Department for Environment Food & Rural Affairs

Defra Northern Ireland Protocol Business Guidance

‘At Risk’ Goods and the UK Trader Scheme

Environment Agency

Forestry Commission

NATURAL ENGLAND

The Trade and Cooperation Agreement (TCA)

The Trade and Cooperation Agreement signed between the UK and EU gives tariff free access for trade between the UK and EU.

Goods must meet the origin requirements set out in the agreement to claim the preferential tariff.

- Goods entering the EU must meet UK origin requirements
- Good entering the UK must meet EU origin requirements

Where goods enter NI the preferential tariffs available under the TCA can be used to reduce the EU tariff to zero

- GB-NI – this means goods qualifying for TCA preferential tariffs enter NI tariff free and the business does not need to consider whether the goods are ‘at risk’
- In this case an authorisation under the UK Trader Scheme (UKTS) would not be required to move goods into NI tariff free

The Northern Ireland Protocol (NIP)

The Northern Ireland Protocol was designed as a practical solution to avoiding a hard border on the island of Ireland.

Under the protocol the UK Government has committed to:

- Deliver unfettered access for NI producers to the whole of the UK market;
- Ensure there are no tariffs on goods remaining within the UK customs territory;
- Give effect to our obligations without the need for any new customs infrastructure in Northern Ireland; and
- Guarantee that NI businesses will benefit from the lower tariffs we deliver through our new Free Trade Agreements with third countries.

NI Protocol – Article 5

Article 5 (1) of the NIP sets out the basis on which tariffs, where applicable, will be applied:

- **Goods entering from another part of the UK**: Tariffs won't be payable "unless that good is at risk of subsequently being moved into the Union, whether by itself or forming part of another good following processing": in which case the EU's Common External Tariff (CET) will be applied.
- **Goods entering from RoW**: if 'not at risk' of continuing into the EU, the UK import tariff is payable. For a goods 'at risk' of entering the EU, the EU's CET will be applied.

Article 5 (2) directs the Joint Committee to determine the criteria for goods that are a) subject to commercial processing, and b) 'not at risk' of subsequently being moved into the EU.

Article 5 (6) sets out how the UK may reimburse, waive or compensate for the CET, subject to state aid limitations.

What are ‘at risk’ goods?

The NIP states that goods moving from GB-NI will be able to do so tariff free, except where those goods are deemed to be ‘at risk’ of entering the EU’s single market. The Northern Ireland Protocol explains that goods from Great Britain (not deemed to be at risk of leaving the UK customs territory) will not pay any tariffs. However, goods ‘at risk’ of entering the EU’s single market will pay EU tariffs.

The Joint Committee (JC) agreement in December established the criteria for determining which goods can be declared not ‘at risk’.

The UK Trader Scheme (UKTS) provides an avenue for NI businesses to declare their goods are not at risk. To be eligible for authorisation under the UKTS businesses need to meet strict trader and end use criteria. Additional criteria also applies for goods subject to commercial processing.

Please see more information here: https://www.gov.uk/guidance/apply-for-authorisation-for-the-uk-trader-scheme-if-you-bring-goods-into-northern-ireland

For Rest of World (RoW) trade, an additional tariff differential test will be applied to the UKTS criteria. If these conditions are not met, the goods will be ‘at risk’, and they will have to pay the EU tariff, rather than the UK one.

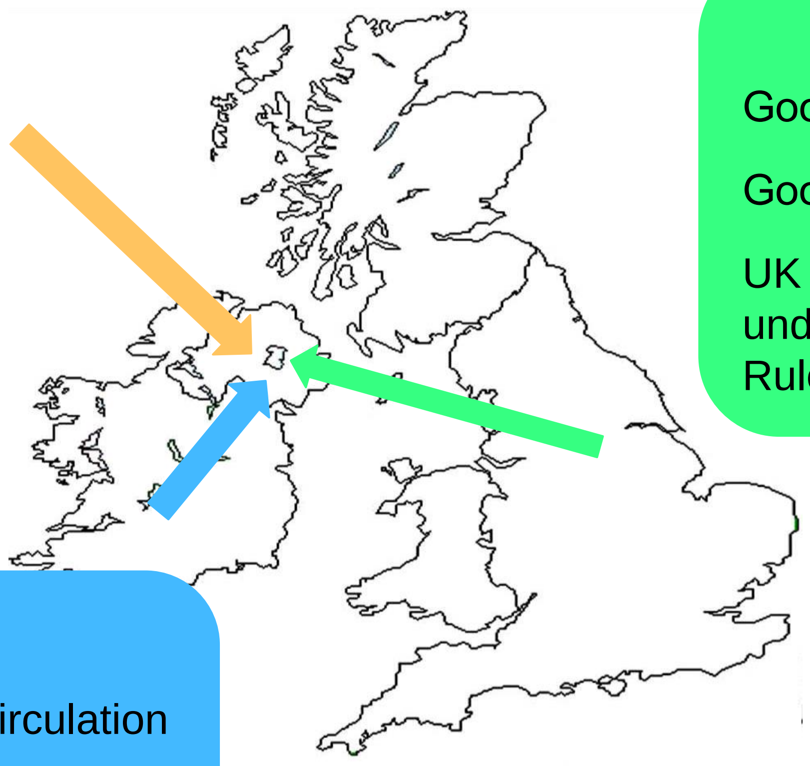
Moving goods into Northern Ireland

RoW to NI movements

Goods “not at risk” = UK tariffs

Goods “at risk” = EU tariffs

UK tariffs include preferential tariffs from UK trade deals, subject to Rules of Origin.



GB to NI movements

Goods “not at risk” = Zero tariffs

Goods “at risk” = EU tariffs

UK goods can enter NI tariff-free under the UK/EU TCA, subject to Rules of Origin.

EU to NI movements

No “at risk” test – all goods in free circulation treated the same

This means no tariffs or customs controls on EU to NI movements, including across the NI/IE land border

‘At risk’ – determining payable duties

All businesses importing into NI from GB and RoW countries will need to consider the risk status of goods to determine payable duties. Risk status refers to payable duties only, not documentation. For imports into NI, non-tariff measures and associated documentation will still apply.

<u>There are three distinct levels of risk status:</u>

Automatically ‘at risk’

- Goods subject to commercial processing in NI and the additional processing criteria is not met.
- Goods from outside the UK/EU where the EU duty is more than 3% greater than the UK duty.

Automatically NOT ‘at risk’

- Goods where the UK duty is equal to or higher than the EU duty. For GB-NI movements there is no UK duty so this would cover goods where the EU tariff is zero .
- A business may use the UK-EU TCA to claim a preferential rate of duty on entry to NI where origin requirements are met. This would mean the goods are automatically not at risk. A business does not require a UKTS authorisation to declare these goods not ‘at risk’.

