



## EUROPEAN COMMISSION

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**Trade facilitation, Rules of Origin and International coordination: Europe and neighbour countries & International organisations**

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### EU-UK TRADE AND COOPERATION AGREEMENT

#### **Guidance on “Insufficient production”**

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

PART TWO: TRADE, TRANSPORT, FISHERIES AND OTHER ARRANGEMENTS

HEADING ONE: TRADE

TITLE I: TRADE IN GOODS

Chapter 2: Rules of origin

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**DISCLAIMER:** This guidance document should be read in conjunction with the full text of the Trade and Cooperation Agreement (hereinafter, the TCA) between the European Union and United Kingdom with the exception of Northern Ireland. It is without prejudice to guidance documents published on specific aspects of the Agreement. The TCA between the European Union and United Kingdom applies since 1 January 2021. This guidance document is of an explanatory and illustrative nature. The text of the TCA as well as customs legislation in the EU and its Member States, as well as customs legislation of the UK takes precedence over the content of this document and should always be consulted. The authentic texts of the EU legal acts are those published in the Official Journal of the European Union. There may also be national instructions.

## INSUFFICIENT PRODUCTION

### 1. Relevant provisions

#### **Article 39 (ex ORIG.3): General requirements**

1. For the purposes of applying the preferential tariff treatment by a Party to the originating good of the other Party in accordance with this Agreement, provided that the products satisfy all other applicable requirements of this Chapter, the following products shall be considered as originating in the other Party:

(a) products wholly obtained in that Party within the meaning of Article 41 (ex ORIG.5) [Wholly obtained products];

(b) products produced in that Party exclusively from originating materials in that Party; and

(c) products produced in that Party incorporating non-originating materials provided they satisfy the requirements set out in ANNEX 3 (ex ORIG-2).

[...]

#### **Article 43 (ex ORIG 7): Insufficient Production**

1. Notwithstanding point (c) of Article 39.1 (ex ORIG.3.1), a product shall not be considered as originating in a Party if the production of the product in a Party consists only of one or more of the following operations conducted on non-originating materials:

(a) preserving operations such as drying, freezing, keeping in brine and other similar operations where their sole purpose is to ensure that the products remain in good condition during transport and storage<sup>1</sup>

(b) breaking-up or assembly of packages;

(c) washing, cleaning; removal of dust, oxide, oil, paint or other coverings;

(d) ironing or pressing of textiles and textile articles;

(e) simple painting and polishing operations;

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<sup>1</sup> Preserving operations such as chilling, freezing or ventilating are considered insufficient within the meaning of point (a), whereas operations such as pickling, drying or smoking that are intended to give a product special or different characteristics are not considered insufficient

- (f) husking and partial or total milling of rice; polishing and glazing of cereals and rice; bleaching of rice;
- (g) operations to colour or flavour sugar or form sugar lumps; partial or total milling of sugar in solid form;
- (h) peeling, stoning and shelling, of fruits, nuts and vegetables;
- (i) sharpening, simple grinding or simple cutting;
- (j) sifting, screening, sorting, classifying, grading, matching including the making-up of sets of articles;
- (k) simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations;
- (l) affixing or printing marks, labels, logos and other like distinguishing signs on products or their packaging;
- (m) simple mixing of products, whether or not of different kinds; mixing of sugar with any material;
- (n) simple addition of water or dilution with water or another substance that does not materially alter the characteristics of the product, or dehydration or denaturation of products;
- (o) simple assembly of parts of articles to constitute a complete article or disassembly of products into parts;
- (p) slaughter of animals.

2. For the purposes of paragraph 1, operations shall be considered simple if neither special skills nor machines, apparatus or equipment especially produced or installed are needed for carrying out those operations.

#### **Article 40 (ex ORIG.4): Cumulation of origin**

1. A product originating in a Party shall be considered as originating in the other Party if that product is used as a material in the production of another product in that other Party.

2. Production carried out in a Party on a non-originating material may be taken into account for the purpose of determining whether a product is originating in the other Party.

3. Paragraphs 1 and 2 do not apply if the production carried out in the other Party does not go beyond the operations referred to in Article 43 (ex ORIG.7).

[...]

