



Brexit Preparedness seminar on Customs, taxation, SPS, Import/Export licenses, TRQs

Council Working Party
(Article 50 Format)
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Customs formalities and controls

- All UK trade will have to be treated as trade with a third country
 - Import and export formalities and controls will apply
 - Customs may also carry out controls on behalf of other authorities
 - Customs duties and other charges will be charged
 - EU27 authorisations covering the UK will have to be reassessed and UK authorisations will no longer be valid in the EU27
 - UK EORIs will no longer be valid in the EU27

Customs formalities and controls

- What is being done – EU level
 - Analysis of legal and procedural implications
 - Analysis of customs processes at the border and possible mitigation measures
 - Commission notices to stakeholders on customs-related issues
 - Preparation of UK accession to the Convention on a common transit procedure
 - Continuous exchanges with Member States and economic operators, including via dedicated meetings
 - Technical expert seminars with EU27

Customs formalities and controls

- What else should/can be done – EU level
 - Further communication with Member States and economic operators concerning
 - Regular updates on developments
 - Taking up concrete concerns and questions
 - Provision of guidance on the practical application of customs legislation to trade with UK as a third country

Customs formalities and controls

- What is being done – national level
 - Recruitment of staff and infrastructure measures
 - Training of the staff
 - Dedicated websites and communication to trade

Customs formalities and controls

- What else should/can be done – stakeholders level
 - Companies currently doing only intra-Union trade with the UK will have to get involved with customs
 - Economic operators with UK authorisations will have to apply for EU27 authorisations and economic operators with UK EORIs for EU27 EORIs
 - Applications for authorisations or registration can be submitted with EU27 customs authorities already now
 - Entry into effect only when the UK is no longer a Member State

Customs IT systems

- **As a third country, the UK will be disconnected from the IT-network**
 - Open movements may have to be handled outside the IT systems
- **What is being done – EU level**
 - Analysis of IT implications
 - Development and testing of IT changes
 - Continuous exchanges with Member States and economic operators, including via dedicated meetings and technical seminars with EU27
- **What else should/can be done – EU level and national level**
 - Testing with IT systems of the MSs for the no deal scenario and for the UK accession to the Convention on a common transit procedure

Preferential trade with third countries

- In case of no deal, as from the withdrawal date, in the EU preferential trade (for instance, FTAs)

For the purposes of proofs and verification of origin and the granting of preferences:

- For EU exports: EU partner countries may consider UK content as non- originating (“non-EU”)
- For EU imports: UK content in EU partner countries goods will be considered as non-originating

Preferential trade with third countries

- What is being done at EU level

- Information to EU preferential partner countries on UK's withdrawal.
- Notice to the importers on preferential rules of origin.
- Technical expert seminars with EU 27 to discuss with customs experts the preferential aspects.

Preferential trade with third countries

- **What should be done by stakeholders**
 - EU business needs to be aware of the possible UK content of their products and may decide to adapt their supply chain and logistics accordingly.
- **What should be done by Member States**
 - MS customs need to be aware of the implications of considering UK content as non-originating when issuing a certificate of origin or a binding origin information, as well as when verifying the origin of goods.

HR capacity in EU27 customs administrations

- Human Resource (HR) capacity of EU27 customs administrations requires considerable upgrading in terms of customs staff.
- What is being done by Member States
 - Most affected MS27 customs administrations are recruiting new staff and getting them trained within short timeframe.
- What is being done at EU level
 - Developing common 'fast-track entry' training programmes for 'newcomers' and 'fast-track re-skilling' training programmes.
 - Complementing national training efforts through common training delivery.
 - Cooperating in national training actions for traders.

Communication

- Businesses need to be informed how to prepare
- What is being done at EU level:
 - Seven things businesses in the EU27 need to know:
https://ec.europa.eu/info/sites/info/files/factsheet-preparing-withdrawal-brexit-preparedness-web_en.pdf
 - Brexit checklist for traders (soon)
 - TAXUD webpage
- What is being done by MS: some dedicated websites for trade
- What else could be done by MS: focus on outreach to SMEs trading so far only in the EU single market (no experience on customs)

Background and reference information

- *Brexit preparedness notices:* https://ec.europa.eu/info/brexit/brexit-preparedness/preparedness-notices_en#tradetaxud
- *Notice to stakeholders – customs and indirect taxation 30.01.2018*
https://ec.europa.eu/info/sites/info/files/file_import/customs_and_indirect_taxation_en.pdf
- *Notice to stakeholders – import and export licenses 25.01.2018*
https://ec.europa.eu/info/sites/info/files/file_import/import_and_export_licences_en.pdf
- *Notice to stakeholders – Preferential rules of origin 4.06.20*
https://ec.europa.eu/info/sites/info/files/file_import/preferential_rules_of_origin_en.pdf

