AIPCE·CEP

EU Fish Processors and Traders Association

Subject: Practical trade impacts and disruptions on the EU Fish processing and trading industry, consequent to EU-UK Trade and Cooperation Agreement

Introduction

The EU-UK Trade and Cooperation Agreement (TCA) was concluded on 24 December 2020, and has been applied provisionally from 1 January 2021.

Heading Five of part Two of the Agreement covers 'Fishery and aquaculture products'. Trade in these products is tariff and quota free, subject to **strictly defined (general and product specific) rules of origin**.

With respect to the specific rules of origin and the traditional sourcing, for many fish and aquaculture products processed in the EU and exported to the UK, duties are applied up to 25% ad valorem now.

Issue

In this paper, we highlight two principal areas where we believe that the provisions of the TCA give rise to **unintended adverse consequences** for processing businesses in the EU:

1. The restrictive nature of the rules of origin provisions,
2. The practical operation of rules aimed at eliminating IUU fish from supply chains,

and we give a short overview of the different issues arising from our initial assessment in the annex to this paper.

- ***Rules of origin & origin of the raw material***

The seafood industry has over many years developed highly integrated supply chains with different stages of processing being carried out at scale in different parts of the EU. In many cases, products sold into the UK originate from outside the EU and have already gone through various processing stages by the time they arrive in the UK either as consumer ready or for further processing into finished products.

Our understanding is that any product from outside the EU and the UK classified under Chapter 03 of the customs code would not meet the TCA's definition of "wholly obtained" within the EU or UK. They are therefore subject to tariffs of up to 18% on entry into the UK.

Avenue de Tervueren, 188A, 4th Floor, Postbox 4, 1150 Brussels, Belgium – Office phone number +32 (0)2 761 16 49 – e-mail address: aipce@kellen.com – website: www.kellencompany.com

For example, we estimate that up to 60 % of consumer ready products exported from Denmark to the UK are based on imported raw material from third countries (Greenland, Norway, Faroe Islands, Canada, Russia and China) and do not therefore qualify for tariff free access to the UK.

Ultimately, this will result in a significantly lower trader flow compared to the pre-2021 period. A reciprocal share of imports into the EU from the UK could likewise be affected under the same rules.

A similar rule of origin issue arises in respect of products under CN 1604 codes. Only a limited range of products falling under Code 160419, plus surimi under Code 160420, qualify for tariff free access between the EU and the UK irrespective of the origin of the raw material. Most of the other common consumer products fall under other CN 1604 headings and therefore only qualify for tariff free trade if they qualify as "wholly obtained" or an import quota is foreseen.

The UK's system of autonomous tariff quotas and tariff suspensions offers some mitigation but only for certain products and for imports destined for limited end uses. This however involves substantial new administrative costs and without fundamental change to the TCA's rules of origin provisions in relation to fish, there is no obvious way in which these impacts can be mitigated.

Under the agreements between the UK and other Third countries, in addition to other cumulation possibilities, a provision was incorporated in order to include the possibility for an extended cumulation with the EU materials. This reduces the availability of preferential raw material for the EU industry, which can only supply from the EU and the UK (with exceptions for 160419, preparations of surimi and a quota for canned tuna) to export to the UK market under preferential treatment. This is a **competitive advantage for Third countries**, which are competitors of the EU industry in the UK market.

These substantial additional costs will therefore lead to many operators re-evaluating their business models, which could ultimately result in additional costs to EU companies from less efficient supply chains or the transfer of some operations to the UK, meaning **loss of employment in the EU**.

At its worst, this combination of tariffs, rules of origin, border control procedures and related additional documentation will increase transaction costs, meaning that a significant share of the trade (import and export) with relatively low margins will no longer be commercially viable.

- ***IUU Documentation (processing statements, storage and catch certificates)***

Under provisions implementing the original UK Withdrawal Agreement, Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (IUU) is wholly transposed into UK legislation as part of retained EU law. This means that trade in both directions is now subject to the full catch and certification requirements which each previously only applied to imports from third countries.

The problem is that these requirements were originally framed to apply at the EU's common external border in the context of trade flows for final consumption within the Single Market (where linkage back to catching vessels would be relatively straightforward) and not for products intended to be re-exported following, often complex, further processing within the EU itself (which might involve the mixing of products from many vessels of different origins).

In addition to these very real practical issues, few of the competent authorities within the EU appear to have been prepared to implement these requirements, which require non-EU origin fish processed in an EU country to be accompanied by an officially endorsed **processing statement** from the authorities of the country in which the processing took place.

In many cases, this will involve the mixing of products from a number of sources - and tracing this back to the original documentation from when it first entered the EU Single Market, creating considerable additional administration costs for businesses.

Some products will also be manufactured in one member state and stored in another before being distributed across the EU and to the UK. At the time of manufacture, the product's final destination may well be unknown and it is impossible to provide processing statements for entire production batches, only part of which may be sent to the UK.

An additional complication arises from the UK government's view that a catch certificate is not required for goods from fish caught before 31 December 2020, if those fish were caught in the EU. The same is not true for fish caught outside the EU. We understand that similar rules will apply for all products entered into the EU before 31 December 2020, when the UK was still a member of the Union and the Single market as they are to be deemed as having been imported under the same system.

There are also inconsistencies between different authorities as to how certificates should be completed and validated (for example in respect of stamps and signatures and the use of digital or non-digital systems) – and the different forms of certification issued for different purposes – all of which make it harder for companies to know what they need to obtain.

- ***Other Impacts on EU Businesses***

In addition to the points above, the general documentary completion and clearance requirements now required for EU-UK trade are adding significantly to business costs, both through direct charges and the time taken to follow new procedures. These will increase further once the UK starts applying health certification and other requirements as from 1 April and 1 July this year. Again, there are many examples of inconsistencies as between different entry and exit points. There are also continuing uncertainties in determining issues such as duty rates. Transportation costs have increased, and border delays have reduced the availability of vehicles.

Other issues raised with the processing industry include label and packaging changes, the exclusion of UK shellfish from B or C grade waters, the complexities of certification requirements for composite products.

Some of these are expected to ease over time as people become more familiar with what is needed. But others represent permanent change to what were previously free and frictionless arrangements.

CONCLUSION

The UK's departure from the EU has inevitably led to additional transactional friction at borders and consequential disruption to historic trade flows. These problems are exacerbated by a lack of preparedness by authorities to provide the necessary official documentation in a timely and consistent manner.

There are also inconsistencies in interpretation and application of the rules. This creates considerable uncertainty for businesses who are already having to cope with new processes and administrative burdens. This is particularly true in the case of IUU documentation and health certificates.

The Commission should urgently review the operation of these systems with member states and where appropriate bilaterally with the UK authorities.

The Commission should also urgently review the practical effect of the rules of origin provisions for seafood in the Trade and Co-operation Agreement. As currently set out, these rules are disrupting the smooth operation of highly integrated supply chains and this is detrimental to the interests of EU businesses. Failure to address this issue could result in significant adverse effects on the EU processing industry.

No.	Table Summary of Issues
1.	Need of harmonization for EU wide validation of required certificates (processing statement, storage certificate, etc.)
2.	IUU Catch Certificate
3.	Trade frictions (documentation, procedures affecting trade flows)
4.	Rules of origin / origin of raw material / consequent duties
5.	Health Certificate (TRACES)
6.	Raw material supply / competitive advantage of 3rd countries against EU
7.	Trade of shellfish between the UK and EU from B or C graded areas
8.	Unequal treatment of 1604 codes
9.	Border controls in UK
10.	Logistics – groupage

-END-