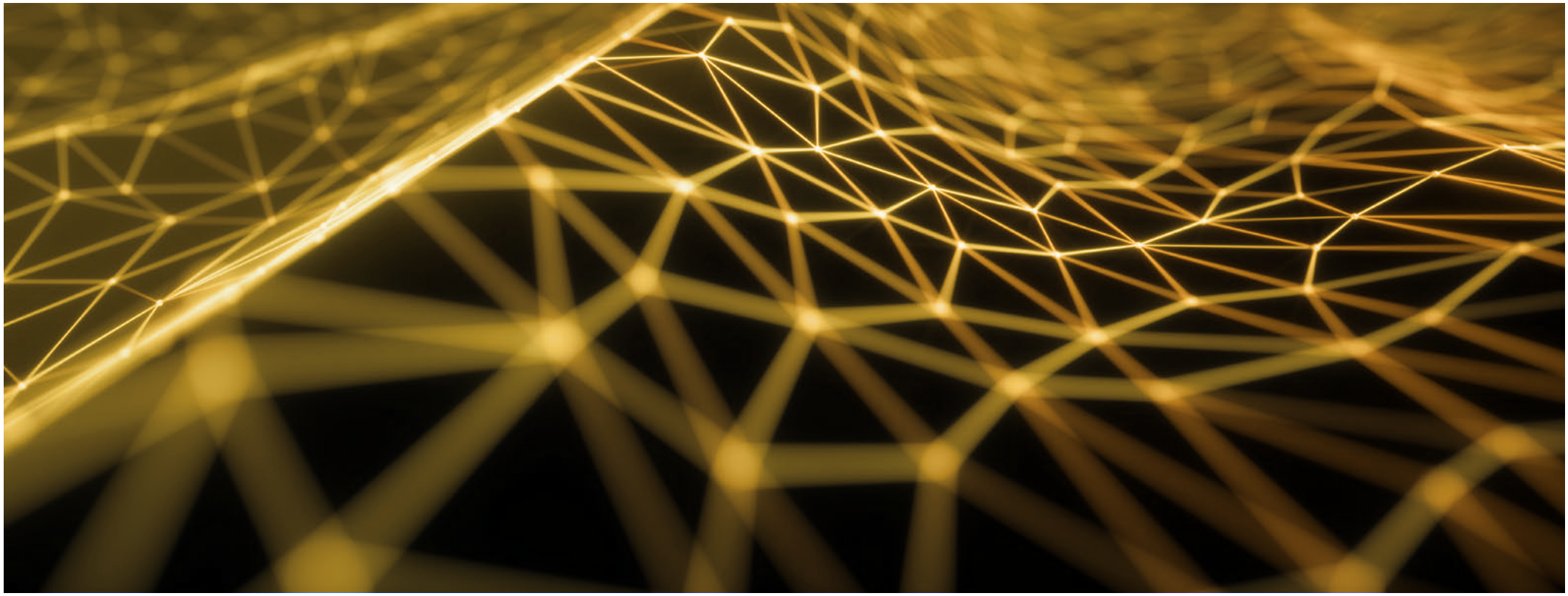

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OCTOBER 2020

BREXIT PREPAREDNESS CHECK: CUSTOMS AND TRADE IN GOODS

Menu

Flows

Forward

Backward

The United Kingdom of Great Britain and Northern Ireland (the "**UK**") officially left the European Union (the "**EU**") at 11 pm on 31 January 2020. The way in which goods can be moved between the UK and the EU has, however, remained unchanged pursuant to the transition period arrangements in the Withdrawal Agreement. The transition period expires on 31 December 2020 (the "**End Date**").

As it has become clear that the transition period will not be extended and it is questionable whether a free trade agreement ("**FTA**") can be concluded between the UK and the EU before the End Date, we have taken stock of what we know in respect of how goods may move between the UK and the EU after the End Date on the assumption that no FTA will be in place.