## 2. General information

Article 43 (ex ORIG-7) contains an exhaustive list of operations which are insufficient to confer origin on a product or to allow cumulation. This so-called ‘insufficient production’ are minimal operations which, when carried out either individually or in combination, are regarded as being of such minor importance that they cannot confer the originating status of the goods in the Party where they take place.

The ‘minimal operations’ have two different purposes:

(a) 'Minimal operations' are used primarily as a ‘negative test’ **to exclude that the originating status is conferred by minor processing operations undertaken on materials not originating** in the Parties. In general, there are two ways of approaching insufficient production:

- When the production process carried out in a Party only consists of one or more insufficient operations, there is no need to verify whether the product specific rule of the final product was fulfilled, since it can never confer the originating status of the goods.
- When the product specific rule of origin is met, it still needs to be verified if (the total of) the operations carried out are more than insufficient in order to determine whether the originating status of the goods has been conferred. It may be that the product specific rule is fulfilled but if the only production that was carried out in a Party is one or more from the list, then the product is still considered non-originating.

***Example 1:** A machine is produced in the EU, just by simple assembling of the parts all of them imported from China. The product specific rule is fulfilled, i.e. the value of the assembling operation represents more than 50% of the ex-works price of the machine. However, if the only operation that was carried out in the EU was a simple*

*assembling (one of the operations of the list), then the product does not acquire the EU origin, even if the product specific rule was met and the product cannot enjoy the preference when exported to the UK.*

(b) 'Minimal operations' are also used, additionally, to **determine whether cumulation can be applied.**

- When materials originating in one Party are imported in another Party, if the only operation undertaken on those originating materials of the other Party is one or more of the listed operations, then cumulation (bilateral cumulation of Article 40.1 (ex ORIG 4.1) cannot be applied and the product does not obtain the origin of the latter Party. It is important to remind that in this cases of cumulation in a Party with originating materials of the other Party, any operation carried out in the first Party would be sufficient as to confer the origin of that Party except if that operation is one or more of the list of Article 43 (ex ORIG 7).
- When materials that have been processed in one Party (but are not yet originating) are then imported in the other Party, if the only operation made on those materials is one or more of the listed operations, then cumulation (full cumulation of Article 40.2. (ex ORIG 4.2) cannot be applied and the product does not obtain the origin of the latter Party. It is important to remind that in this cases of cumulation in a Party with production carried out on non-originating materials of the other Party, the final product acquires the origin of the first Party if the product specific rule is fulfilled there when considering together the total production carried out in both Parties and the production in the first Party is one or more of the list of Article 43 (ex ORIG 7).

**Example 2:** *Sweets are produced in the EU and they obtain the “EU origin”. They are sent under preferences to the UK. In the UK they are put in groups of 50 in plastic bags imported from China. The bag is close with an elastic rubber and a label with the name of the company is affixed on the bags. No other operation is carried out in the UK. The packed and labelled sweets are sent back to the EU. As the only production carried out in the UK are two of the listed operations (simple packing and affixing of labels), cumulation cannot apply in the UK and the UK origin cannot be obtained for the packed and labelled sweets. The product cannot benefit from the preferences when imported in the EU under the TCA.*

Furthermore, it should be considered that:

- if the only production carried out in a Party is one or more of the listed insufficient operations, the production will be considered as insufficient.
- if any other production, other than those listed as insufficient operations, is carried out in a Party, then the production is not considered insufficient.

*Example 1a: A machine is produced in the EU, just by simple assembling of parts all of which have been imported from China - except for one which is produced in the EU. The product specific rule is fulfilled, i.e. the value of the assembling operation and the value of the production of the part is more than 50% of the ex-works price of the machine. Considering that in the EU “something else” than a simple assembling operation was made (i.e. the production of one of the parts), then Article ORIG 7 does not apply to the case and the machine may acquire the EU origin. It can receive the preference when exported to the UK.*

*Example 2a: Sweets are produced in the EU where they obtain “EU origin”. They are sent under preferences to the UK. In the UK they are put in groups of 50 in plastic bags. The bags are close with an elastic rubber and a label with the name of the company is affixed on the sweets. The plastic bags are produced in the UK. The packed and labelled sweets are sent back to the EU. As a production other than the two operations from the list was carried out in the UK (the production of the plastic bags), cumulation may apply in the UK and the UK origin can be obtained for the packed and labelled sweets. The product may benefit from the preferences when imported in the EU.*

In Example 2a the “production, other than those listed as insufficient operations”, refers to the production of the packaging (the plastic bag). According to the product specific rule applicable to the sweets, the originating or non-originating status of the packaging is not relevant for the consideration of the sweets as originating. In accordance with Article 46 (ex ORIG 10) on “Packaging materials and containers for retail sale”, the plastic bag being the packaging materials in which the product is packaged for retail sale, is to be disregarded in determining the origin of the sweets.