Can be declared NOT ‘at risk’

- For GB – NI movements, goods are only eligible to be declared not ‘at risk’ under the UKTS if **ALL** the following apply:
  - *Trader has authorisation under the UKTS and holds sufficient evidence to declare goods not ‘at risk’;*
  - *Goods are NOT subject to EU trade defence measures;*
  - *Goods are NOT subject to commercial processing, or additional processing criteria is met; and*
  - *Goods are for sale to, or final use by, end consumers located in Northern Ireland.*
- For RoW to NI movements goods will need to meet the above UKTS criteria and an additional tariff differential test. The applicable EU tariff must be less than 3% higher than the applicable UK tariff.
- Goods are only eligible to use the UKTS where not considered to be automatically ‘at risk’.

Tariff options

Traders moving goods from GB to NI have three main avenues to achieve a zero-tariff outcome, depending on risk status:

Option 1: *TCA – meeting rules of origin*

Option 2: *UK Trader Scheme (UKTS)*

Option 3: *Waivers and reimbursements.*

Option 1: TCA – meeting rules of origin

Rules of Origin (RoO) are a requirement under FTAs, in this case the EU/UK TCA. However, UK traders bringing goods into NI which meet RoO according to the TCA will be able to access NI tariff free, without needing to meet UKTS eligibility requirements.

This could be the best option for traders with controlled supply chains of UK goods, or traders who cannot use the UKTS because they do not qualify for one of the commercial processing exemptions.

Businesses and suppliers will need to know the origin of materials or ingredients – both ingredients imported from abroad and ingredients bought within the UK.

Rules for each product, which determine the imported ingredients you can use, are specified in the TCA.

Option 2: UK Trader Scheme (UKTS)

Traders moving goods from GB to NI can declare their goods *not 'at risk'* using the UK Trader Scheme (UKTS), if they meet the authorisation requirements and can show that their goods will not be moving outside the UK. If the criteria are met, goods that that are *not 'at risk'* of entering the EU through RoI are able to be imported into NI tariff free, without complying with RoO.

This could be the best option for traders bringing finished goods into NI for sale (e.g. retailers), or processors who qualify for one of the commercial processing exceptions.

Goods imported into NI must be for personal or business end use in the UK. End use criteria includes:

- Goods for sale to or final use by, end-consumers located in the UK
  for example, goods for sale in retail stores
- Goods for business use in NI
  for example, a business purchasing stationery, or a farmer purchasing a tractor

The UKTS is open to businesses in all sectors and of all sizes. To declare goods not at risk, a business must be authorised to use the UKTS.

UKTS – trader criteria

The UKTS is designed to support genuine internal UK trade. To ensure this, businesses are only eligible to use the UKTS if they meet specific trader criteria.

Traders must be:

- Established in NI, or
- Established in GB
    - and have customs operations carried out in the UK
    - and have indirect representation in NI
    - and have a fixed place of business in NI where records are available and where goods are sold to, or provided for final use by end-consumers, and

Traders must also have:

- No history of serious customs or tax infringements or other similar criminal offences of an economic nature, and
- Sufficient controls of operations and record keeping to ensure can provide evidence to support not at risk declarations

For traders who supply goods to a business in Northern Ireland but do not have a fixed address in Northern Ireland, a temporary approach has been designed to enable provisional authorisation under the UKTS.

Temporary approach is applicable if:

- you do not have a fixed address in Northern Ireland
- you supply goods to a business in Northern Ireland which has a fixed place of business from where those goods are provided for, or sold to end consumers, and that business is either:
    - provisionally authorised under the UK Trader Scheme
    - could be provisionally authorised, were they the importer of those goods

To be provisionally authorised to declare goods not ‘at risk’, you must:

- meet all of the other UK Trader Scheme criteria
- be able to declare not ‘at risk’ for end-use or sale to end consumers in the UK

UKTS – commercial processing

Goods brought into NI for processing are automatically at risk, unless the business meets one of the following exemptions:

- **Small processor** – businesses with an annual turnover less than £500,000 pa

- **Approved sectors where the processing is in Northern Ireland and for the sole purpose of:**
    - *Sale of food to end-consumers in the UK*
    - *Construction in NI*
    - *Not for profit activities in NI*
    - *Goods for use in health or care in NI*
    - *Final use of animal feed in NI*

Other than the sale of food, the processing must be carried out by the business moving the goods into NI.

Businesses who meet these criteria must inform HMRC of this when applying for the UKTS. Once authorised they may declare goods for processing *not at risk*. They must keep supporting evidence.

Option 3: Waivers and reimbursements

For GB to NI movements, where goods are ‘at risk’ on entry to NI, an eligible business could claim a waiver.

This could be the best option for small or infrequent traders, or processors who are bringing non-UK goods into NI and who do not qualify for one of the commercial processing exceptions.

Please see guidance here for more information

https://www.gov.uk/guidance/claim-a-waiver-for-duty-on-goods-that-you-bring-to-northern-ireland-from-great-britain

For GB and RoW to NI movements, reimbursements may be available where the EU tariff has been incorrectly applied.

Guidance on aspects of the NIP such as the reimbursement scheme will be published in due course by HMRC.

Waivers

Businesses can claim a waiver for duty on goods brought into Northern Ireland from Great Britain which might otherwise incur ‘at risk’ tariffs if they have not exceeded the allowances set out below at the point the import declaration is submitted.

How much you can claim

- If you are eligible to claim a waiver you must do this at the point your import declaration is submitted.
- Waivers for duty on goods that would otherwise incur ‘at risk’ tariffs are provided in the form of ‘de minimis aid’.
- This is measured in euros.

Allowances and de minimis aid

Most businesses can claim up to a maximum of €200,000 of aid over 3 tax years, lower allowances apply for certain sectors. The period of 3 years is assessed on a rolling basis.

The maximum allowance includes all de minimis aid you claim over a period of 3 tax years such as:

- de minimis aid unrelated to waivers for Customs Duty
- de minimis aid granted through any other scheme - such as Employment Allowance

Imports into NI from Rest of World (RoW)

For goods entering NI from outside the UK and EU, the ‘risk’ test will determine whether UK or EU duties are applied. Goods not ‘at risk’ will be subject to UK tariffs. Goods at risk of entering the EU will be subject to EU tariffs. The risk assessment only addresses tariffs – all other non-tariff measures and associated documentation will still apply.

Goods will be *automatically not ‘at risk’* when

- the applicable UK tariff is equal to or higher than the applicable EU tariff. This includes cases where UK and EU MFN tariffs are the same, but also when goods are eligible for preferential duties under both UK and EU trade deals (e.g. Japanese goods).

Goods can also be *not ‘at risk’* if

- the goods are for sale to, or final use by, end consumers located in Northern Ireland
- are brought into Northern Ireland by a trader authorised under the UK Trader Scheme
- If the applicable EU tariff is higher than the applicable UK tariff and the difference is lower than 3 percentage points

If the goods you bring into Northern Ireland will be subject to processing, then you must also meet additional criteria when applying for UK Trader Scheme authorisation before you can declare your goods not ‘at risk’.