Pursuant to the Northern Ireland Protocol, arrangements for the trade in goods between the EU and Northern Ireland ("**NI**") will be different from arrangements for the trade in goods between the rest of the UK, i.e. Great Britain (England, Scotland and Wales) ("**GB**"), and the EU. This difference also has ramifications for the trade in goods between NI and GB.

This briefing provides an overview of the anticipated arrangements for the movement of goods between the EU, GB and NI and highlights key points to consider in respect of the movement of goods to the rest of the world. The briefing closes with a checklist of key preparatory steps.

MENU

Menu

Flows

Forward

Backward

Existing registrations, authorisations, decisions and licences

In particular where businesses operate across the UK and the EU in reliance on one set of registrations, authorisations, decisions or licences, these may no longer suffice after the End Date. In this respect, we highlight the following key issues:

EORI NUMBERS

Businesses that need to file customs declarations in the UK and the EU will need Economic Operators' Registration and Identification ("**EORI**") in both places. An EORI previously granted by the UK will not be valid in the EU after the End Date, and an EORI previously granted by a Member State will not be valid in the UK after the End Date. So, an additional EORI should be applied for in the UK or the EU as required. The relevant online application in the UK should in most cases take no more than five to ten minutes to complete. In the EU, this registration has to be carried out with the customs authorities responsible for the place where the operator is established or, for operators not established in the EU, where they first lodge a declaration or apply for a decision. It is usually carried out online and is linked to the VAT registration.

CUSTOMS AUTHORISATIONS

Customs authorisations issued by the UK customs authorities or in respect of a UK EORI will no longer be valid in the EU after the End Date and would have to be amended or, if this is not possible, a new authorisation would have to be requested. Businesses currently operating in the UK on the basis of EU authorisations would need to consider whether additional UK authorisations will be required. This also applies to a business's Authorised Economic Operator status, although it is hoped that a system of mutual recognition would be agreed between the UK and the EU.

EU customs authorisations should also be reviewed in case they need to be amended to take account of the new geographical coverage excluding the UK (e.g., Regular Shipping Service, Single Authorisation for Simplified Procedure, authorisations to use the comprehensive guarantee where the guarantor is established in the UK).

Menu

Flows

Forward

Backward

CUSTOMS DECISIONS

Customs decisions and, in particular, Binding Origin Information and Binding Tariff Information issued by the UK authorities or in respect of a UK EORI will not be valid in the EU after the End Date. As these decisions cannot be amended, new ones will have to be requested in the EU. Furthermore, Binding Origin Information issued before the End Date which referred to goods including UK materials or processing operations will no longer be valid after the End Date.

LICENCES

Existing export licences should be reviewed if a business intends to rely on these after the End Date. Existing export licences issued by the UK will not be valid for exports from the EU after the End Date and existing export licences issued by a Member State will not be valid for exports from the UK.

Similarly, in respect of licence-managed EU tariff rate quotas, the rights and obligations that arise from UK agricultural licences allocated by the licensing issuing authorities of the UK will cease to be valid in the EU as of the End Date.

Additional licences should be applied for as required.