This, however does not impede that the production of the plastic bag in the UK is considered as production other than those operations listed as insufficient operations.

### **3. List of the insufficient operations**

The following operations are considered as insufficient production:

(a) preserving operations such as drying, freezing, keeping in brine and other similar operations where their sole purpose is to ensure that the products remain in good condition during transport and storage.

- Preserving operations such as chilling, freezing or ventilating are considered insufficient within the meaning of subparagraph (a),
- Whereas operations such as pickling, drying, or smoking that are intended to give a product special or different characteristics are not considered insufficient.

***Example 3:** Vegetables and fruit originating in the EU are imported into the UK. To preserve the freshness of these products they are stored in special cooled warehouses in the UK. This chilling of the products is considered as an insufficient operation, cumulation cannot be applied and the UK origin cannot be conferred if the products are exported back to the EU.*

However, some other operations that are used to preserve products can be considered as more than insufficient.

***Example 4:** Salmon of UK origin (HS heading 03.02) is imported into the EU where it is smoked to get smoked fish (HS heading 03.05). The smoking of fish (or drying of fish) gives the fish different characteristics in flavour and shelf-life, thus these operations can be considered as more than insufficient. Cumulation is possible in this case and EU origin is conferred.*

(b) breaking-up or assembly of packages;

***Example 5:** EU-made wine is imported in bottles into the UK where it is repacked and sent back to the EU. The bottles arrive to the UK in a pallet containing hundreds of bottles and are then packaged into cases of 3 or 6 bottles: this would be an insufficient operation and cumulation with the EU bottles of wine could not be applied. As a consequence the UK origin could not be conferred.*

(c) washing, cleaning, removal of dust, oxide, oil, paint, or other coverings;

**Example 6:** *Raw coffee beans are imported in the EU from a third country. The beans are dusted (removing dust) and exported to the UK. Even if the product specific rule is met, the product does not acquire the EU origin because the only process carried out in the EU is an insufficient operation and cannot be imported in the UK with preference.*

(d) ironing or pressing of textiles or textile articles;

**Example 7:** *UK originating clothes are exported to the EU where they are ironed with a special ironing machine specifically made for this purpose. As the only operation carried out in the EU is an insufficient one (ironing), cumulation cannot apply and the clothes cannot obtain the EU origin.*

(e) simple painting and polishing operations.

The term “simple” applies both to painting and polishing.

**Example 8:** *UK originating terracotta pots are painted in the EU in one colour without any design by hand. This is an insufficient operation, cumulation cannot apply and the EU origin cannot be conferred. However, the painting with a specific design requires special skills which go beyond simple painting and would not be an insufficient operation.*

(f) husking and partial or total milling of rice, polishing and glazing of cereals and rice; bleaching of rice;

**Example 9:** *Rice that is wholly obtained in the EU is imported to the UK and is milled into rice flour. Since the total milling of the rice is an insufficient operation, cumulation cannot be used and the rice flour would not obtain UK origin. However, milling of other cereals is not an insufficient operation so if wheat wholly obtained in the EU is milled into wheat flour in the UK, cumulation could be used and the flour would have UK origin.*

(g) operations to colour or flavour sugar or form sugar lumps; partial or total milling of sugar in solid form;

**Example 10:** *EU-originating raw sugar is imported into the UK. It is totally milled and then refined. The total milling is an insufficient operation as per subparagraph (g). But refining is not considered to be an insufficient operation. Therefore, the*



*refining of the EU sugar in the UK is sufficient to confer UK origin on the product. If the refined sugar is then exported back to the EU from the UK, the goods could benefit from preferences.*