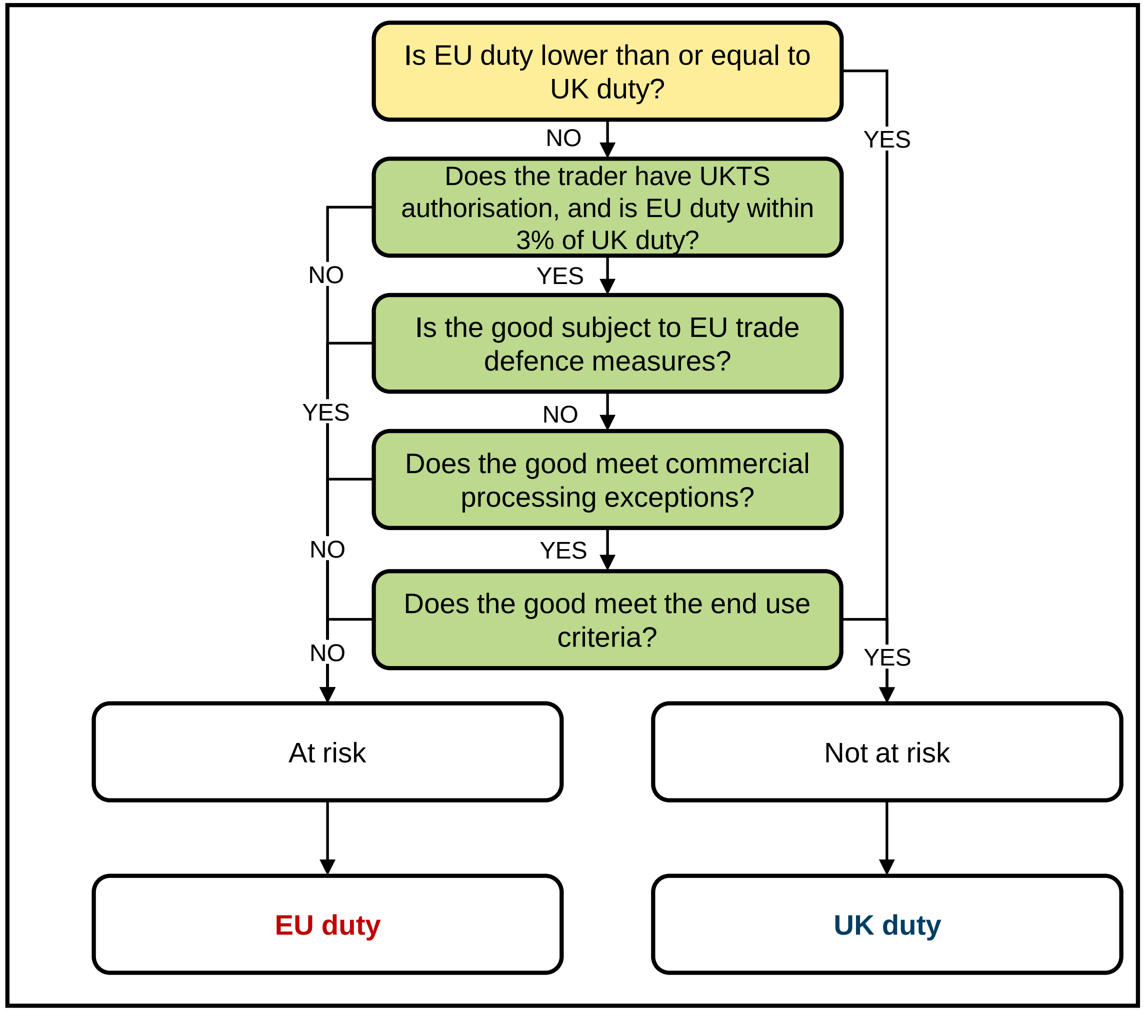
Goods will *always be ‘at risk’* where:

- the EU duty is more than 3% higher than the UK duty, and the EU tariff will be applied, irrespective of other UKTS eligibility.

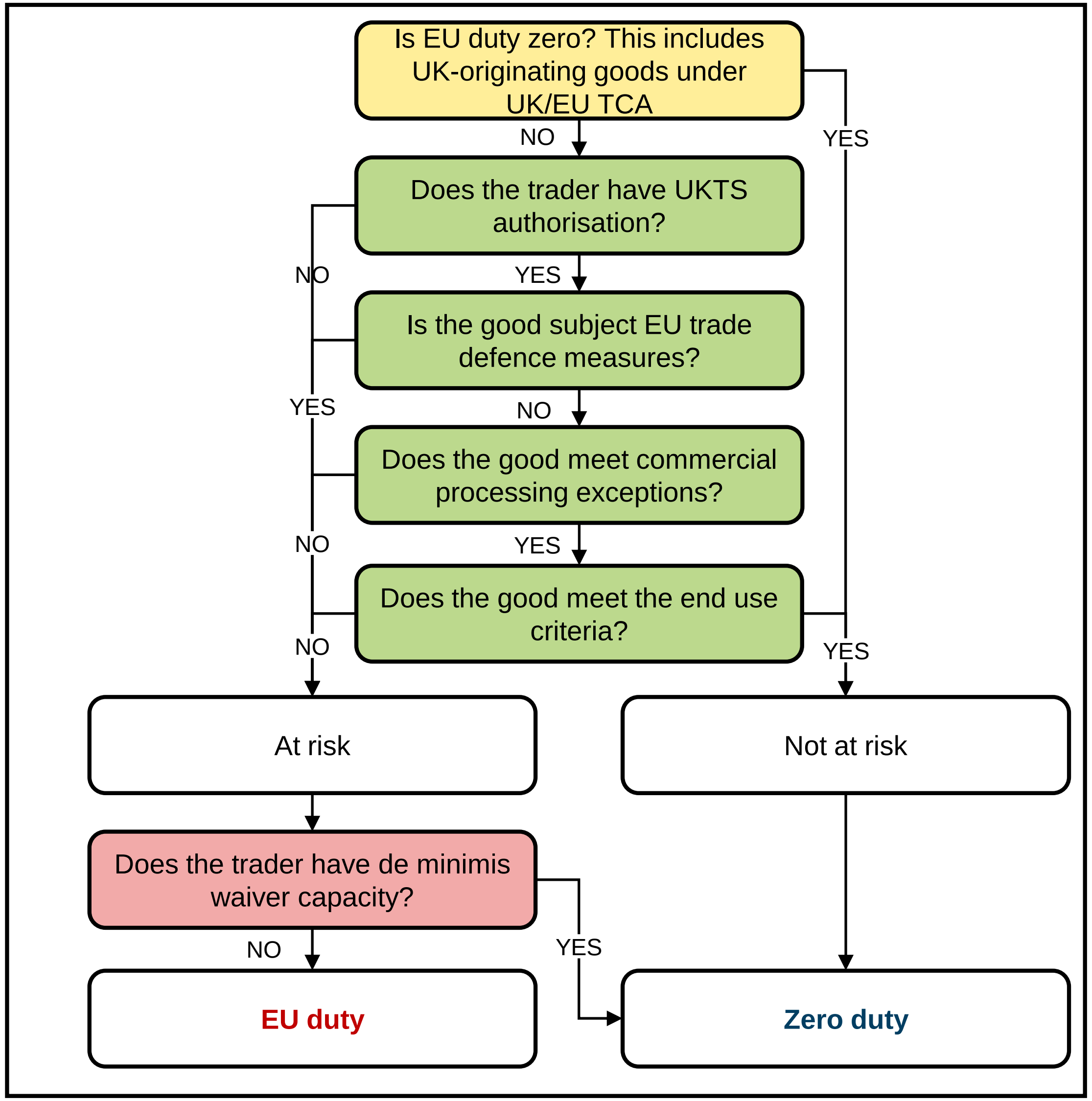
Waivers and reimbursements cannot be used for RoW-NI movements.

