

EXPLANATORY MEMORANDUM ON A UK/EU TRADE AND COOPERATION AGREEMENT GOVERNANCE DOCUMENT

COM(2023) 950 + Annex

Proposal for a Council Decision on the position to be taken on behalf of the European Union in the Partnership Council established by the 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, as regards the transitional product-specific rules for electric accumulators and electrified vehicles.

Submitted by Foreign, Commonwealth and Development Office, 15 January 2024

SUBJECT MATTER

1. The European Commission's proposal sought a Decision from the Council of the EU ('Council') on the position to be adopted on behalf of the EU in the Trade and Cooperation Agreement (TCA) Partnership Council. The proposal was for the Partnership Council to extend the transitional product-specific rules of origin for electric accumulators and electrified vehicles to 31 December 2026 by:
 - a. Replacing the original Annex 5 of the TCA with a new annex – this new annex would remove the originally-foreseen transitional rules applicable from 1 January 2024 – 31 December 2026. Instead, the rules previously foreseen as applicable from the entry into force of the agreement until 31 December 2023 would continue to apply until 31 December 2026;
 - b. Amending Article 68 – to remove the ability of the Partnership Council to further amend the TCA rules of origin in respect of electric vehicles and their batteries until 1 January 2032, except where technical amendments are required to reflect updates to the World Customs Organisation's Harmonised System.
2. The proposal was adopted by the Council on 21 December. The Partnership Council then adopted a Decision to amend the TCA, also on 21 December. The adopted Partnership Council Decision reflects the Commission's proposal in its substance. A Statutory Instrument – The Customs Tariff (Preferential Trade Arrangements) (Amendment) Regulations 2023 – was laid in Parliament on 22 December, to give effect to the Partnership Council Decision in UK law by 1 January 2024.

SCRUTINY HISTORY

3. The Foreign Secretary wrote to the Chairs of the European Scrutiny Committee and the European Affairs Committee on 21 December 2023 to notify them of the Partnership Council Decision to extend the TCA rules of origin, which was adopted that day.

MINISTERIAL RESPONSIBILITY

4. The Foreign Secretary is responsible for the UK-EU relationship and is Co-Chair of the Partnership Council. The Chancellor of the Exchequer is responsible for the

administration of import duties (tariffs). The Secretary of State for Business and Trade is responsible for the automotive sector.

INTEREST OF THE DEVOLVED GOVERNMENTS (DGs)

5. The trade provisions under the TCA, including rules of origin, are reserved. Devolved Governments have nonetheless been consulted on the preparation of this explanatory memorandum and had no comments.

LEGAL AND PROCEDURAL ISSUES

- i. **Legal Base:** the European Union's legal basis for this decision is Article 218(9) of the Treaty on the Functioning of the European Union (TFEU). The legal basis for amending the rules of origin chapter and its annexes (including Annex 5) by the Partnership Council is Article 68 of the TCA.
- ii. **Voting Procedure:** the adoption of the proposal by the Council was on the basis of qualified majority voting.
- iii. **Timetable for adoption and implementation:** the Council formally adopted the Commission proposal on 21 December. Following this, the Partnership Council took a Decision by written procedure on 21 December to extend the relevant TCA rules of origin.

POLICY AND LEGAL IMPLICATIONS

6. To access zero tariffs under the TCA, businesses must prove their products include a minimum level of EU or UK manufactured content. These requirements are known as "rules of origin" and help determine where products originate rather than where they're shipped from, to ensure lower tariffs are correctly applied to eligible products and support market competition.
7. The TCA introduced a staged approach for electric vehicles and batteries which required phased increases in these rules of origin requirements - with the first increase due to take effect on 1 January 2024, before a final increase from 1 January 2027. This approach was initially designed to reflect industry capability at the time and incentivise investment in domestic battery production.
8. This Council Decision, and subsequent UK-EU agreement to amend Article 68 and Annex 5 of the TCA by Decision of the Partnership Council, recognises the disruption to the global supply chain caused by the COVID-19 pandemic and Russia's illegal invasion of Ukraine. It cancels the changes that were scheduled in 2024, meaning the existing rules of origin will last for a further three years until the end of 2026.
9. This agreement facilitates UK-EU tariff-free trade in electric vehicles and has prevented 10% tariffs being levied on this trade from January. Industry expects this will save car manufacturers and consumers up to £4.3 billion in additional costs and provide long term certainty to the sector as we continue to scale up our domestic battery supply chain and work to deliver our net zero commitments.

10. The removal of the Partnership Council's ability to further amend the TCA rules of origin in respect of electric vehicles and their batteries until 1 January 2032 reflects our shared commitment with the EU to developing domestic electric vehicle battery capacity. This puts arrangements for electric vehicles on the same footing as most others in the TCA, which require a "supplementing agreement" to change the agreement's terms.
11. The amendments to the TCA rules of origin were given effect in UK law by The Customs Tariff (Preferential Trade Arrangements) (Amendment) Regulations 2023. This Statutory Instrument amended the relevant origin reference document to reflect the updated rules in the TCA as amended by the Partnership Council Decision.
12. The Government regrets that this SI breached the convention that SIs subject to the negative procedure should normally be laid before Parliament, and copies thereof provided to the Select Committee on Statutory Instruments, at least 21 days before the SI comes into force. Unfortunately, it was not possible to lay this instrument until agreement was reached with the EU, which only took place on 21 December. The Government was committed to implementing the extension to the current rules of origin before the 1 January 2024 deadline, in accordance with its international obligations, as agreed with the EU.

CONSULTATION

13. No external consultation has been necessary.

FINANCIAL IMPLICATIONS

14. There are no financial implications for the UK.

MINISTERIAL NAME AND SIGNATURE



Leo Docherty

Minister for Europe

Foreign, Commonwealth and Development Office