**(h)** peeling, stoning and shelling of fruits, nuts and vegetables;

**Example 11:** *EU originating nuts from HS heading 08.01 are imported into the UK and after importation the shell is removed using machines and exported back to the EU. Shelling nuts is considered an insufficient operation, being the use of machines irrelevant.*

**(i)** sharpening, simple grinding, or simple cutting;

**Example 12:** *The cutting in the UK of EU originating wood into shorter pieces for wood burning stoves is to be considered as simple and thus an insufficient operation; whereas the cutting of diamonds is to be considered as a more than simple cutting operation because special machinery and skills are needed.*

**(j)** sifting, screening, sorting, classifying, grading, matching including the making-up of sets of articles;

**Example 13:** *Different types, sizes and quality of potatoes are imported in bulk from the EU into UK. The sorting of potatoes by hand in the UK is to be considered as simple and so is an insufficient operation. Cumulation cannot apply and the UK origin cannot be obtained.*

**(k)** simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations;

**Example 14:** *The placing of EU originating watches in jewellery cases in the UK is to be considered as simple and so an insufficient operation. As a consequence cumulation cannot apply, the watches cannot obtain the UK origin and preferences cannot be granted in the EU if exported back there.*

**Example 15:** *The placing in the EU of third country medicaments in bulk into a glass ampoule requires special skills or apparatus going beyond simple packaging - thus it would not be considered an insufficient operation. Therefore, the product specific rules would be met, the EU origin acquired and preferences granted if the medicaments in the ampoules would be exported to the UK.*

(l) affixing or printing marks, labels, logos, and other such distinguishing signs on the products or their packaging;

**Example 16:** *EU originating crystal glasses in boxes are exported to the UK. In the UK stickers are put on boxes indicating that they contain fragile products. This is to be considered as an insufficient operation. As a consequence cumulation cannot apply, the crystal glasses cannot obtain the UK origin and preferences cannot be granted in the EU if exported back there.*

(m) simple mixing of products, whether or not of different kinds; mixing of sugar with any material;

**Example 17:** *Milk produced in the EU is imported into the UK where it is mixed with third country milk. This is considered as simple mixing which is not sufficient to confer UK origin. As a consequence cumulation cannot apply, the mixed milk cannot obtain the UK origin and preferences cannot be granted in the EU if exported back from the UK.*

(n) simple addition of water or dilution with water or another substance that does not materially alter the characteristics of the product, or dehydration or denaturation of products;

**Example 18:** *.Denaturing EU originating ethanol by adding one or more chemicals (denaturants) in the UK to it to make unfit for human consumption is an insufficient operation.*

(o) simple assembly of parts of articles to constitute a complete article products into parts;

**Examples 19:** *A dining table is assembled in the EU by fixing a wooden table top to 4 wooden table legs using only non-originating materials with the assistance of a basic tool. Although the product specific rule applied to furniture is fulfilled (CTH), the table as a whole does not obtain EU originating status because this assembly is to be considered simple.*

*A piano is imported in parts from a third country and assembled by a piano maker in the EU. This requires special skills which also contribute to the characteristics of the piano. This would not be a simple assembly and would therefore not be an insufficient operation. The product specific rule applied to the piano could be fulfilled and the EU origin conferred.*

*A UK business imports non-originating parts for an analytical instrument from a third country to assemble the instrument in the UK. In addition to the assembly, the business uses specialised apparatus and software to undertake these processes. This cannot be considered a simply assembly. The product specific rule applied to the analytical instrument could be fulfilled and the UK origin conferred.*

(p) slaughter of animals;

Any form of slaughtering of animals will always be considered as an insufficient operation.

#### **4. Interpretation of the list**

The list, as indicated above, is exhaustive and should be interpreted in a restrictive manner. This means that operations that are not listed should not be considered as ‘insufficient’.

A clarification is needed at this point, however. The operations listed reflect “insufficient *production*”. But there may be “operations” that *cannot be considered as a “production”*. While indeed these operations are not on the list, they cannot either confer origin or allow cumulation because *production* is needed for a product to acquire origin or trigger cumulation.

Production is defined in the TCA as “any type of working or processing including assembly”. The concept of production covers also operations that are addressed to put in place certain conditions only under which a concrete product may be obtained, such as to develop and keep concrete humidity or temperature in a room to dry, mature or age a product. To repair a product may also be considered as production, as it implies a working or processing on the product even if just to restore it to its initial state.