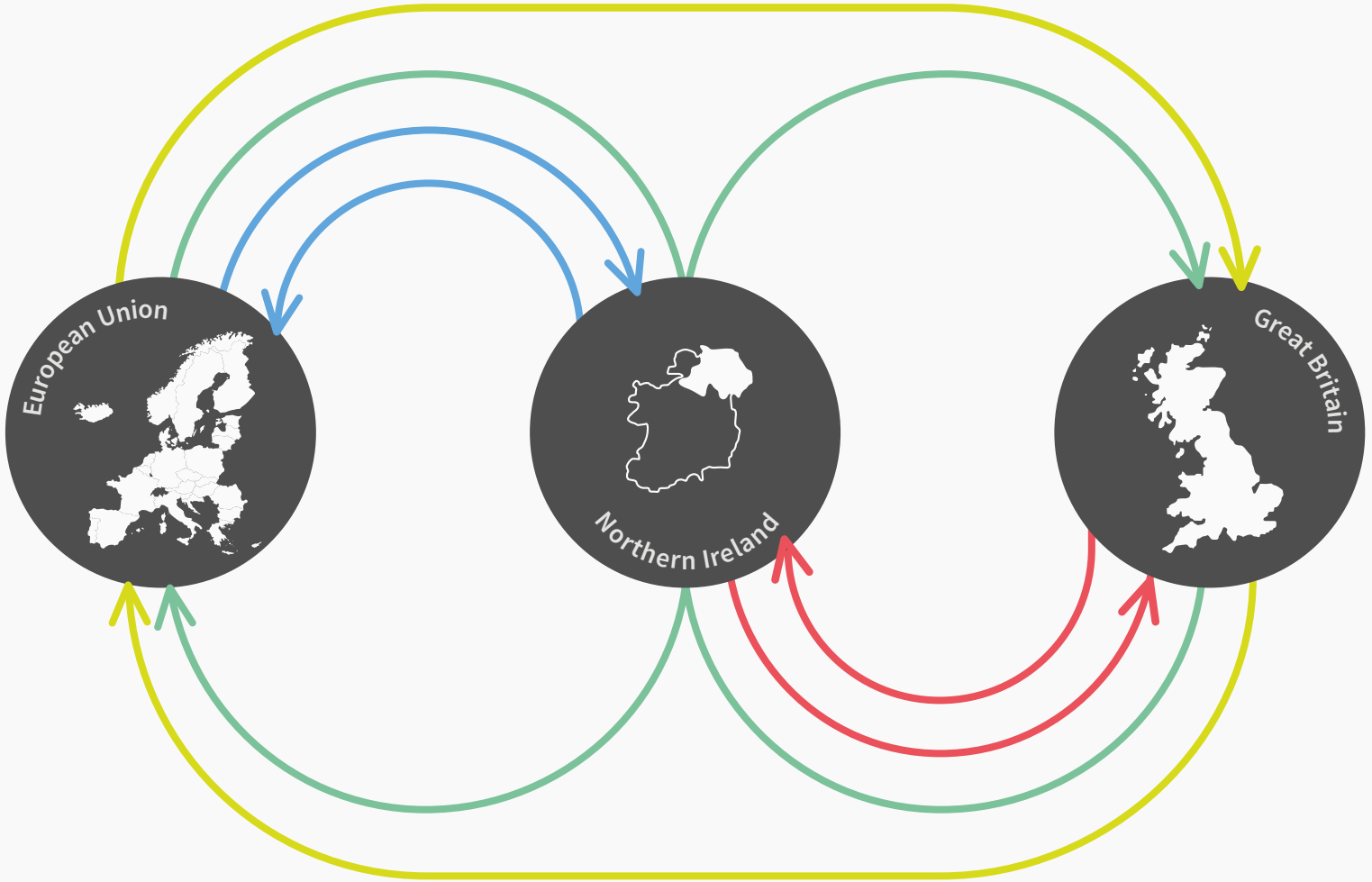
Further information from an EU perspective can be found in this guidance note published by the European Commission.

Menu

Flows

Forward

Backward



EU to GB / GB to EU

NI as conduit

EU to NI / NI to EU

GB to NI / NI to GB

Menu

Flows

Forward

Backward

Movement of goods between GB and the EU

From 1 January 2021, the following procedures will generally apply in respect of the movement of goods between GB and the EU. Further details from a UK and an EU perspective can be found in, respectively, the border operating model published by the UK government (which envisages that the UK will delay the coming-into-effect of some of the border processes until 1 July 2021 to afford businesses additional time to prepare) and this guidance note published by the European Commission.

MOVING EU GOODS TO GB

Customs declarations and safety and security ("**S&S**") declarations will need to be filed in GB and the EU and import tariffs be paid under the new UK Global Tariff. Excise duty or climate change levy may also be payable in the UK, if the imported goods are within the scope of these taxes.[1]

In the EU, pre-departure and export declarations will have to be lodged. The pre-departure declaration contains the S&S particulars and must be lodged electronically through the national export customs declaration system of the Member State concerned. It will usually take the form of an exit summary declaration and will have to be lodged with, or communicated to, the customs office of exit by the carrier or the carrier's representative. The export declaration must be lodged electronically either at the customs office responsible for supervising the place where the exporter is established or where the goods are packed or loaded for export shipment. This declaration can be (and usually is) dealt with by a customs representative.

