

BREXIT – CUSTOMS IMPACTS **BE PREPARED DESPITE POLITICAL UNCERTAINTY**

I. Background

On 25 November, the European Council approved the [text negotiated](#) between the European Union and the United Kingdom to settle relations between the two parties after Brexit.

This agreement formalizes the introduction of a transition period is planned from 30 March 2019 to 31 December 2020 but could be extended by two years with an agreement between London and Brussels. During this period, the United Kingdom will be considered as a third country but will continue to contribute to the common budget and to apply European law. However, it will no longer participate in the decision-making process.

The issue of the Irish border has been addressed in a protocol, commonly known as the backstop, which will maintain Northern Ireland, until a binding decision is taken, in the internal market for goods and in the EU's VAT system.

In order to be applicable, this agreement must be approved by the British Parliament. However, in view of many reservations expressed by Members, the vote, initially scheduled for 11 December 2018, should take place at the latest on 21 January 2019.

II. Customs impacts in case of agreement

In case of agreement, from a trade point of view, the United Kingdom and the European Union will be considered as being in a "single customs territory" (until at least 31 December 2020). This has significant consequences:

- The United Kingdom will continue to benefit from the **free trade agreements** negotiated by the European Union and that none of the agreements negotiated by the United Kingdom during the transition period will be effective until the end of this period;
- The United Kingdom has undertaken to retain the **tariffs** imposed by the EU on third countries and to apply the same **tariff nomenclature** as that of the EU;
- Goods and components manufactured in the United Kingdom will retain a European **origin**;
- Any exchange between an EU country and the United Kingdom will be considered as an **intra-Community supply**;
- **Sector-specific market access regulations** (e.g. REACH) will continue to be applied in the United Kingdom, as well as **European regulations on economic sanctions and on export controls** (double-use goods).

The relationship between the EU and the United Kingdom "post-Brexit", and therefore theoretically put in place at the end of the transition period, was described in a [political declaration](#) dated 22 November 2018. It will take the form of a global free trade agreement, modeled on the CETA, creating an integrated area combining deep regulatory and customs cooperation, underpinned by provisions ensuring transparent, fair and open conditions of competition.

This free trade area should in particular guarantee the following elements:

- Elimination of tariff barriers between the EU and the United Kingdom;
- Harmonization and mutual recognition of non-tariff barriers: technical barriers (TBT), health barriers (SPS), markings and certifications, sector-specific market access regulations (e.g. REACH);
- Mutual recognition of privileged customs status (AEO);
- Administrative cooperation for the recovery of customs and tax debts, as well as for the exchange of information to fight fraud;
- Technological facilities to overcome the absence of physical borders in Ireland;
- Facilitation of electronic commerce between the two areas.

III. Customs impact in case of a withdrawal without an agreement

The political uncertainty surrounding the approval of a withdrawal agreement by both parties prevents any visibility on the real customs impact that the United Kingdom's exit from the Union will have. It is impossible to predict at this stage which exit scenario will be preferred, especially since the Court of Justice held, in a judgment named *Wightman and others* of 10 December 2018, that the United Kingdom was free to unilaterally revoke the notification of its intention to withdraw from the European Union.

Nevertheless, given the context, there is a serious risk of withdrawal without agreement. In such a case, the United Kingdom would simply become a third country to the European Union, and relations between the two parties would be governed by WTO rules.

In the meantime, **British customs** are seriously considering the risk of withdrawal from the United Kingdom without a negotiated agreement (hard Brexit). In order to prepare for this risk, they recently recommended, in an informative letter to English importing or exporting companies, that they already obtain an **English EORI number** so that they can continue to import or export with EU Member States after any withdrawal without agreement.

As part of a meeting organised in Paris by the French Ministry of Economy and Finance on December 5th, in which DS Avocats participated, the **French customs** authorities, which recruited 700 new agents and set up a Brexit mission directly to the General Director to face the challenge of rebuilding a customs border between France and the United Kingdom, indicated that they were considering the creation of a smart border.

IV. Recommendation

If an agreement is voted by the parties, the current VAT and customs declaration processes can be maintained during the transition period. Companies will be able to use this period to bring their contracts and flows in compliance with the tax and reporting obligations that will result from the announced free trade agreement from the beginning of 2021.

With a view to a withdrawal without an agreement, the impact of a no deal on flows, whether or not one is established in the United Kingdom, should be analysed as soon as possible.

The customs department of DS Avocats has prepared a free of charge evaluation survey for this purpose, the answers to which would make it easier to identify and consider the most urgent decisions. Please contact us if you are interested in obtaining the survey.

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