On the contrary, the handling of a finished product when being stored or transported cannot be considered as production (See cases 8 and 9 for further examples).

**Example 20:** The specialist handling of originating explosive chemicals during transport and/or storage is not ‘production’. If a product originating in the EU is imported in the UK and warehoused there, and the only activity that is made in the UK on the explosive chemicals is specialist handling, then it cannot be concluded that

a production was carried out in that Party. Cumulation cannot be triggered, simply, because there was no production at all.

## **5. The term 'simple'**

Some operations have the qualifier “simple”. These are the cases of:

- e) simple painting and polishing operations;
- i) simple grinding or simple cutting;
- k) simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations;
- m) simple mixing of products, whether or not of different kinds; [note that mixing of sugar with any material is always considered insufficient, and not only when it is a ‘simple mixing’];
- n) simple addition of water or dilution with water or another substance that does not materially alter the characteristics of the product;
- o) simple assembly of parts of articles to constitute a complete article [please note that disassembling is always considered an insufficient operation and not only when is ‘simple disassembling’];

An operation shall be considered simple when neither special skills, nor machines, apparatus, or equipment especially produced or installed are needed for carrying out those operations.

It is important to note that, using special skills, machines, apparatus or tools are in themselves not enough for the operation to go beyond “simple” operations.

Machines are today used basically in all production processes. Specialised machinery is required to ensure that the processing can be undertaken at the scale or volume required. This does not automatically make the production ‘not simple’, just because it is made with machines.

These special skills, machines, apparatus or tools are “needed” to obtain the product as it is, i.e. for the product to obtain its characteristics or properties.

An assessment needs to be made as to whether without those machines the product could be produced with similar characteristics or properties.

***Examples 21:** Pears are put into foam packets in groups of four and covered by a transparent plastic film. This is undertaken through an automated process by machines. However, this does not make the process ‘not simple’ just because machines are used. The same process could be carried out manually without the resulting product – the packets of four pears - being different or having other characteristics. The process may, however, always be done with machines because is more profitable but it does not change the nature of the production process.*

## **6. Cases**

The assessment of whether a concrete production method is ‘insufficient’ or not needs to be carried out case by case, considering the specific production process, the use or not of machines, the impact of the use of those machines in the characteristics or properties of the product, the need of specialised skills or knowledge, etc.

We offer below a list of cases as an illustration of the considerations that are required to assess a production as ‘insufficient’, though it does not mean that the conclusion in your specific case could be the same if any other element would intervene. We advise you to address your case to your national customs authority to have a tailored-made analysis.

### **Case 1: Bottling and canning of alcoholic beverages**

*A UK business imports bulk beer originating in the EU to be bottled or canned in the UK for re-export to the EU. They blend the bulk beer with water and insert gas through a carbonator or nitrogenator to reach the required ABV (alcohol by volume). They then evacuate unwanted gases from the bottle or can to ensure the beer does not age prematurely, and pressurise the product with specific gases to ensure that the beer is transferred from the storage location to the bottle or can under continued pressure using specialised machinery.*

#### **Analysis:**

The assessment of the operations described is relevant for the application of cumulation in the UK on EU originating materials.

Several operations need to be considered:

- a) The blending of the bulk beer with water which could be considered as listed in letter n) *“simple addition of water or dilution with water or another substance that does not materially alter the characteristics of the product“*.
- b) The processing described for the bottling which could be considered as listed in letter k) *“simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations”*.

There is no sufficient information to assess if the addition of water could be considered as an insufficient operation, or if the use of specialised machines would make the addition of water more than *”simple”* because the resulting liquid could not be obtained with the same characteristics if undertaken without those machines.

In relation to the bottling process undertaken also with specialised machines, gas is inserted to ensure that the liquid has the required characteristics (e.g. ABV), unwanted gas is evacuated and pressurisation is kept. It seems that these operations could not be carried out without those specialised machines. The bottling therefore seems not to be *“simple”*.

Therefore it could be considered that production beyond insufficient operations of the list was undertaken in the UK (a bottling process that is not simple), cumulation applied and the UK origin acquired.