In GB, a customs import declaration and an S&S import declaration will need to be filed. Whilst the UK government appears to expect that most businesses would wish to engage an agent to complete these formalities, it is possible for businesses to do so themselves. Businesses that have obtained a CHIEF badge may submit customs import declarations electronically through the Customs Handling of Import and Export Freight ("**CHIEF**") system (or the new Customs Declaration Service ("**CDS**") which the UK tax authority is phasing in to replace CHIEF). S&S import declarations would be submitted through the S&S GB system (and, in respect of imports, the border operating model does not currently appear to envisage a linkage between S&S GB and CHIEF/CDS such that a combined customs and S&S declaration could be made). Additional commercial software may have to be acquired to access these systems and submit the relevant declarations.

[1] Broadly, excise duty applies to alcohol, tobacco and certain oils. The climate change levy applies to the supply or use of electricity, natural gas, liquefied petroleum gas and coal.

Menu

Flows

Forward

Backward

For VAT purposes, the export of goods from the EU to GB will no longer be treated as an intra-EU transaction. From the EU perspective, an exemption on exportation can be applied. It requires the goods being effectively dispatched or transported to a destination outside the EU by or on behalf of the vendor. It should be checked which specific requirements, such as documentation or time limits, are applied by the Member State of export and exit. Goods imported to GB from the EU would be subject to import VAT in GB. VAT registered traders will be able to account for such import VAT on their VAT return by using postponed VAT accounting from 1 January 2021. Non-VAT registered traders (and VAT registered traders not using postponed VAT accounting) will need to report and pay import VAT through the customs processes.

MOVING GB GOODS TO THE EU

Customs declarations and S&S declarations will need to be filed in the UK and the EU and import duties paid in the relevant Member State in accordance with Common Customs Tariff. Excise duty may also be payable in the relevant Member State, if the imported goods are within its scope.

In GB, a customs export declaration and an S&S export declaration will need to be filed. Whilst the UK government appears to expect that most businesses would wish to engage an agent to complete these formalities, it is possible for businesses to do so themselves, but they may need to acquire additional commercial software to do so. Businesses that have obtained a CHIEF badge may submit customs export declarations electronically through the CHIEF system (or the new CDS). S&S declarations are processed through the S&S GB system, but the border operating model envisages that, for exports, combined customs and S&S declarations may be submitted through CHIEF/CDS. The S&S information would then be transmitted from CHIEF/CDS to S&S GB.

In the EU, an entry summary declaration ("**ENS**") and customs import declaration will have to be lodged. An ENS must be lodged for S&S risk analysis purposes. It is the carrier's responsibility to lodge it at the customs office where the means of transport will first enter the EU. If a customs declaration is lodged in advance within the applicable time limit and contains the particulars of the ENS, the lodgement of an ENS may be waived. The customs declaration needs to be lodged in order to place the goods under a customs procedure. It can be lodged before the presentation of the goods to customs, but can only be accepted when goods are presented to customs. The customs declaration can be (and usually is) lodged by the customs representative.

Menu

Flows

Forward

Backward

Looking at the VAT position, GB exporters should be able to charge customers VAT at 0% on most goods exported to the EU. In the EU, the goods would be subject to VAT as imports. Some Member States allow import VAT to be entered in the periodical VAT return of the taxable person (otherwise payable at the moment of import), but this may have to be requested in advance. Please note that, as of 1 July 2020, for certain e-commerce sales in the EU, alternative means for declaration and payment of VAT will be available (such as Import One Stop Shop or declaration through a postal operator).

CONTROLLED GOODS

The import and export of certain goods[2] is subject to additional rules and requirements (such as the need to obtain licences or certificates) in the UK and the EU (and some imports or exports may even be entirely prohibited). Businesses would need to consider whether the goods that they wish to export or import fall within these rules and whether new licences need to be applied for. It is possible that, in some cases, existing licences would cover post-1 January 2021 activities. For example, UK-issued export licences may cover exports from GB to the EU after the End Date.