Determining applicable duty

RoW-NI



GB-NI



Case studies

Scenario 1

GB – NI: Flour of UK origin

- *GB – NI: No ‘at risk’ assessment required*

Scenario 2

GB – NI: Flour not of UK origin

- *A) Flour as an intermediate good for processing – finished good for sale in NI*
- *B) Flour as an intermediate good for processing – finished good for sale in NI and RoI*

Scenario 3

RoW – NI: High protein Canadian wheat for processing into flour

- *Canada – NI: UK and EU preferential tariffs are equal*

Scenario 4

RoW – NI: Wholly milled medium grain rice- par boiled for sale in NI supermarkets.

- *USA – NI: EU tariff is less than 3% higher than UK tariff*

Scenario 5

RoW – NI: Australian chocolate for sale in NI as a finished good

- *A) Australia – NI: EU CET is more than 3% higher than UKGT*
- *B) Australia – GB – NI: Import into GB paying UK duty – internal movement of chocolate eligible to be declared not ‘at risk’ under the UKTS*

Scenario 1

GB – NI: Flour of UK origin

GB – NI: No ‘at risk’ assessment required

Flour produced in GB is moved to NI.

Flour contains:

- EU wheat
- GB wheat
- <15% Canadian wheat

Flour meets RoO as:

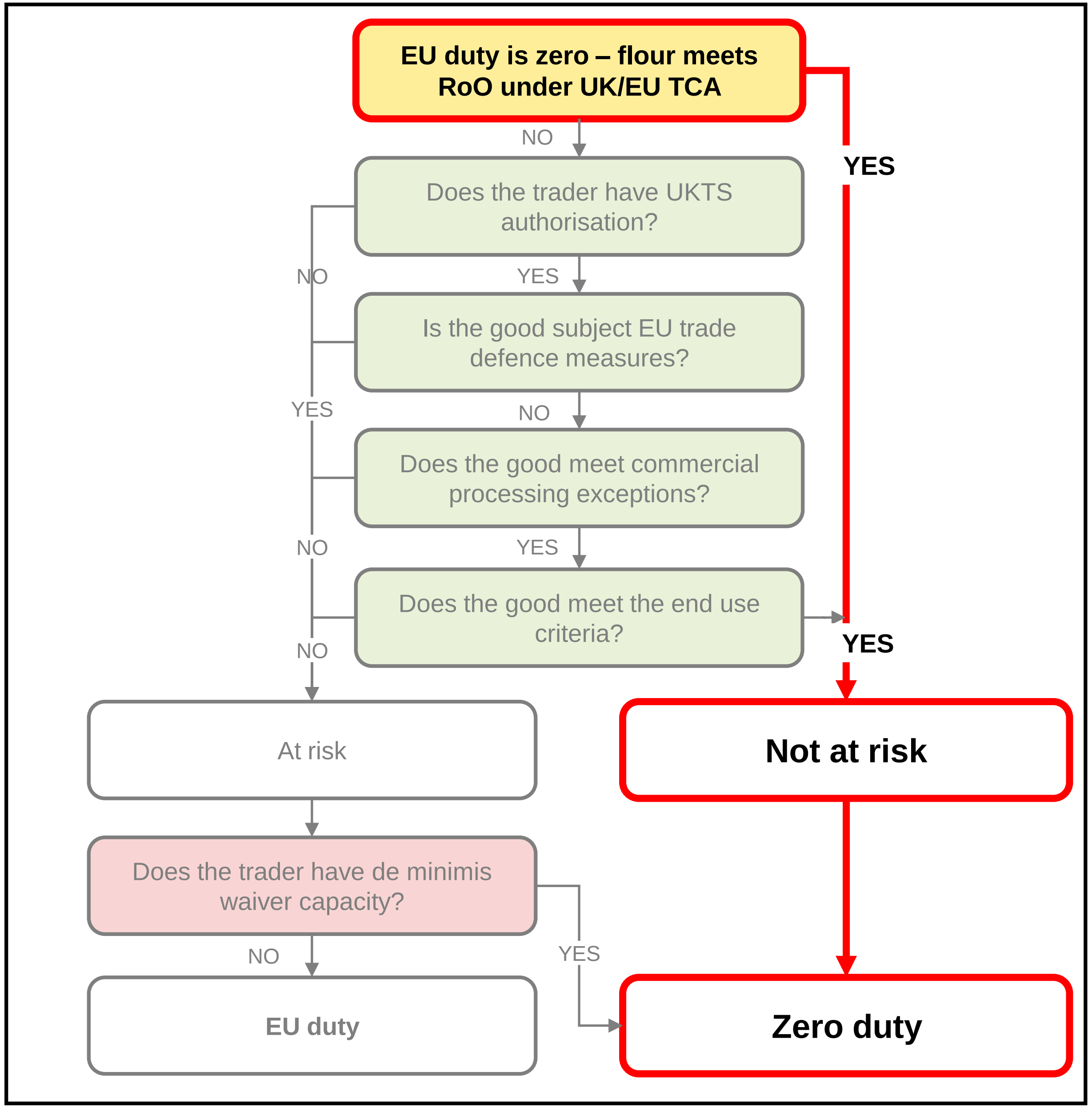
- RoW wheat is within the 15% threshold
- EU wheat is sufficiently processed for bilateral cumulation

Flour is **eligible** for preferential 0% tariff under the UK/EU TCA.

EU duty is zero – flour is automatically **not at risk** – zero duty applied.

UKTS not required when good is automatically not at risk.

Traders moving goods eligible for 0% tariff under TCA can opt to use UKTS if preferred, and if UKTS eligibility criteria can be met. This might be useful when traders face difficulties proving origin.



Scenario 2

GB – NI: Flour not of UK origin

A) Flour as an intermediate good for processing – finished good for sale in NI

Flour produced in GB is moved to NI for processing into bread for sale in NI only.

