

30/10/2019

Alert n°

Brexit: new agreement of 17 October and new extension until 31 January 2020

As a reminder. Brexit should have taken place on 29 March 2019, 2 years after the United Kingdom's has invoked the applicability of Article 50. The Heads of State and Government have twice delayed the United Kingdom's exit from the Union. On 21 March 2019, 8 days before the initial date, they granted a delay until 12 April if Theresa May failed to ratify the agreement approved on 25 November 2018. On 10 April, in the absence of ratification, they agreed to extend this deadline until 31 October.

On 17 October, the European Council approved the new version of the withdrawal agreement with the United Kingdom, which would have made it possible to carry out a well-organized Brexit on 31 October and to open negotiations on the future relationship between the European Union and the United Kingdom as soon as possible.

On 19 October, at an extraordinary session, the House of Commons did not rule on the agreement but forced Prime Minister Boris Johnson to request a new deadline from the Union.

A new chapter of Brexit began on 28 October when Donald Tusk, President of the European Council, made the news official. The United Kingdom now has until 31 January 2020 to leave the European Union, unless the divorce agreement concluded on 17 October is ratified by that time.

I. Description of the new withdrawal agreement of 17 October

The new text, which is still pending a vote in the British Parliament, covers two points:

(1) Joint concessions on Northern Ireland (Ulster):

The dual objective remains to preserve an open border between the two Irelands in order to preserve the 1998 peace agreement while guaranteeing the integrity of the Union customs territory:

- **Concessions on the EU side:** the EU has renounced the "backstop" which provided that in the absence of an alternative solution to a "hard border", the whole of the British territory would remain in the EU. With the new withdrawal agreement, Ulster will leave the EU with the whole of the British territory and will therefore be able to

participate in future free trade agreements negotiated between the United Kingdom and third countries.

- **Concessions on the United Kingdom side:** Ulster remains aligned with EU internal market rules for goods, veterinary and phytosanitary controls, agricultural products and State aids.

Customs rules: The EU Customs Code will apply to goods imported into Ulster (which implies customs controls at Ulster's ports and airports including on United Kingdom goods, thus creating a kind of "border in the Irish Sea" which was removed in March 2018) and EU customs duties will apply to products entering Ulster from third countries but also from the United Kingdom which may subsequently be introduced into the EU. Only goods imported from third countries and only destined for the Northern Irish territory will be subject to British customs duties.

VAT rules: VAT in Ulster will be collected by UK customs but according to EU VAT rules. In addition, the exemptions and reduced rates of Northern Ireland will apply in Ulster in order to ensure a level playing field between the two parts of the island.

Ultimately, Ulster will therefore be both within and outside the EU. The "fronstop" replaces the "backstop".

Once voted by the British Parliament, the sustainability of this solution will be submitted to the vote of the Northern Ireland Assembly after 4 years (concession made to the DUP Democratic Unionist Party against any differentiation between Ulster and the rest of the United Kingdom).

(2)The future relationship redefined

The objective is a "complete and balanced" economic partnership rather than a close economic association including a single customs territory.

The aim is to avoid the emergence of a "Singapore on the Thames" where post-Brexit deregulation would create a strong distortion of competition in tax and regulatory matters (in particular tax, social and environmental standards, competition and State aid).

II. Analysis of the new withdrawal agreement of 17 October

The text remains subject to two types of hazards:

(1)The risks inherent to the agreement itself:

There are two of them:

- The definition of "products of British origin which may subsequently be introduced into the United Kingdom": this work carried out by a joint committee in parallel with the negotiations on the future free trade agreement;
- The effectiveness of the controls carried out by the UK authorities on behalf of the EU and the cooperation between the two parties.

(2) The risks inherent in the process of adopting the agreement in the United Kingdom:

On 29 October 2019, the British Parliament voted in favor of the early elections on 12 December 2019 which, in the absence of early ratification, are in favor of Prime Minister Boris Johnson, ultimately allowing for deferred ratification of the agreement. However, this goal is not assured.

In the context of this hazard, two things seem certain:

- The revocation of Article 50 remains unlikely both in the absence of a political majority and in the light of public opinion would remain the solution for a second referendum with a random result (the latest polls give the "remain" weakly winning);
- The EU and the Member States have in any case prepared for a "no deal" or "hard Brexit" by already adopting 19 texts ensuring the continuity of transport and trade, border formalities and citizens' rights and even considering financing anticipated losses of 0.5% of GDP in the Euro zone.

III. Conclusion

The new withdrawal agreement makes the definition of rules of origin more essential than ever in the present and future relationship between the EU and the United Kingdom.

Indeed, as a result of the new provisions relating to Northern Ireland, British products will be the only products originating in a third country that do not have a non-preferential origin but only a more or less preferential origin depending on the nature of the future agreement

Whatever the outcome of the new withdrawal agreement, the only real achievement of this preposterous situation is the preservation so far of European solidarity despite residual differences of opinion on flexibility as to the date of postponement of Brexit.

Even better, the pragmatism of the European negotiator could lead the European Commission to entrust him with the negotiation of the future free trade agreement, as announced by Mrs. Ursula von der Leyen.

DS Customs & Trade team is at your disposal to provide you with any additional information.

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