IMPACT OF AN FTA BETWEEN THE UK AND THE EU

Most of the observations in the previous section are unlikely to be materially impacted if the UK and the EU were to conclude an FTA before the End Date. Given the stated position that no customs union will be formed between the UK and the EU, additional customs procedures are expected to apply even if an FTA was agreed. The FTA could, however, remove or reduce some or all of the import duties that would otherwise be payable.

[2] Examples include waste, ozone-depleting substances, certain agri-food goods and other animal products, specimens of endangered species, firearms and ammunition, military technology and equipment, rough diamonds, and certain goods that could be used for capital punishment.

Menu

Flows

Forward

Backward

NI as a conduit for moving goods between GB and the EU

As a matter of principle, the movement of goods from GB to the EU or from the EU to GB via NI, should be subject to the same rules and formalities as a movement of goods directly from GB to the EU or vice versa. It is, however, unclear how this would be achieved in practice. At what point would the relevant declarations be submitted and taxes paid?

Looking at the UK government's proposed approach to the Northern Ireland Protocol, the answer would appear to be that the rules and formalities are applied in GB and the EU by reference to the intended destination of the goods. But what happens in the case of a change in destination, e.g. if GB goods intended for NI end up being moved to the EU?

It remains to be seen whether the UK and the EU will be able to agree a simple and fully electronic solution to these practical difficulties as seems to be envisaged by the UK government (given its position that no additional infrastructure will be built, and the EU will not be permitted to establish a customs outpost, in NI).

Menu

Flows

Forward

Backward

Movement of goods between NI and the EU

Pursuant to the Northern Ireland Protocol, NI should, from an EU perspective, be treated as part of the customs territory of the EU and subject to the EU's VAT and excise duty rules.

The European Commission has confirmed that "[n]o customs supervision, controls or formalities shall be applicable to goods moving between Northern Ireland and the Union, where those goods move as an intra-Union movement", while the UK government has stated that "[t]rade in goods between Northern Ireland and Ireland, and between Northern Ireland and EU Member States, will continue unaffected" (another policy paper sets out further details and a case study of a NI manufacturer of protective equipment).

So, current processes in respect of the movement of goods between NI and the EU should apply without change. No additional procedural requirements should apply and no additional duties should have to be paid.

The European Commission has further confirmed that "[t]ransactions involving movements of goods between Northern Ireland and Member States will be considered as intra-EU transactions" for VAT purposes and proposed an amendment to the Principal VAT Directive to provide for distinct VAT identification numbers in NI, using the prefix "XI". The UK government has not yet confirmed how this would be implemented in NI.

Menu

Flows

Forward

Backward

Movement of goods between GB and NI

On 20 May 2020, the UK government published its proposed approach to the Northern Ireland Protocol. This was followed by the publication of more detailed policy papers on 7 August 2020 which, inter alia, refer to the creation of a Trader Support Service, intended to operate from September 2020 "to help all traders, regardless of size and at no additional cost, to move their goods between Great Britain and Northern Ireland". This service has recently been promoted by the UK tax authority in letters to NI businesses.

MOVING NI GOODS TO GB

The Internal Market White Paper sets out the UK government's intention to legislate for "full unfettered access for Northern Ireland goods to the UK market by the end of this year, reflecting Northern Ireland's integral place in the UK's Internal Market and customs territory." The relevant draft legislation, in the form of Part 5 of the United Kingdom Internal Market Bill was passed by the House of Commons, the first chamber of the UK's Parliament, on 29 September 2020.

Clause 42 of the Internal Market Bill would require authorities within the UK to have regard to the need to maintain the integrity of NI's place in the UK internal market and as part of the UK customs territory, when implementing, or otherwise dealing with, matters related to the Northern Ireland Protocol. Such authorities would generally be prohibited from introducing any new checks, controls or administrative processes under clause 43. Clause 44 would allow regulations to be made to disapply any exit procedures which would otherwise apply on the movement of goods from NI to GB, including under the Northern Ireland Protocol. As per clause 47, clause 44 and regulations thereunder would "have effect notwithstanding any relevant international or domestic law with which they may be incompatible or inconsistent".