### **Case 2: Bottling and canning of non-alcoholic beverages**

*A UK business imports bulk juice concentrate from the EU to bottle in the UK for re-export to the EU. They use specialised machinery for every step of the process. They blend the bulk juice concentrate with water using a machine to reach the required consistency and flavour. The juice is then pasteurised in the UK before it is placed in bottles. A machine is then used to bottle the juice. The bottles are first sterilised. Next, the bottles are filled with juice. The machine is designed to remove gas, most notably oxygen, from the process so the juice does not spoil prematurely. The bottle is then capped with a seal by the same machine to stop any more gas entering the bottle and spoiling the juice.*

#### **Analysis:**

This scenario involves several processes that need to be considered to determine whether production goes beyond insufficient:

- a) The blending of water with the juice concentrate which could be considered as the operation listed in letter n) “simple addition of water or dilution with water or another substance that does not materially alter the characteristics of the product“.
- b) The processing described for the bottling which could be considered as listed in letter k) ‘simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations“.
- c) The pasteurisation process for the juice which could be considered as a preserving operation of letter a) “preserving operations such as drying, freezing, keeping in brine and other similar operations where their sole purpose is to ensure that the products remain in good condition during transport and storage”

The dilution of fruit juice concentrate would be a borderline case. It could be argued that the specialised machinery to dilute the juice concentrate at the start of the process is needed for the operation, as otherwise the juice would not have the desired characteristics, most notably the concrete taste, consistency and flavour. It could be argued, however, that the only requirement would be to correctly measure the quantity of water to be added to the concentrate and this could be made by hand.

The bottling of the juice - seems to go beyond a “simple bottling” per subparagraph (k). There is a sterilisation of the bottles and removal of unwanted gas from the bottle finalising with the seal of the bottle, so no further gas can enter. All these processes are carried out with machines. It seems difficult that the same operations could be carried out with the same results without the machines.

There is finally also the pasteurisation of the juice, which cannot be considering as a “preserving operation which the sole purpose is to ensure that the products remain in good condition during transport and storage”. Pasteurisation destroys or deactivates organisms and enzymes that contribute to spoilage or risk of disease and ensures food preservation but also food safety. It confers to the product specific characteristics that go beyond to ensure that the products remain in good condition during transport and storage.

Therefore it could be considered that production beyond insufficient operations of the list was undertaken in the UK (pasteurisation and a bottling process that is not simple), cumulation applied and the UK origin was acquired.

### Case 3: Peeling, dicing and packaging of fruits

*A UK business imports fruits from the EU to peel, slice and package in individually-sized plastic trays to prepare for retail sale and export to the EU. They use specialised machinery for every step of the process, including industrial fruit peeling and slicing machinery and automatic tray sealing machinery.*

#### **Analysis:**

This scenario involves three separate processes that need to be considered to determine whether production goes beyond insufficient:

- a) *operations of letter (h) “peeling, stoning and shelling, of fruits, nuts and vegetables”;*
- b) *operations of letter (i) “sharpening, simple grinding or simple cutting”;* and
- c) *operations of letter (k) “simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations”.*

The first step of the process, peeling of the fruit, would be considered insufficient. The provision is clear that peeling of fruits is insufficient; peeling is not qualified by ‘simple’ and so no analysis of the precise nature of the peeling operation is required.

In relation to the slicing of the fruit there is some room to argue that the slicing of the fruit goes beyond “simple cutting.” It depends on the final result, i.e. if the width or form granted to the sliced fruit cannot be normally obtained by cutting by hand by a lay man, or if on the contrary the resulting product is just pieces of fruits that could be obtained equally by using a knife.

Finally the final step of the process, packaging of the fruit in individually-sized plastic trays, depends again on the concrete process and the result: as described, the process requires machinery to vacuum any unwanted gas from the trays and to lay and seal the top film to provide protective packaging for the product and ensure the contents do not spoil prematurely. The vacuum process could be considered as part of the packaging, and in such a case it could be considered as a ‘sophisticated’ packaging process, which needs a machine to be carried out. However, it could also be considered not as part of the packaging, but as a preserving operation of letter a), i.e. a “preserving operation where its sole purpose is to ensure that the products remain in good condition during transport and storage”, considering that the purpose is that the content does not spoil prematurely. If the latter, the preserving operations



are not qualified by "simple" and therefore the vacuum would be insufficient production.