Issues around taxation

- Tax treatment of transactions with the UK
- VAT refund
- Administrative cooperation and fight against fraud
- Direct taxation and level playing field

Tax treatment of transactions with the UK (1)

- Problems for business: change of the tax treatment of their transactions in relations with the UK, also for on-going transactions
 - Different VAT rules apply in relation to third countries
 - Excise general arrangements no longer applicable, including for on-going movements
 - Registrations and formalities will change
 - e.g. VAT registrations (e.g. MOSS) will have to be amended
 - e.g. Excise EU27 authorisations covering the UK will have to be revoked or amended and UK authorisations will no longer be valid in the EU

Tax treatment of transactions with the UK (2)

What is being done at EU level ?

- Analysis of legal, regulatory and procedural implications
- Preparation of IT-implications for the EU and for EU27 MS
- Commission notices to stakeholders (30.01.2018 and 11.09.2018) and draft guidelines for businesses and national administrations
- Technical workshops with EU27 MS (VAT, excise duties, administrative cooperation and tax recovery assistance, IT-aspects)
- Presentation to EU27 MS and business representatives on 20.11.2018 (EU VAT Forum meeting)

Tax treatment of transactions with the UK (3)

- What is being done at the level of MS ?

- Preparation at tax administration level (legal, practical)
- Communication to business

Tax treatment of transactions with the UK (4)

- What else should/can be done at EU level ?
- Harmonised approach on: reciprocity (VAT refund), ongoing transactions:
→ Technical meeting will discuss way forward in the beginning of 2019
- Further communication to EU27 MS and business

Tax treatment of transactions with the UK (5)

- What else should/can be done at national level ?
 - Adapt IT-systems and rules for registration and reporting
 - Staff and infrastructure
 - Communication : information to business about the changes

Tax treatment of transactions with the UK (6)

- What else should/can be done at business level ?
 - Adapting contracts and flows of goods
 - Relocating business or having new registrations (e.g. MOSS)
 - Ensuring the application of other rules for transactions that will be considered to take place after the withdrawal (invoicing, payment of taxes, ...)
 - Checking VAT identification numbers of clients on Vies-on-Web before the UK's disconnection from the IT-network

VAT refund

- Problems for business

- - **Now:**

- - refund request can be submitted electronically in the own Member State,
 - and is forwarded by the own Member State to the refund State
 - (in accordance with Directive 2008/9).

- **After 29.3.2019:**

- Directive 2008/9 will no longer apply in relation to the UK
- No electronic VAT refund application anymore in relation to the UK
- VAT refund: may become subject to a reciprocity condition

VAT refund (2)

What can be done at business level ?

- VAT paid until 31.12.2018:
 - refund request best in the beginning of 2019, in accordance with Dir. 2008/9.
 - Communication about the request with the debtor will have to be directly after 29.3.
- VAT paid from 1.1.2019 until 29.3.2019:
 - right to have it refunded (irrespective of reciprocity issue applying in relation to third countries),
 - but will have to be requested after 29.3.2019, with use of the only available procedure for VAT refund requests (= national procedure implementing the 13th Directive (86/560))
- VAT paid after 29.3.2019:
 - right to refund in accordance with 13th Directive,
 - may be subject to reciprocity → value of an EU approach

Administrative cooperation and fight against fraud

- Problem for MS :difficulties to ensure the right tax collection and to fight against fraud
 - UK no longer bound by EU legal instruments for administrative cooperation and recovery assistance
 - UK disconnected from the IT-network that supports this administrative cooperation
 - No sufficient fall-back options
- To some extent, this is also an issue for business:
 - Reporting for Q1/2019: still as before (recapitulative statements; MOSS returns) but no exchange of info with UK after withdrawal under Reg. 904/2010
 - E.g. corrections/amendments of previous MOSS returns: not via the MS of registration

Administrative cooperation and fight against fraud (2)

- What can/should be done at national level by tax authorities / business ?

- Taxable persons should be reminded of their obligation to provide themselves the necessary evidence with regard to transactions with the UK
- Cf. CJEU 27.9.2007, C-184/05, Twoh, pt. 34): "administrative cooperation is "not adopted for the purpose of establishing a system for exchanging information between the tax authorities of the Member states allowing them to establish the intra-Community nature of supplies made by a taxable person who is not himself able to provide the necessary evidence for that purpose".

