

Alert | International Trade



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Brexit: EU Trade and Customs Developments

On March 23, 2018, the European Council published guidelines for the negotiations on the future relationship with the UK. This publication follows the March 19, 2018, draft Withdrawal Agreement reached by the EU and UK negotiators on parts of the legal text of the Withdrawal Agreement and a transition period. There is no final deal until the EU and UK agree on all withdrawal and transition issues. Since negotiations are ongoing and a number of important issues still require agreement, nothing is final yet. However, the current status of the negotiations and the available documents provide insight on the anticipated trade and customs implications after the Brexit. This GT Alert provides an overview of the main anticipated trade and customs related changes. Please note that final arrangements could be different due to the ongoing negotiations.

In short, the UK will no longer be an EU Member State as of March 30, 2019. On that day, the transition period will commence. This transition period will end on December 31, 2020. During this period the UK will no longer be part of the EU, but it will maintain the benefits of the Single Market¹ and the Customs Union. At the same time, the UK should respect all EU regulations and rules as if it were an EU Member State. This is an important arrangement for both trade between the EU and the UK and for trade between the EU/UK and non-EU countries. Basically, it means that businesses will not be confronted with Brexit-related trade and customs changes until 2021. For example: the EU and the UK will apply the same customs duty rates when customs clearing non-EU goods. Another example: businesses should continue to comply with the same regulatory provisions (*e.g.*, labeling, trade sanctions, food safety). As a result, the impact of Brexit on trade and customs compliance during the transition period is expected to be limited.

Businesses will however be confronted with the impact of Brexit when the transition period ends, *i.e.* January 2021. And the changes are expected to be comprehensive. As from that moment, the EU and the UK are expected to have a free trade agreement (FTA) in place. Such a FTA will be finalised and concluded once the UK is no longer an EU Member State. Therefore, the actual FTA provisions are not known yet.

¹ The Single Market refers to the EU as one territory without any internal borders or other regulatory obstacles to the free movement of goods and services.

It is however clear that the differences between on the one hand the UK being part of the EU Customs Union and Single Market (the current situation) and on the other hand the trade between the EU and the UK under an FTA (as of January 2021) should not be underestimated. In the guidelines provided by the European Council it is confirmed that the FTA should cover all sectors. The aim is to maintain zero customs duties and that no quantitative restrictions apply. However, as in all FTAs, the benefits will only apply to products originating in the EU and the UK.² As a result, all businesses doing cross-border EU-UK business will be confronted with any origin requirements and compliance obligations that will be outlined in the FTA. Due to origin requirements, it is likely that not all products manufactured in the EU and UK will qualify for preferential treatment.

Another crucial change will be that the shipment of goods manufactured in, for example, Germany from an EU harbor to a harbor in the UK will be considered an export from the EU followed by an import into the UK. This implies that an export and import declaration will have to be filed. Again, since the aim is to apply zero duties, such shipment will not result in a duty payment as long as the products qualify for preferential origin under the EU-UK FTA.³ When compared to current trade obligations, filing export and import declarations will mean an important increase in the compliance burden and can easily result in increased costs and a delayed supply chain.

As also highlighted by both the UK and the European Council, the transition period will be useful for businesses and administrations, both in the EU and the UK, to prepare for the anticipated changes. Considering the amount of work that needs to be done and the limited time, the transition period is relatively short and the workload is daunting. An example of the challenges for the administrations is the thousands of extra customs officers that will be required. The Netherlands is, for instance, recruiting more than 750 new customs officers. There will also need to be improved compliance systems to deal with the potentially millions of extra customs declarations, reviews whether products meet the FTA origin requirements, changed regulatory requirements, and possible changes in supply chains.

The EU and UK agreed on a transition period that would end late in 2020 and it appears that the chance there will be a Brexit without a proper Withdrawal Agreement and FTA has decreased. However, we expect that the transition period will be indispensable in preparing for the actual Brexit as it will still be a great challenge to be fully ready for the 'Big Change' on 1 January 2021.

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² There could be cumulation and similar links to other FTAs as a result of which the EU-UKFTA will have an impact on goods originating in other countries as well.

³ Products not qualifying for preferential origin, for example products manufactured in China or products assembled in the EU or UK using a certain amount of non-EU/UK parts and/or not having sufficient EU/UK added value, could be subject to customs duties.

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