It seems that the vacuum process to take out unwanted gases or oxygen is part of the packaging (or bottling, as in case 2) process. Though its effect may be a packaging that ensures a better preservation of the goods, it cannot be considered as an isolated operation destined solely to the preservation of the goods such as freezing or ventilating separated from the packaging process.

#### **Case 4: Removal of parts of fish and filleting**

*UK originating fish is processed in EU plants where the head, skins and intestines are removed and fillets cut.*

#### **Analysis:**

The analysis would be in this case to assess if such operations would fall within the concept of simple cutting of letter h). The operation of filleting covers the removal of certain parts of the fish (head, tail, internal parts and bones) which cannot be made without certain skills or appropriate machines to get the expected result, i.e. a fully clean and free-bone product and which, therefore, may be considered going beyond simple cutting.

#### **Case 5: Arranging bouquets**

*A UK business imports cut flowers of different types originating in the EU and arranges them into bouquets or floral arrangements in the UK for export to the EU.*

The first issue is to see if there is any operation in the list that may be considered as similar to the arranging of the flowers in a bouquet. The formation of a bouquet could be considered as "sorting" and "matching including the making-up of sets of articles" of letter j). In this case, the qualifier of "simple" does not appear and therefore it could be understood that the arrangement of any bouquet would fall under the provisions on insufficient operations.

However, there is a difference between putting the same type of flowers (i.e. 12 tulips) of the same size together with an elastic rubber and wrapped in a plastic film or paper and make a bouquet of different flowers in an artistic manner. If the second, to consider the formation of a bouquet as an insufficient operation would imply an extensive interpretation of the list, as such type of bouquet is not only sorting and

matching, but implies the formation of final product requiring artisanal or artistic skills and training which go beyond sorting and matching .

#### **Case 6: Embroidering business logo to a sporting good**

*A UK business imports EU sporting goods and embroiders a business logo with a machine for export to the EU.*

#### **Analysis:**

In this case, the issue is to assess if embroidering can be covered by “affixing or printing marks, labels, logos and other like distinguishing signs on products or their packaging” of letter l). While the result is that a logo is placed on the product, the process is, however, different to the operations of the list, which refers only to ‘printing’ and ‘affixing’.

It could be considered that the provision refers to two processing ‘affixing “ and “printing” and does so on purpose: The use of the term affixing means “sticking, attaching or fastening something to something else”. It would imply that the logo, label or mark is contained in a separate piece of paper, fabric, etc which would be placed or “affixed” on the product with an adhesive or by stitching in the case of textiles. The term “printing” would be used for the cases where the logo, label or mark does not exist separately but is formed on the product or packaging directly when printing. If this interpretation would be followed, then embroidering would not be covered by “affixing” as the logo is not contained in a separate piece of material. For example, stitching or sewing a piece of fabric with the mark or label on the product would be “affixing”, but embroidering the logo directly on the product it would not be.

The issue would be then to assess whether embroidering could be covered by “printing”, that is the other term used by letter l).

When comparing ‘embroidering’ and ‘printing’ there are two possible approaches: a) a literal one, i.e. taking into account that the list should be interpreted in a restrictive manner, embroidering a logo cannot be considered as an insufficient operations: only printing is; b) a teleological one: it could not be logically expected that in letter l) a complete enumeration of all the different possible processes to put a logo on a product were to be listed (i.e. embroidering, coating, flocking, carving, etc) and instead the more usual process “printing” was mentioned. But this does not mean that

other processes with the same aim and result (to place a logo or mark on a product) are not covered by the provision. Moreover, even a consideration to the type of printing would be needed: it is not the same to print a logo on the internal part of a T-shirt than to print the logo in whole t-shirts with expensive colours reacting to the change of light, etc which could be understood to go beyond the mere printing of a logo.

It seems more appropriate for a correct application of letter l) to follow a case by case approach with a consideration of the concrete process with which the logo or mark was placed on the product and the result of such operation in relation to the characteristics of the product.