Flour contains:
- GB wheat
- >15% Canadian wheat

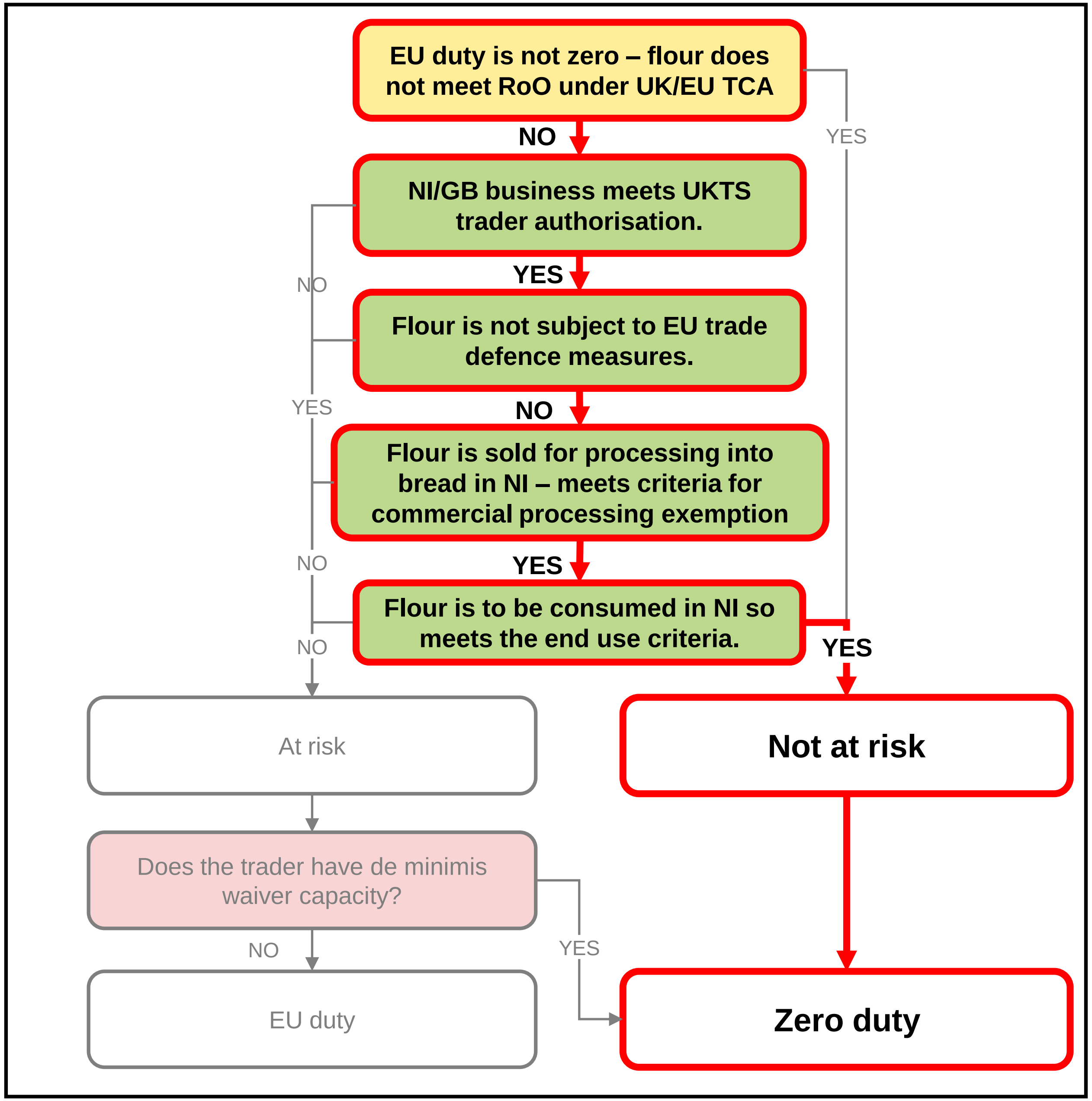
Flour does NOT meet RoO as:
- RoW wheat is beyond the 15% threshold

Flour is **not eligible** for preferential 0% tariff under the UK/EU TCA.

EU CET duty is 41% – UKTS required to declare flour as not at risk of entering RoI.

All **UKTS eligibility met:**
- Genuine NI/GB business
- Flour is not subject to trade defence measures
- Flour is to be baked into bread for sale in NI only so additional criteria for commercial processing exemption is met
- Flour is to be sold in NI only

Flour can be declared **not at risk** of entering RoI – **zero duty** applied.



Scenario 2

GB – NI: Flour not of UK origin

B) Flour as an intermediate good for processing – finished good for sale in NI and RoI

Flour produced in GB is moved to NI for processing into bread for sale in NI and RoI.

Flour contains:

- GB wheat
- >15% Canadian wheat

Flour does NOT meet RoO as:

- RoW wheat is beyond the 15% threshold

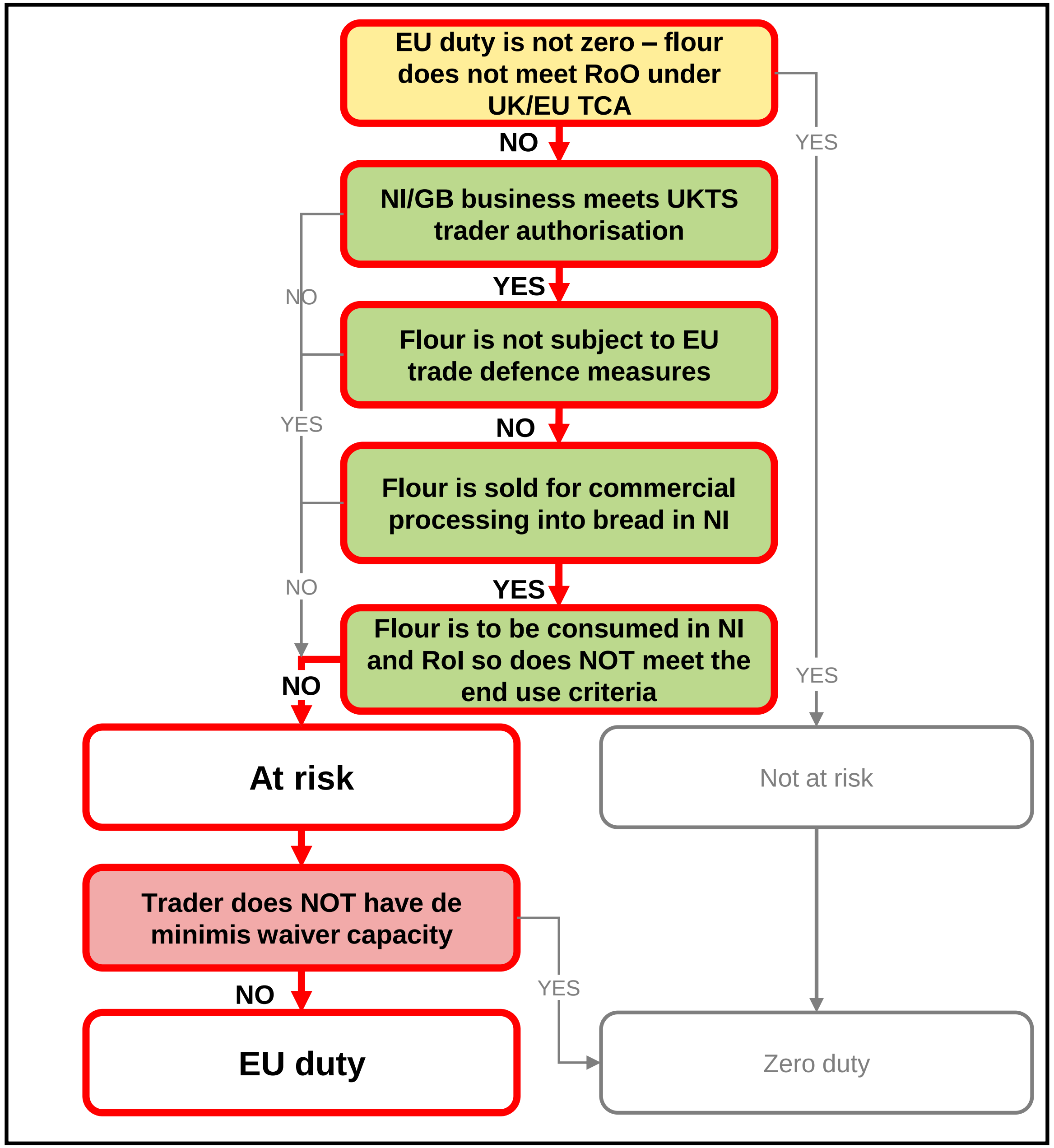
Flour is **not eligible** for preferential 0% tariff under the UK/EU TCA.