It therefore appears that the UK government's plan is that current processes should generally apply without change and neither additional registrations should be needed nor additional formalities need to be complied with. Whether this plan will be implemented as envisaged is, however, unclear. On 1 October 2020, the European Commission confirmed that it had sent the UK a letter of formal notice for breaching its obligations under the Withdrawal Agreement given that the Internal Market Bill, "if adopted, would flagrantly violate" the Northern Ireland Protocol

Menu

Flows

Forward

Backward

and, from an EU perspective, it seems likely that the conclusion of an FTA between the UK and the EU would be conditional on the removal of the offending provisions from the Internal Market Bill.

It is also noted that, in one of its letters to NI businesses, the UK tax authority has warned businesses that the Northern Ireland Protocol "means there will be changes for goods movements between Great Britain and Northern Ireland". Indeed, the UK government has outlined some situations where there will be changes – for example where traders wish to move goods subject to specific international rules (such as endangered species) or where they wish to make use of special procedures such as duty suspense. A different process would also apply to EU goods passing through NI on their way to GB.

It is expected that this position may be implemented through regulations defining a qualifying status for goods and businesses in NI. An express power to make regulations that define "qualifying Northern Ireland goods" is included in section 8C(6) of the European Union (Withdrawal) Act 2018 (section 8C was inserted into that Act by section 21 of the European Union (Withdrawal Agreement) Act 2020). The UK government has stated that it is "engaging with businesses and the Northern Ireland Executive on the means for delivering qualifying status".

MOVING GB GOODS TO NI

The UK government confirmed that no export declaration, exit declaration, or customs and regulatory clearance for any goods will be required as goods leave GB for NI. An electronic import declaration will, however, have to be submitted along with S&S information. A UK EORI would be required to submit such an import declaration.

The UK government intends that no tariffs would be charged unless the goods are destined for the EU or there is a substantial risk that the goods would end up in the EU. The arrangements to give effect to this principle (including the criteria for identifying goods at risk of ending up in the EU) still need to be formalised with the EU within the Withdrawal Agreement Joint Committee. But the UK government has stated that it "will make full use of the provisions in the Protocol giving us the powers to waive and/or reimburse tariffs" on goods moving from GB to NI. How this would be achieved without triggering State aid concerns is, however, unclear.

Special rules will apply in respect of movements of a limited number of controlled goods and of agri-foods from GB to NI. In respect of the latter, the UK government intends to build on "the existing practice established to maintain the Single Epidemiological Unit (SEU) on the island of Ireland" and work with the Northern Ireland Executive on the required facilities for the purpose of

Menu

Flows

Forward

Backward

processing agri-food goods arriving in NI from GB. The process for conducting controls and their frequency are to be discussed with the EU in the Withdrawal Agreement Joint Committee, but the UK government's intention is to avoid controls at NI ports as far as possible and minimise documentary requirements. Further details are set out in the UK government's policy paper.

VALUE ADDED TAX AND EXCISE DUTIES

From a UK perspective, it would seem sensible that the movement of goods between NI and GB should be treated as an intra-UK supply for VAT purposes and current processes should apply without change. The European Commission, however, envisages that the corollary of applying EU VAT rules in NI (and treating NI as part of the EU for these purposes) is that "[t]ransactions involving movements of goods between Northern Ireland and other parts of the United Kingdom will be considered as imports/exports". It seems unlikely that the UK government would agree with this analysis.

The UK government indicated that the application of EU VAT and excise rules in NI should be managed "in a way which minimises new costs and burdens on businesses in Northern Ireland". No further details on the practical implications were provided as these are "subject to ongoing consultation and discussion".

MANUFACTURED GOODS

NI businesses will be able to place their goods on the GB market irrespective of whether they are manufactured and certified in accordance with UK or EU rules, but the certification requirements differ slightly depending on the applicable rules. For NI businesses intending to place goods on the EU as well as the GB market, the most straightforward solution would seem to be to opt to manufacture their products in accordance with EU rules and use an EU body to provide any required certification.

