

Information Note –VAT, Customs and Excise Duty

Main aspects of the draft Free Trade Agreement to be signed between the EU and the United Kingdom

30th of December 2020

On 24th December 2020, the European Union and the United Kingdom reached a draft agreement that will make it possible to regulate the future of trade relations with the United Kingdom after the end of the transitional period on 31st December 2020.

This draft is subject to approval by the Member States and, therefore, considering the need to have a regulation in force by 1st January 2021, its provisional application is envisaged with effect from 1st January 2021 until 28th February 2021, pending its ratification by all Member States, as well as by the European Parliament and the Council.

The draft agreement signed regulates the following aspects:

- Trade in goods;
- Trade in services, investments, as well as capital movements and transfers;
- e-commerce, intellectual property, public procurement, small and medium-sized enterprises (SMEs);
- Energy and aviation;
- Establishing a level playing field for competition and sustainable development;
- Transparency and cooperation rules;
- Road transport;
- Coordination on social security and visas for temporary visits;
- Fisheries.

The text also covers other substantive issues such as enforcement and judicial cooperation in criminal matters, participation in EU programmes and the establishment of dispute settlement and governance measures.

For the purposes of this Information Note, we will focus solely on aspects related to trade in goods, as well as on those tax issues that are covered by the draft Agreement.

As far as trade in goods is concerned, the adoption of this Agreement and its subsequent ratification by the Member States and the Parliament and the Council is a milestone in that it is a Free Trade Agreement that **sets, as a general rule, a zero-tariff rate for all types of products and eliminates all types of quotas (or quotas)** for almost all goods, **except for the following:**

- Canned tuna, skipjack and bonito (CN 1604.14). The quota is set at 3,000 t. for both;
- Other canned fish preparations (CN 1604.20). The quota is fixed at 4 000 t. for both;
- Aluminium products to be classified under the following headings: CN 7603, 7604, 7605, 7606, 7607, 7608- 7616. In this case, quotas are set for two periods: a first period from 1st January 2021 to 31st December 2023 (95,000 t. for both) and a second period from 1st January 2024 to 31st December 2026 (72,000 t. for both).

Irrespective of the fact that an *ad valorem* tariff of 0% has been set for all types of products, the fact is that, with effect from 1st January 2021, any movement of goods between the UK and the EU and vice versa will be subject to the establishment of customs and/or para-customs control measures which will require the redesign of all supply chains by operators and the implementation of new working arrangements by Member States. Thus, all movements of goods between the United Kingdom and the EU will be subject to an entry/exit summary declaration, except for movements between the European Union and Northern Ireland which are covered by the provisions contained in the Protocol to the Withdrawal Agreement.

That said, **there is the possibility that either party may pass on the costs associated with the importation** of a product if they are directly related to such aspects as:

- Costs associated with travel by the customs authorities outside the customs area;
- Costs associated with the taking of samples and analyses or, where appropriate, the issuing of reports by experts, in connection with the issuing of binding tariff information;
- Expenses associated with the destruction of goods in cases where the customs authorities are involved;
- Expenses associated with the imposition of extraordinary measures in view of the dangerous nature of the goods or the risk associated with the imported goods.

Such expenditure must be published so that operators and authorities are aware of the amount and the competent authority responsible for passing it on.

With a view to facilitating the adaptation of supply chains and the introduction of new control systems by Member States, in the framework of the negotiations with the United Kingdom, **approving a reserve fund of up to EUR 5,370,994,000 is proposed**¹ to finance, for a certain period of time, measures to help reduce the negative impact on businesses and local communities that may be affected by Brexit.

¹ https://ec.europa.eu/info/sites/info/files/brexit_files/info_site/com_2020_854_final_act_v1.pdf



The two parties agreed that the control measures to be implemented, particularly those affecting health, safety and public health controls, must not result in the establishment of barriers to trade. To that end, **the two parties agreed to reduce administrative burden** as far as possible to facilitate trade by agreeing to adopt innovative measures in certain sectors in the future.

In the draft agreement, certain rules based on international certification standards have been established, recognising the continued use of the self-certification scheme by the producer, provided that this scheme itself is applicable in both the EU and the UK.

Specific cooperation protocols on market and consumer protection have also been adopted in order to maintain the standards of protection previously in force and concern, in particular, the following sectors: automotive, pharmaceuticals, chemicals, wine and organic products.

In the case of the **automotive sector**, the following rules are laid down:

- Regulatory convergence based on the use of international quality standards (UNECE) is established so that both parties commit to setting, where appropriate, a roadmap to promote greater harmonisation of technical requirements.
- Both parties commit themselves to accept in their respective markets all those products that carry a UN certificate;
- A cooperation and information exchange scheme on market surveillance is established in order to facilitate the identification of non-conformities in the scope of motor vehicles;
- A cooperation and information exchange scheme is established for the development of new safety measures affecting the motor vehicle, the reduction of emissions and the emergence of new technologies.

As for the **pharmaceutical sector**:

- It provides for the recognition or validity of inspections that may be carried out by the authorities of the contracting parties on the manufacturer's premises in order to avoid duplicate inspections;
- Likewise, provided that the manufacturers of medical products demonstrate compliance with Good Manufacturing Practice, the parties may unilaterally extend the recognition or validity of inspections carried out by the competent authorities in relation to facilities located in third territories, under certain conditions.

Regarding the **chemical sector**:



- Regulatory cooperation is established, while recognising the right of each Contracting Party to regulate bilaterally and internationally the assessment of risks and hazards of chemicals and the documentation supporting the results of these assessments;
- Both parties also undertake to respect the Harmonised System, as well as the labelling of chemicals and the technical guides issued by international bodies;
- Transparent procedures are laid down for the classification of certain substances and the possibility of exchanging non-confidential information.