EU CET duty is 41% – UKTS required to declare flour as not at risk of entering RoI.

All **UKTS eligibility NOT met:**

- Genuine NI/GB business
- Flour is not subject to trade defence measures
- Commercial processing exemption **not met** - Flour is to be baked into bread for sale in NI and RoI
- End use criteria **not met** – bread is to be sold in NI and RoI

Flour is classed as **at risk** of entering RoI – trader does not have waiver capacity – **41% duty** applied.



Scenario 3

RoW – NI: High protein Canadian wheat for processing into flour

Canada – NI: UK and EU preferential tariffs are equal

High quality Canadian wheat containing 14% protein is imported into NI.

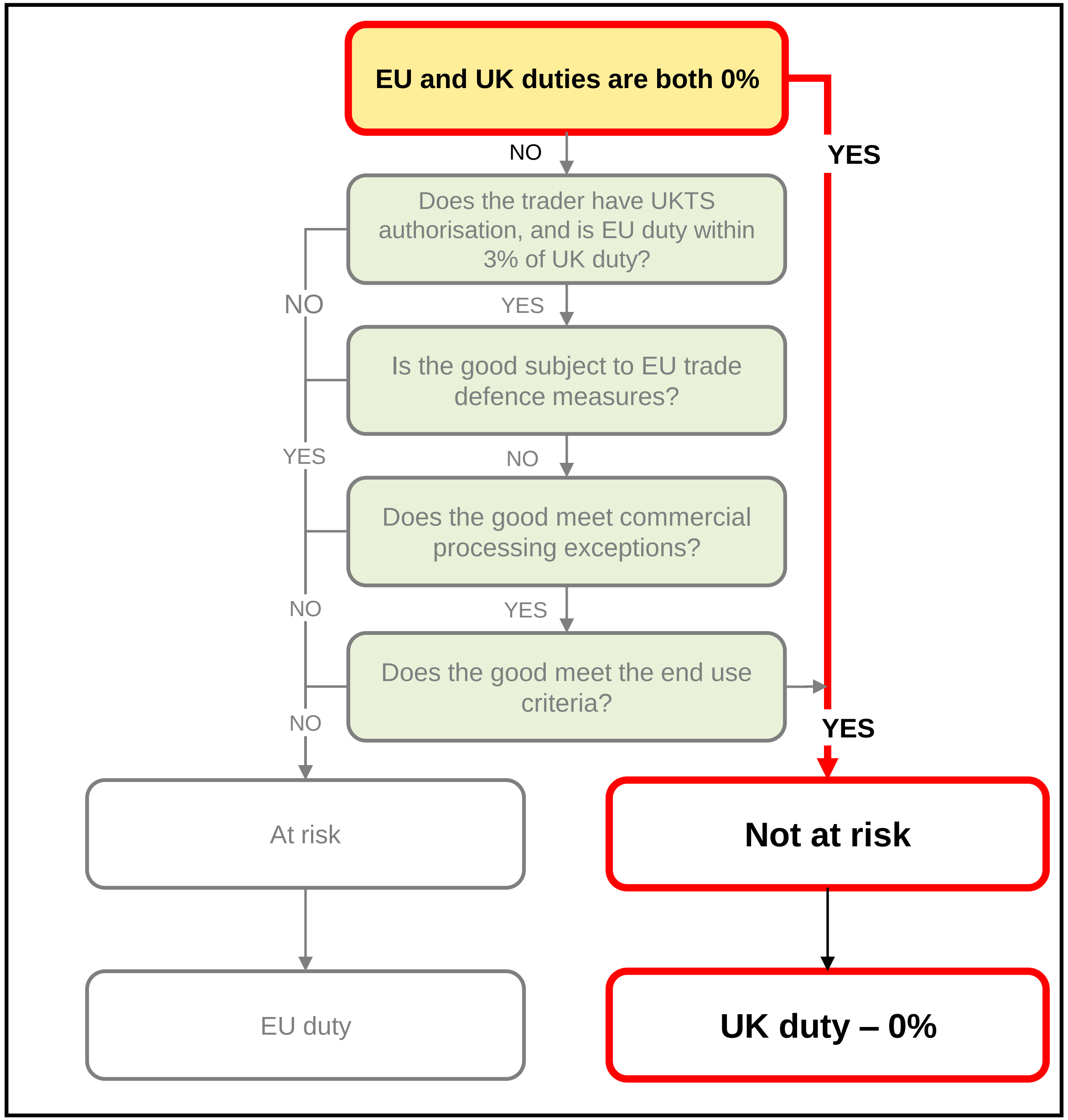
High quality Canadian wheat is subject to **0% tariffs** when entering the UK and EU.

EU and UK duties are equal so there is no risk of tariff circumvention.

Wheat is automatically **not at risk** – UK duty of 0% applied.

UKTS not required when good is automatically not at risk.

Wheat enters into free circulation in UK (via unfettered access) and EU.



Scenario 4

RoW – NI: Wholly milled medium grain rice – par boiled for sale in NI supermarkets

USA – NI: EU tariff is less than 3% higher than UK tariff

Wholly milled medium grain, par boiled rice is imported into NI.

