 70 % (EXW)	CTH except from non-originating active cathode materials; OR MaxNOM 50 % (EXW)	CTH except from non-originating active cathode materials; OR MaxNOM 35 % (EXW)
87.02-87.04			
Plug in hybrid vehicles: Vehicles with both internal combustion piston engine and electric motor as motors for propulsion capable of being charged by plugging to external source of electric power	MaxNOM 60 % (EXW)	MaxNOM 55 % (EXW)	MaxNOM 45 % (EXW); AND Battery packs of heading 85.07 of a kind used as the primary source of electrical power for propulsion of the vehicle must be originating.
Electric vehicles: Vehicles with only electric motor for propulsion			
Hybrid vehicles: vehicles with both internal combustion engine and electric motor as motors for propulsion other than those capable of being charged by plugging to external source of electric power	MaxNOM 60 % (EXW)	MaxNOM 55 % (EXW)	[Subject to conditions of all “other” products under HS headings 87.02-87.04]

²⁸ Refers to production from non-originating materials of any subheading of the HS, except that of the product.
²⁹ Refers to maximum non-originating material.
³⁰ Refers to ex-works price of product.
³¹ Refers to production from non-originating materials of any heading, except that of the product.

TECHNICAL BARRIERS TO TRADE

To avoid a legal vacuum, the UK transposed much of EU legislation into UK law by means of the [European Union Withdrawal Act 2018](#). However, as was made clear during the course of the Brexit negotiations, the UK government insists that it must be capable of diverging from EU legislation following its withdrawal from the EU. Thus, the EU and the UK start from a position of regulatory alignment, i.e. applying identical standards, technical regulations and conformity assessment procedures for goods. Overtime, however, it is likely that differences will arise between the two Parties on these matters.

The TCA aims to prevent, identify, and eliminate any unnecessary technical barriers to trade (“TBT”) that may arise, including to standards, technical regulations and conformity assessment procedures on goods traded between the two Parties.³² Chapter 4 of the TCA builds on the WTO TBT Agreement and sets out general rules on technical barriers to trade which cover good procedural practices for developing technical regulations and standards, transparency requirements, and a framework for cooperation. The implementation and administration of the TBT provisions are supervised by the Trade Specialised Committee on Technical Barriers to Trade.³³ This Committee also acts as a forum where the Parties to raise any issue in relation to the provisions of the TBT chapter.

In addition to the general TBT provisions, the TCA contains specific rules on TBTs in certain sectors. Annex TBT-1 of the TCA on motor vehicles and equipment and parts thereof sets out specific provisions on the TBTs faced by the automotive sector. Annex TBT-1 covers all categories of motor vehicles, equipment and parts thereof, listed, among others, under HS Chapters 40, 84, 85, 87 and 94.³⁴ It stipulates that the relevant international standardising body is the World Forum for Harmonisation of Vehicle Regulations within the framework of the United Nations Economic Commission for Europe (“WP.29”).³⁵ It also establishes that the relevant international standards for motor vehicles, equipment and parts thereof are the UN Regulations adopted under the 1958 Agreement concerning the Adoption of Harmonized Technical United Nations Regulations for Wheeled Vehicles, Equipment and Parts³⁶ and the General Technical Regulations (“GTRs”) adopted under the 1998 Agreement concerning the Establishing of Global Technical Regulations for Wheeled Vehicles, Equipment and Parts.³⁷

In principle, Annex TBT-1 prohibits the EU and the UK from introducing or maintaining any domestic technical regulations, markings or conformity assessment procedures that diverge from UN Regulations or GTRs which are completed or where their completion is imminent.³⁸ The EU and the UK are also required to consider applying any new UN Regulations that are adopted.³⁹ Furthermore, Annex TBT- 1 provides that imported products covered by a valid UN type-approval certificate are recognised as compliant with the

³² TCA, Article TBT.1 and Article TBT.2.

³³ TCA, Article TBT.13.

³⁴ TCA, Article 2 of Annex TBT-1.

³⁵ TCA, Article 4 of Annex TBT-1.

³⁶ Agreement Concerning the Adoption of Harmonized Technical United Nations Regulations for Wheeled Vehicles, Equipment and Parts which can be Fitted and/or be Used on Wheeled Vehicles and the Conditions for Reciprocal Recognition of Approvals Granted on the Basis of these United Nations Regulations, done at Geneva on 20 March 1958.

³⁷ Agreement concerning the Establishing of Global Technical Regulations for Wheeled Vehicles, Equipment and Parts which can be Fitted and/or be Used on Wheeled Vehicles, done at Geneva on 25 June 1998.

³⁸ TCA, Article 5 of Annex TBT-1.

³⁹ TCA, Article 5.3 of Annex TBT-1.

domestic technical regulations, markings and conformity assessment procedures of a Party, without the need for any further testing or marking.⁴⁰

A Party may only diverge from the UN Regulations or GTRs if it can substantiate why the particular UN Regulation or GTR is ineffective or inappropriate to achieve a legitimate objective, such as road safety or the protection of the environment.⁴¹ If either Party decides to introduce or maintain divergent rules, it must comply with certain procedural obligations.⁴² For example, it must regularly conduct a review of the diverging measures with a view to increasing their convergence with the relevant UN Regulations or GTRs.

The EU and the UK also agreed to cooperate on various TBT-related topics relevant to the automotive industry.⁴³ This includes cooperation (i) on the development and establishment of technical regulations or related standards; (ii) on the exchange of research, information and results linked to the development of new vehicle safety regulations or related standards, advanced emission reduction and emerging vehicle technologies; (iii) on the identification of safety and emissions-related defects of vehicles and any non-compliance with technical regulations; and (iv) to promote international harmonisation of technical requirements.

Annex TBT-1 of the TCA does not provide for specific enforcement measures for the obligations it sets out. This stands in contrast to, for example, Annex 2-C on motor vehicles and parts to the JEPA. Annex 2-C on motor vehicles and parts to the JEPA permits either Party, during a limited period of 10 years following the entry into force of the JEPA, to suspend equivalent concessions if the other Party does not apply a UN Regulation listed in the JEPA or introduces measures that nullify or impair the application of a listed UN Regulation.⁴⁴ The JEPA also provides for an accelerated dispute settlement procedure.⁴⁵ Annex TBT-1 of the TCA does not contain equivalent specific provisions for enforcement and dispute settlement. Any breaches of the Annex TBT-1 provisions may, therefore, be subject to lengthy dispute settlement proceedings under the general provisions set out in Part 6 of the TCA.

Finally, Annex TBT-1 sets up a Working Group on Motor Vehicles and Parts.⁴⁶ This Working Group will assist the Trade Specialised Committee on Technical Barriers to Trade in carrying out its functions with respect to TBTs affecting the trade in motor vehicles, equipment, and parts thereof.⁴⁷

We trust the above is useful. Please do not hesitate to contact us should you have any further questions in relation to the above.

⁴⁰ TCA, Article 6 of Annex TBT-1.

⁴¹ TCA, Article 5 of Annex TBT-1.

⁴² These are also set out in TCA, Article 5 of Annex TBT-1.

⁴³ TCA, Article 8 of Annex TBT-1.

⁴⁴ JEPA, Annex 2-C, Article 18.

⁴⁵ JEPA, Annex 2-C, Article 19.

⁴⁶ TCA, Article 9 of Annex TBT-1.

⁴⁷ TCA, Article 9 of Annex TBT-1.