Direct taxation

- Problem for MS: UK not bound anymore by EU law on direct taxation
 - EU anti-tax avoidance provisions do not apply to the UK anymore
 - End to the UK's political commitment to the Code of Conduct for Business Taxation (to prevent harmful practices)
 - Risk of tax competition

Direct taxation (2)

- What can be done at EU level ?
 - UK still OECD member – bound by transparency and BEPS standards
 - EU List of Non-Cooperative Jurisdictions: Third countries must comply with transparency, fair competition, BEPS and substance requirements.
 - UK crown dependencies and overseas territories already in listing process, with good results.

Background and reference information

Brexit preparedness notices:

https://ec.europa.eu/info/brexit/brexit-preparedness/preparedness-notices_en#tradetaxud

Notice to stakeholders – Customs and indirect taxation 30.01.2018

https://ec.europa.eu/info/sites/info/files/file_import/customs_and_indirect_taxation_en.pdf

Notice to stakeholders – Value added tax 11.09.2018

https://ec.europa.eu/info/sites/info/files/value-added-tax_en.pdf

Sanitary and Phytosanitary (SPS) rules

Import/transit conditions

Key issue:

- *Animals, plants and their products coming from the UK must comply with EU import/transit conditions for third countries*

What has been done:

- *At EU-level:*
 - 14 preparedness notices to Member States and stakeholders on SPS rules, available under: https://ec.europa.eu/info/brexit/brexit-preparedness/preparedness-notices_en
 - Several technical expert seminars with EU27 Member States from March 2017
 - Seminar with Advisory Group on Food Chain and Animal and Plant Health in June 2018

Sanitary and Phytosanitary (SPS) rules

Import/transit conditions

What should be done:

- *At EU-level:*
 - Contingency measures announced in Commission Communication of 13 November 2018, subject to UK guarantees:

“On the basis of the EU veterinary legislation, the Commission will – if justified – swiftly ‘list’ the United Kingdom, if all applicable conditions are fulfilled, so as to allow the entry of live animals and animal products from the United Kingdom into the European Union.”

Sanitary and Phytosanitary (SPS) rules

Import/transit conditions

- Preparing the application of the UK to be listed as an authorised third country for the relevant categories of animals and animal products.

However, some preconditions still need to be met:

- ✓ To receive from the UK the relevant guarantees to fulfil the applicable conditions
 - ✓ To adjust the appropriate health conditions to the SPS status of the UK
 - ✓ To receive assurance that the UK will maintain their SPS status over time
 - ✓ To ask the UK to provide their national monitoring plans for residues
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- Drafting implementing acts for the different categories where the UK might be listed:
 - ✓ Categories of live animals
 - ✓ Horses
 - ✓ BSE status
 - ✓ Approved residue monitoring plans
 - ✓ Categories of food of animal origin
 - ✓ Categories of animal by-products
 - ✓ Categories of genetic products
 - ✓ Hay and straw

Sanitary and Phytosanitary (SPS) rules

Border controls

Key issue:

- *Border controls applicable to (cf. next slide):*
 - Imports from the UK
 - e.g. products of animal origin: 100% documentary check, 100% identity check, variable physical check
 - External transit through the EU, from the UK to non-EU countries
 - Internal transit through the UK (land bridge) between Ireland and the EU26
 - Export of live cattle where exit controls are necessary