UK tariff is 7%
EU tariff is 9%

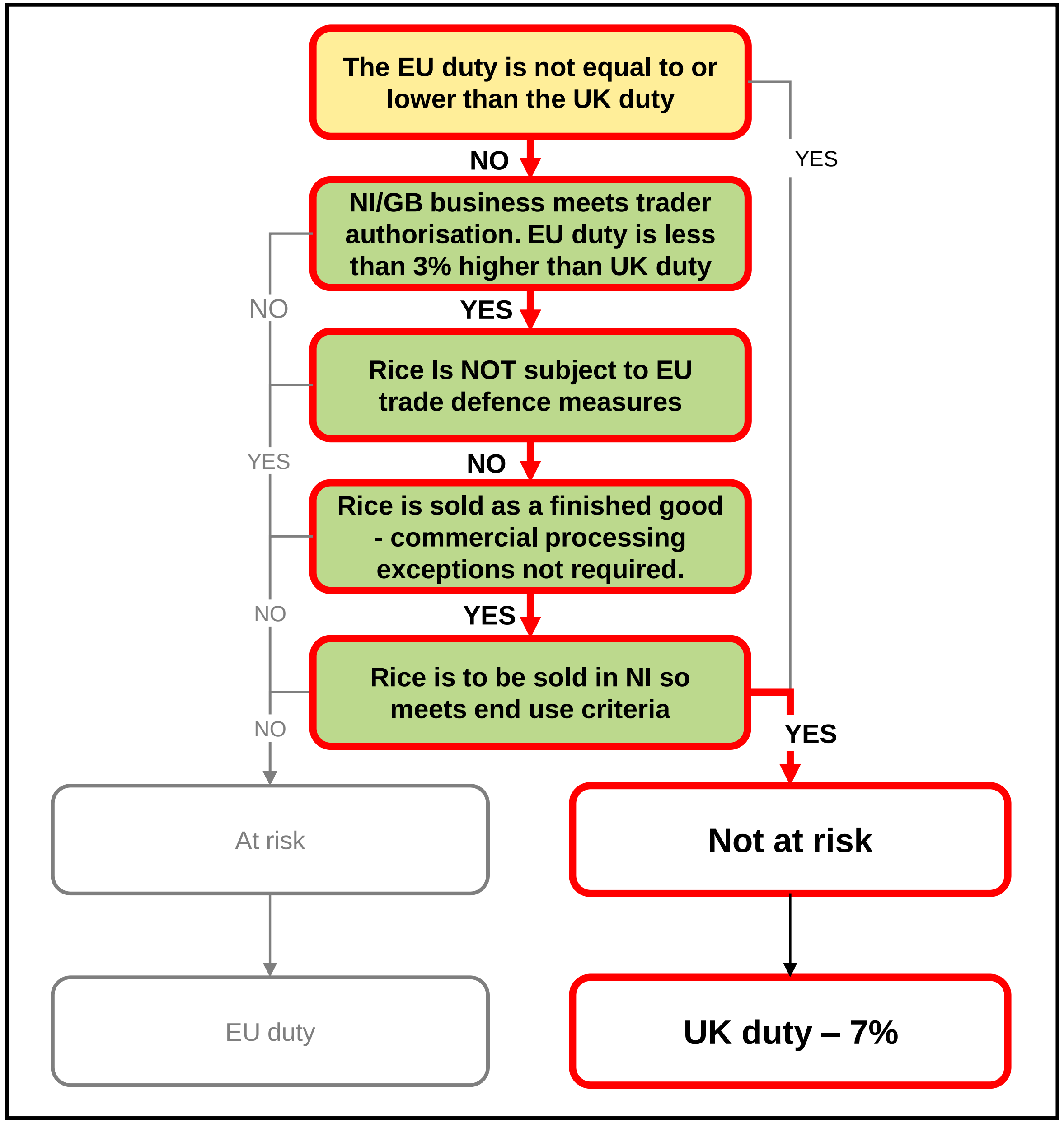
EU duty is 2% higher than UK duty. The tariff differential is less than 3% so there is minimal risk of tariff circumvention.

All **UKTS eligibility met:**

- EU duty is within 3% of UK duty
- Business is eligible for the UKTS
- Rice is not subject to trade defence measures
- Rice is to be **sold as a finished good** so additional criteria for commercial processing exemption is not required
- Rice is to be sold in NI only

Rice can be declared **not at risk** of entering RoI – **UK duty of 7%** applied.

Rice enters into free circulation in UK (via unfettered access) and EU.



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Scenario 5

RoW – NI: Australian chocolate for sale in NI as a finished good

A) Australia – NI: EU CET is more than 3% higher than UKGT

Australia chocolate is imported into NI.

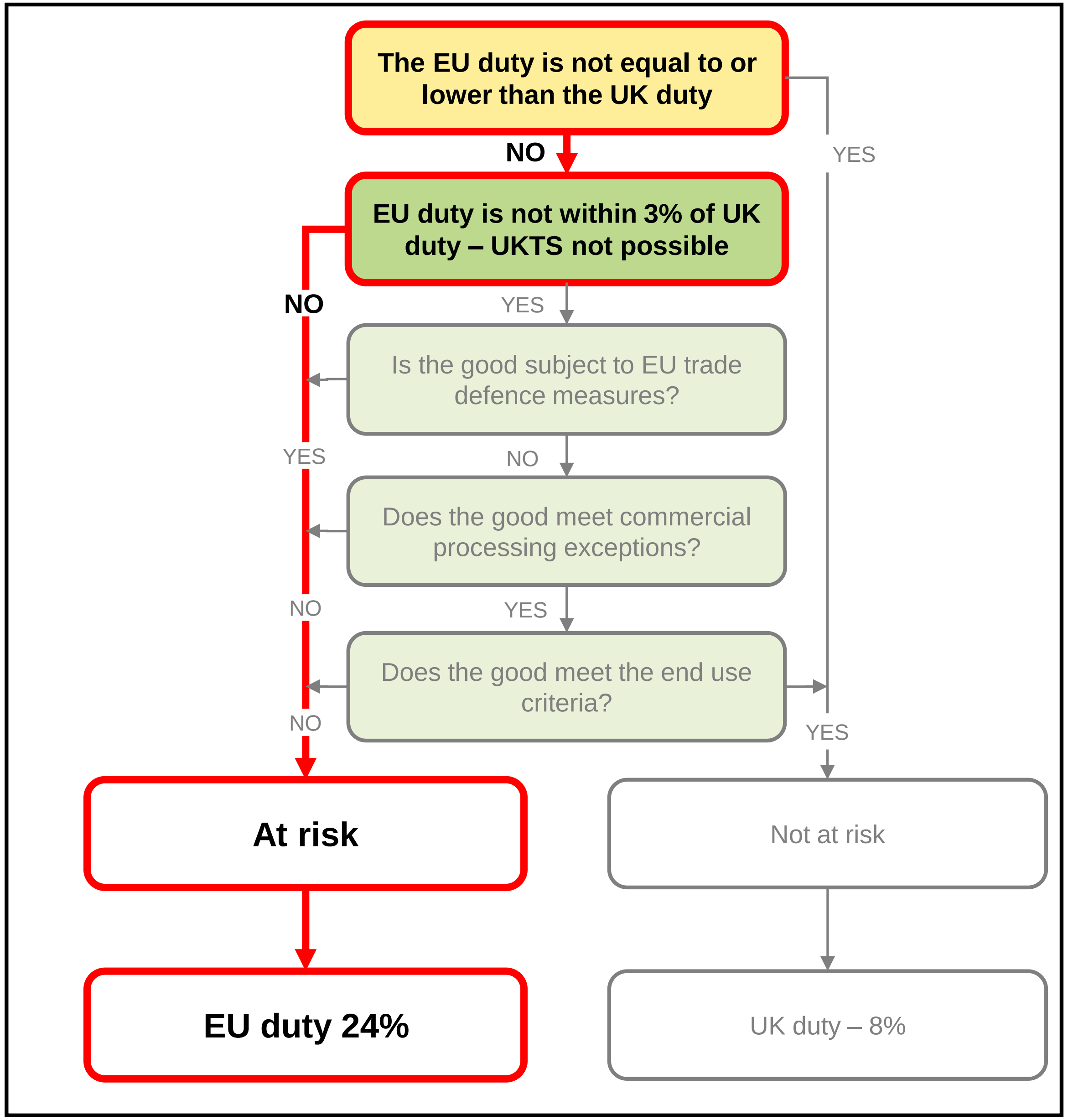
UK tariff is 8%
EU tariff is 24%

EU duty is 16% higher than UK duty. The tariff differential is more than 3% so there is substantial risk of tariff circumvention.