### **Case 7: Dry ageing beef**

*A UK business imports beef from the EU. In the UK, it is dry aged for between 21 and 35 days in a dry maturation chamber. The chamber constantly monitors the airflow, temperature and humidity to ensure the correct conditions have been met. This gives the meat a new and distinct tenderness and flavour. This is a costly and skilled process, reserved for premium cuts of beef.*

#### **Analysis:**

Activities like drying or maturing products with the intention to change their characteristics (e.g. their flavour or taste), go beyond the insufficient operation in Article ORIG-7(1) point (a) which refers to “preserving operations [...] where their sole purpose is to ensure that the products remain in good condition during transport and storage”.

Notably, *drying*, together with *smoking* are identified in the footnote of letter a) as non-insufficient operations when are intended to give a product special or different characteristics, by opposition to other preserving operations *such as chilling, freezing or ventilating*”.

The key element to consider “dry” as a non-insufficient operation is, therefore, that the dry aging process is intended to give a product special or different characteristics rather than the sole purpose to ensure that the product remains in good condition of the preserving operations considered as insufficient. If the dry-aged beef is marketed and priced differently than other beef, because of the different flavour and other

quality characteristics conferred by that process, it is an indication that this process goes beyond insufficient operations.

### **Case 8: Ageing Gin**

*A UK business imports gin from the EU. In the UK, it is aged for three months in oak barrels. Aging in an oak barrel for a three-month period gives the gin a new and unique flavour.*

#### **Analysis:**

First, it should be noted that this would be a hypothetical case as being 0% the EU and the UK tariff rate applicable to the product, the determination of the preferential origin would not be relevant, but the analysis of the concept of “aging” could be relevant for other spirits or products.

Contrary to the previous case, “aging” is not expressly mentioned as a non-insufficient operation.

The aging process, in any case, does not seem to fall under the preserving operations of letter a) as it has not as “a sole purpose to ensure that the product remains in good condition”. On the contrary the intention is that the flavour properties of the product change, giving it a different commercial quality.

The question would be whether in such a case it may be considered that there is ‘production’. May it be considered ‘production’ just the passing of time? If such ageing took place without any change or manipulation involved (e.g. a bottle of a spirits is simply moved from the place of production to another place where it is just stored), then it could be considered as not having undergone production which is defined as “any working or processing”.

However, in this case of aging in a specific type of barrel, the transformation of the characteristics of the product by the passing of time may take place only because certain specific conditions are developed: i.e. the spirit is introduced in a concrete type of barrel, specifically produced for such purpose. It may be that the product is kept in a conditioned environment with precise temperature and humidity with the intended objective of the change of its characteristics, etc.

It may, therefore, be concluded that ‘drying’, ‘aging’ or ‘maturing’ when taking place under certain conditions developed with the intention to give a product special or different characteristics involves a certain type of production which goes beyond the

mere passing of time and could be considered also as going beyond “insufficient production”. Without putting those conditions in place, the aging or maturing, implying the change of the characteristic of the product would not take place. By mere passing of time the product could at the best just be preserved or at the worst be spoiled as without those conditions the aging, maturing or drying would not take place.

Finally, it could be also considered that the production is still ongoing for the spirit placed in the oak barrel. The spirit derives different commercial qualities depending on the amount of aging it has undergone in an oak barrel, its “production” is still underway while being aged in a barrel.

Conversely, if the EU originating spirit had already been distilled, aged and bottled in the EU and was sold to a UK distributor who kept the bottles in a temperature controlled storage facility for 6 months before selling it to a customer in the EU, this would be considered as insufficient production since that would be a preserving operation to maintain the product in good condition rather than a maturing process that changes the characteristics of the product in a significant way.

#### **Case 9: Testing, calibrating (conformity assessment)**

*EU high-tech products are calibrated and tested in the UK before sale/export to ensure they function properly and produce accurate results. The UK business uses specialised apparatus and software to undertake these processes.*

#### **Analysis:**

Calibrating, testing and copyrighting are not operations listed in the provision of insufficient operations. Therefore the question is not if they may be considered as insufficient operations, but more if they are “production”. While calibrating would change the properties of the product, testing it would not necessarily mean any change in the characteristics of the product, as the product may stay exactly as it was before the testing. However while a non-tested product may not be ready to be sold and used, a tested one may be. Calibrating and testing also frequently require specific techniques and machines. A case-by-case analysis would be required to assess whether these activities may be considered as “production”. A conformity assessment test, which does not involve any processing on the product but an analysis of the production method may be considered in all cases as not being production.