GB goods may be placed on the NI market only if they have the required certification according to EU standards, usually shown through the application of the CE mark. Following the End Date, goods certified in accordance with EU standards would continue to be CE marked, but if such certification has been done by a UK body, the UK(NI) mark would also need to be applied. There will also be a UKCA mark, denoting that a UK body has certified conformity with UK standards. Only CE or CE and UK(NI) marked goods may be placed on the NI market; GB goods that are only UKCA marked may not be sold in NI.

Menu

Flows

Forward

Backward

Application of the EU's FTAs

The UK and the EU envisaged that, for the purpose of the FTAs concluded by the EU, the UK could continue to be treated as part of the EU in accordance with the Withdrawal Agreement (although this would, of course, have been subject to the consent of the relevant preferential partner and not all of them have confirmed their consent to this treatment). After the End Date, this treatment will no longer apply.

UK businesses will need to consider whether a replacement FTA has been concluded between the UK and the relevant preferential partner on the same terms, or whether different trading arrangements will apply. Whilst, for EU businesses, the position should generally remain the same after the End Date, differences may arise if the relevant goods had some interaction with the UK.

Examples of potential adverse interactions are set out below. Further information from an EU and a UK perspective can be found, respectively, in this guidance note published by the European Commission and in this guidance published by the UK government.

EU CONTENT

UK materials and processing operations will no longer count as "EU content" and products containing such inputs will be considered non-originating as of the End Date. Therefore, it would be advisable to assess whether the goods at stake would still have EU originating status disregarding UK inputs.

Proofs of origin issued before the End Date in the EU or by the preferential partner in relation to goods with UK content remain valid, provided the export of the consignment has been effected or ensured before the End Date.

Menu

Flows

Forward

Backward

IMPORTED GOODS

Goods imported into the EU from the UK (whether produced in the UK or the EU) will, after the End Date, become non-originating for the purposes of their direct exportation, or exportation after being processed, to an EU preferential partner. Similarly, goods originating in the EU preferential partners that were imported into the UK before the End Date will not be considered originating in the corresponding partner country and will not be suitable to use for cumulation purposes if they are imported into the EU after the End Date. This fact means that businesses should consider undertaking a stock review and movement planning in order to make sure that the goods maintain their preferential status where this is desirable.

MOVEMENT VIA THE UK

Movements of goods via the UK to a preferential partner or from the latter to the EU will have to comply with direct transport and non-manipulation provisions set forth in the relevant preferential arrangements. The supply chain should be reviewed accordingly.

Menu

Flows

Forward

Backward

Checklist of key preparatory steps

The below list includes key preparatory steps that businesses may wish to consider. From a UK perspective, the UK government's step-by-step guidance to help GB businesses to prepare for importing goods from the EU from 1 January 2021 or for exporting goods to the EU from 1 January 2021 may also be helpful. From an EU perspective, the European Commission's Brexit Checklist for Traders, its Customs Guide for Businesses and its "Getting ready for changes" communications may prove useful.

✓	Apply for new EU and/or UK EORI numbers as required.
✓	Confirm whether any existing customs authorisation and decisions need to be amended or replaced.
✓	Confirm whether any relevant goods are subject to special rules or requirements, and apply for any additional import or export licences that may be required.
✓	Confirm arrangements for paying any customs duties, VAT and other taxes that may become due on cross-border movements of goods.
✓	Appoint an agent to file relevant customs and S&S declarations. (Or, if the business wants to file these itself, it needs to request access to the relevant systems and acquire any additional software that may be needed.)
✓	Engage with supply chains to discuss how to work together going forward and to ensure that the information required by different entities to complete customs procedures is made available to them.
✓	To the extent that FTAs are relied on, consider whether they will apply in the same way after the End Date.

Menu

Flows

Forward

Backward

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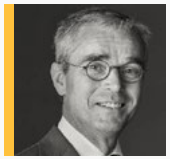

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