Not eligible for authorisation under the UKTS as tariff differential is greater than 3%.

Australian chocolate is automatically **at risk** – EU CET duty of 24% applied.

Chocolate enters into free circulation in UK (via unfettered access) and EU.



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Scenario 5

RoW – NI: Australian chocolate for sale in NI as a finished good

B) Australia – GB – NI: Import into GB paying UK duty – internal movement of chocolate eligible to be declared not ‘at risk’ under the UKTS

First movement

Australia – GB

Australian chocolate is imported into GB and UK tariff of 8% is applied. Chocolate clears customs and enters into free circulation in GB.

Second movement

GB – NI

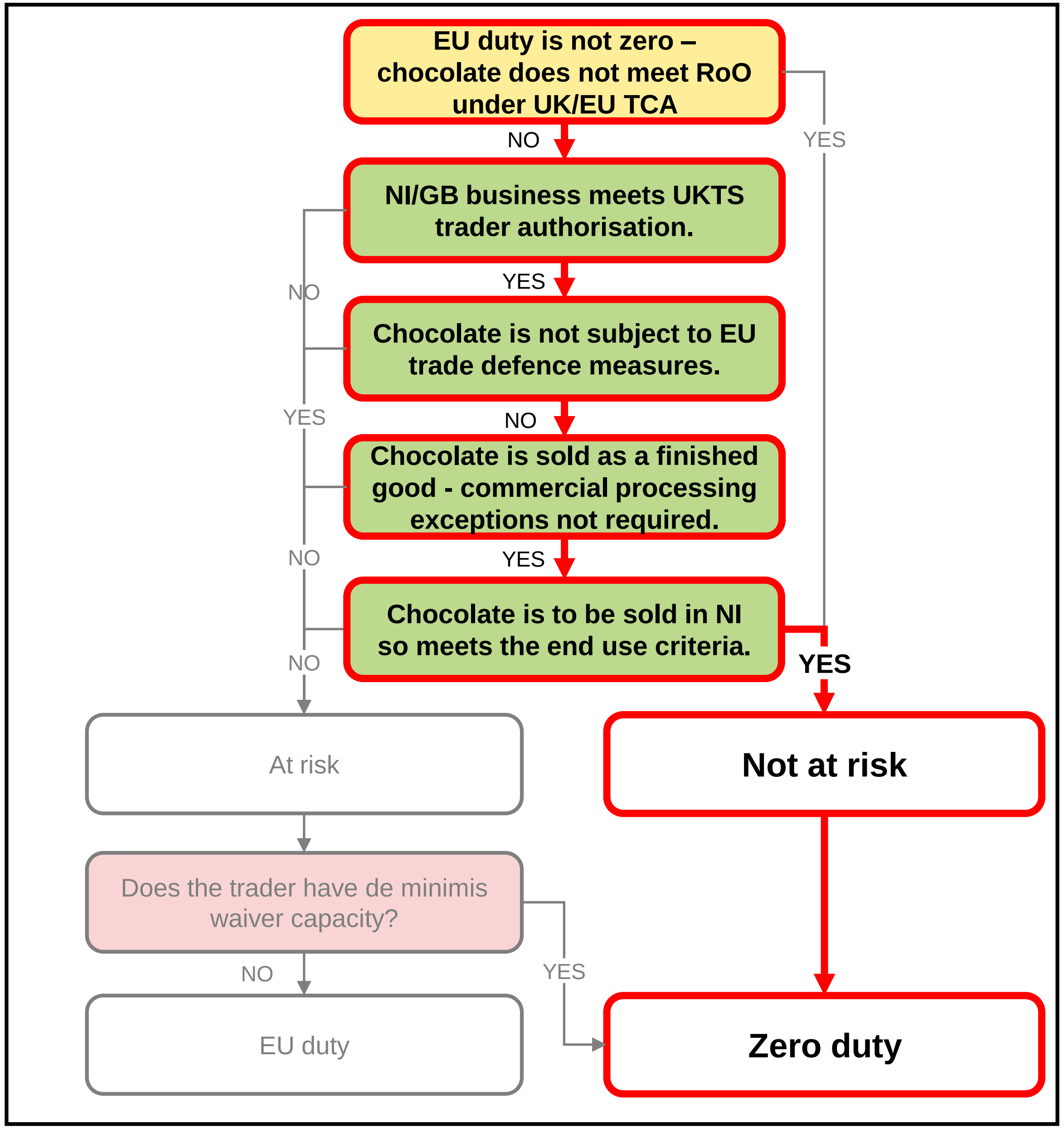
Does NOT meet RoO as chocolate is 100% Australian produced.

Australian chocolate is **not eligible** for preferential 0% tariff under the UK/EU TCA. EU CET duty is 24% – UKTS required to declare chocolate as not at risk of entering RoI.

All **UKTS eligibility met:**

- Business is eligible for the UKTS
- Chocolate is not subject to trade defence measures
- Chocolate is to be **sold as a finished good** so additional criteria for commercial processing exemption is not required
- Chocolate is to be sold in NI only

Chocolate can be declared **not at risk** of entering RoI – **zero duty** applied.



Additional resources

Useful reading

HMG Command paper

JC decision on at risk goods

Article 5 in the NIP agreement

HMRC guidance on applying for the UKTS.

The Trade Cooperation Agreement (TCA) (Rules of Origin General Provisions pg.27-41 and Product Specific Rules pg.423-429)

Business readiness

Register for TSS by visiting: https://www.tradersupportservice.co.uk/tss

Sign up to TSS training courses: https://www.nicustomstradeacademy.co.uk/

Identify if you need to seek additional professional advice on the most suitable customs arrangements to meet your specific needs

See the latest guidance https://www.gov.uk/guidance/trading-and-moving-goods-in-and-out-of-northern-ireland-from-1-january-2021

Check if you can declare your goods are not ‘at risk’ of onward movement to the EU

To find the applicable UK duty, refer to the UK Global Online Tariff here: https://www.trade-tariff.service.gov.uk/sections

To find the applicable EU duty, refer to the Northern Ireland Online Tariff here: https://www.trade-tariff.service.gov.uk/xi/sections/