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Brexit: Unprecedented trade agreement and restoration of customs formalities at the EU-UK border on 1 January 2021

While the transition period, following the United Kingdom's departure from the EU last February, will end on 31 December 2020, the two sides reached an agreement on 24 December 2020 which includes a trade and cooperation agreement aiming at regulating trade between the EU and the United Kingdom.

From a customs standpoint, it is imperative to bear in mind that this agreement will not exempt operators from export and import customs formalities, which are restored for each flow of goods, since the United Kingdom will be fully treated as a non-EU country as of 1 January 2021.

In terms of customs facilitations and favorable rules, it should be noted that this agreement is ambitious and offers to operators various practical novelties:

- Full absence of customs duties and quotas for originating products

This is one of the great achievements of this agreement. All products originating in one Party will be admitted into the other Party's territory duty-free and without the application of quotas. The agreement does not contain any exclusion list or timetable for progressive tariff dismantling, traditionally present in agreements previously negotiated by the Commission.

In line with the renewal of the WTO Moratorium on Electronic Trade, the agreement also confirms that electronic transmissions between operators of the Parties may not be subject to customs duties: only goods are.

- Preferential origin rules

To benefit from these exceptional trade preferences, imported products must be originating in one of the two Parties to the Agreement. The Agreement thus provides for specific preferential rules of origin. Firstly, there is no main or dominant preferential origin rule, but rather a large number of various rules (list rules) associated with tariff headings (HS codes, 4 digits) or groups of headings. It is therefore a line-by-line analysis exercise that awaits operators, depending on the tariff classification of their products. Second observation: these list rules are fairly simple, containing both shift from tariff headings, tariff subheadings or chapters and percentage of value added criteria.

As for facilitations, the agreement provides for bilateral cumulation provisions, and does not, at this stage, provides for a non-duty drawback clause. Tolerances in the percentage of non-originating components are also provided for certain products. At last, the direct transport rule is replaced by a non-alteration rule, which in practice also aims at encouraging the most direct flow of products between the Party of origin and the Party of destination.

An interesting point to note concerns certification. The Agreement provides that preferential origin will be granted upon presentation of a statement issued by the exporter, or if the importer demonstrates his knowledge of the preferential nature of the goods it is importing. There will therefore no longer be a need for EUR 1 certificates endorsed by customs to certify preferential origin. While this choice, left between one or other method of proof of preferential origin, is a practical facility, it increases the responsibility of importers in the determination of origin.

- Customs procedures - Facilitations for AEO operators

Even though customs formalities and export/import controls are reinstated for goods exchanged between the EU and the United Kingdom, the agreement provides for simplified procedures for authorized economic operators (AEO). These may include, inter alia, the following:

- (a) customs declarations containing a reduced set of data or supporting documents;
- (b) periodic customs declarations for the determination and payment of customs duties and taxes covering multiple imports within a given period after the release of imported goods ;
- (c) self-assessment of customs duties and taxes and deferment of their payment until after the release of imported goods; and
- (d) Setting up of reduced amount guarantees or exemption from the obligation to set up a guarantee.

The agreement offers then a special place to the AEO status. It also provides that each Party will adopt or maintain measures enabling operators who meet the criteria specified in its laws and regulations to benefit from further simplification of customs procedures. In granting this status, a Party shall also take into account any status that the operator holds in the other Party. An AEO mutual recognition mechanism is at last provided.

- Technical barriers and obstacles to trade

The agreement aims to prevent the creation of unnecessary technical barriers to trade, for example by providing for self-declaration of regulatory compliance for low-risk products and facilities for other specific sectors of mutual interest, such as automobiles, wine, organic products, pharmaceuticals and chemicals. However, all UK products entering the EU will still have to respect EU regulatory standards, including food safety, sanitary and phytosanitary measures, and product safety.

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The Customs & International Trade team of DS Avocats is at your disposal for more informations.

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