As far as the **wine sector** is concerned:

- Simplified certification requirements are established so that, in both markets, winemakers can self-certify the conformity and quality of their wines;
- Common labelling principles are set out to ensure that adequate information is provided to consumers while avoiding disproportionate labelling measures;
- Both parties will allow imports of wine provided that it has been produced in accordance with the oenological practices and regulations in force and that the oenological practices recommended by the International Wine Organisation have been respected, although certain additional practices not recognised by the International Wine Organisation have also been approved;
- A procedure for the exchange of information and cooperation on wine matters has been established, as well as a review clause within a period of three years from the date of entry into force of the Agreement to promote trade in this area.

Finally, regarding **organic products**, the following measures are established:

- The implementation of the current organic regulation and its control system is recognised by both parties;
- Organic products that comply with both EU and UK regulations and have been certified by the relevant bodies will be accepted by both parties;
- Given the entry into force of the new EU regulation on organic products with effect from 1st January 2022, the principle of equivalence will need to be reassessed by the end of 2023.

As regards products subject to **health and plant protection control measures**, it is important to note that the EU sets exceedingly high protection standards, whereas the text of the Agreement does not provide for any simplification measures in this respect so that exporters of agri-food products will be subject to the same controls on import into the EU as any importer of products from third countries.



However, it recognises the right of the contracting parties to reduce unilaterally the volume of border controls and furthermore allows for the establishment of a list of establishments from which exports of such products are permitted and which would benefit from a simplified system for obtaining the relevant import authorisations, subject to any guarantees provided by the authorities of the exporting territory.

Regarding risk control in customs matters, **mutual recognition** of the **figure of the Authorised Economic Operator in matters of security and safety (hereinafter AEO-S)** is established on both sides. This mutual recognition will thus make it possible:

- Consider the AEO status, for the purpose of risk controls in order to reduce controls and inspections, as well as the implementation of other security measures;
- give priority to inspections of consignments, where the entry and/or exit summary declaration has been lodged by an AEO, in cases where such consignments are subject to control by the customs authorities
- Grant the holder of the AEO authorisation the recognition of secure partner in those cases where compliance with the requirements relating to trading partners is being assessed;

In addition, the draft Agreement provides that the parties will endeavour to establish a joint mechanism to enable business continuity in cases where trade flows are disrupted because of security alert levels and border closures and/or natural disasters or other major incidents so that priority burdens related to the AEO can be expedited as far as possible.

It is important to bear in mind that the **establishment of a 0% tariff in trade** between the UK and the EU is based on one premise and that is the **need to prove the European or, where appropriate, British origin of the products imported/exported.**

The draft agreement lays down the rules for defining what is meant by a wholly obtained product, as well as the percentage limits of non-originating products that a given product may contain to be considered as originating, commonly known as the "tolerance rule".

A free trade area is therefore created and evidence of this is that the draft Agreement adopts a **cumulation scheme** under which operators can benefit from the Agreement in respect of materials originating in the EU or the UK used in production, but also where such materials are used in a manufacturing process either in the UK or in the EU.

In these cases, materials originating in the UK or the EU, which are processed in either territory, will be deemed to have acquired the origin of the last territory in which they were processed without the need for proof of processing / valuation rates, as this is a full cumulation scheme.



Unlike the traditional Free Trade Agreements, in this case, the **process of accrediting preferential origin** is greatly simplified as two mechanisms are established: on the one hand, **the exporter's declaration on a commercial document (normally the invoice declaration)** and on the other, **the system based on the importer's knowledge** in line with the procedure contained in the latest Free Trade Agreements signed by the EU, specifically with Japan.

These systems of proof of origin give operators greater flexibility, but they have a counterpart in that, if they opt for the system of proof of origin based on the knowledge of the importer, they require the customs authorities to lay down strict rules on verification of origin to limit the application of subjective criteria.

Finally, a **Protocol on mutual assistance in the customs field** was adopted to govern relations between the EU and the United Kingdom to ensure uniform interpretation of the provisions of the Agreement and to prevent, investigate and combat fraud in this area. Such assistance may be granted at the request of one of the parties or on its own initiative and will specify the nature of the information to be exchanged, the format of the request, its scope and maximum content. Such information will not be provided in the following circumstances:

- It is prejudicial to the sovereignty of the United Kingdom or that of any Member State which has made the request for information under the abovementioned Protocol;
- is prejudicial to political, security or other essential interests; and
- It involves an infringement of industrial or commercial property or the violation of a professional secret.

In addition, the provision of the required information may be delayed in cases where such information could prejudice ongoing inspections or investigations.

In addition, and in relation to the recovery of duties or any other taxes which may become chargeable on import, a **Protocol on administrative cooperation in the fight against fraud** is adopted, with the aim of establishing a framework for administrative cooperation between the Member States and the United Kingdom to enable the authorities to work together to ensure compliance with the rules on **VAT** and thus protect its collection and the recovery of claims relating to **taxes and duties**, including the costs and interest associated with the recovery of these amounts.

As in the previous case, the request for information may be at the request of a party or on its own initiative, in which case it may be spontaneous or automatic. To this end, a maximum time limit (90 days) is set for providing the required information.

It is important to note that this Protocol contains detailed rules regarding the procedure to be followed, the type of documentation, the type of information, the notification rules, the recovery procedure, the



establishment of precautionary measures and the mechanisms for resolving disputes which may arise under this Protocol.

To this end, a specialised Committee on administrative cooperation for VAT purposes and the recovery of taxes and duties has been set up to hold recurrent meetings and consultations and to evaluate the effectiveness and proper functioning of the Protocol every five years.

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