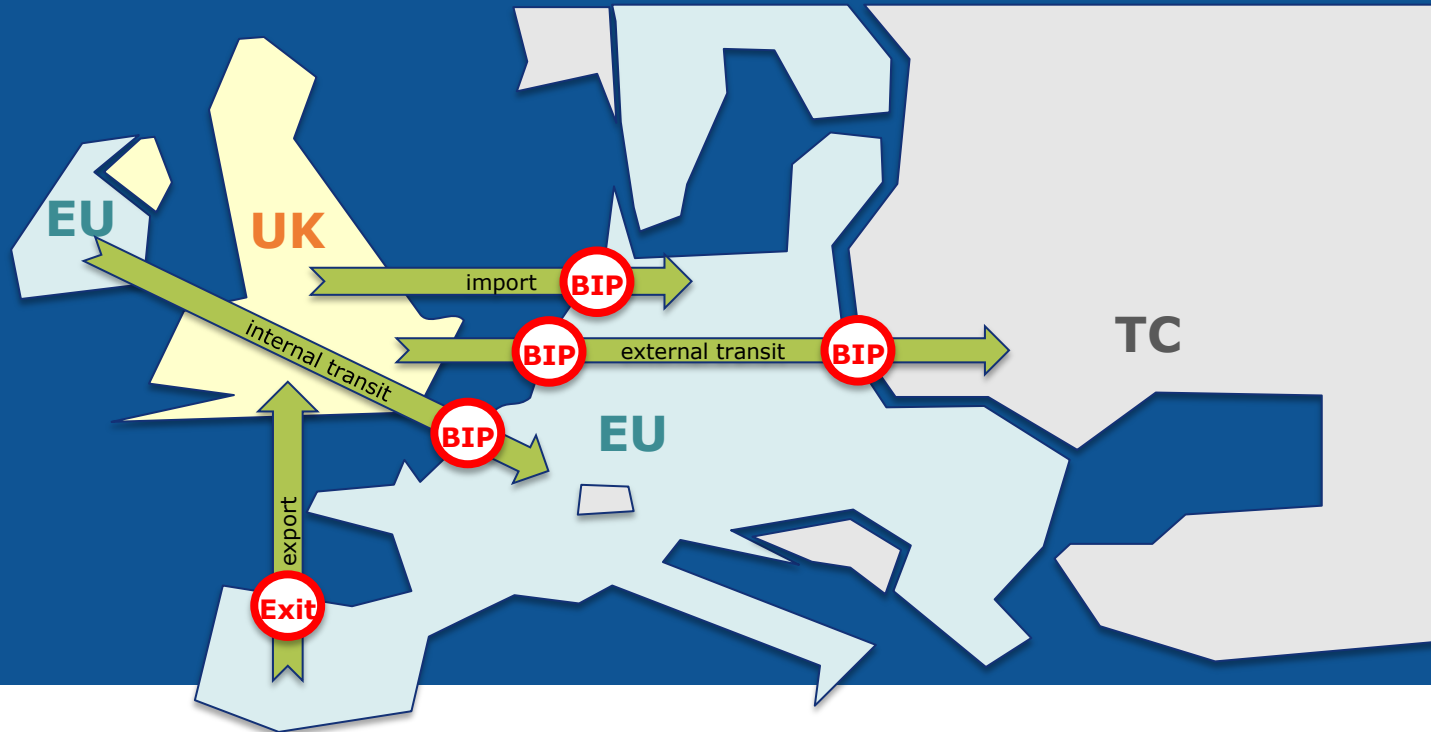
What has been done:

- *At EU-level:*
 - Several seminars with EU27 Member States from March 2017
 - Meetings with the most directly affected Member States from April 2018
 - Bilateral meetings with certain Member States

Sanitary and Phytosanitary (SPS) rules

Border controls

- Official controls at EU borders*



Sanitary and Phytosanitary (SPS) rules

Border controls

What should be done:

- *At EU-level:*
 - Approval of BIP projects presented by Member States, with the flexibility provided for in EU legislation
 - Reasonable distance from the point of entry, with proper customs/veterinary surveillance
 - Temporary premises for inspection rooms and social rooms
 - Use of commercial facilities for unloading areas and storage rooms
 - Commission training programme for the new staff assigned in BIPs.
- *At national level:*
 - Member States to present BIPs for approval by the Commission (deadline: 15 February 2019)
 - Member States to recruit additional staff for the BIPs and ensure their training
 - Member States to consider possible exchanges of officials working in BIPs

General presentation

- Export/import licenses (or other procedures: permits, certificates, etc.) are mandatory for shipment to/from third countries, for a wide variety of goods, for example:
 - Waste
 - "Dual use goods"
 - Specimens of endangered species
 - Certain hazardous chemicals
 - Rough diamonds
 - Certain goods that can be used for torture or capital punishment
 - ...
- What has been done?
 - At EU level: Notice to stakeholders (25 January 2018)

Licences issued in the United Kingdom

- **Issue**
 - In case of no deal, export/import licenses issued by the UK will no longer be valid in EU27
- **What can be done?**
 - At stakeholders level: Request license from an EU27 Member State
 - At national level: Inform stakeholders and prepare processing of licenses applications

Ongoing transactions (UK – EU27)

- **Issue**
 - Shipments starting before withdrawal date and arriving after withdrawal date may not be properly licensed
- **What can be done?**
 - At national level: Inform stakeholders
 - Pragmatic solutions where available (e.g. waste)

Licensing of exports/imports post-withdrawal

- **Issue**

- As of withdrawal date, UK becomes a third country and export/import licenses regimes apply fully.

- In certain cases, individual licenses must be obtained

- In certain cases, export/import become forbidden

- **What can be done?**

- At national level: Inform stakeholders and ensure resources for licenses processing (where pertinent)

Focus: dual use items

- **Volume**
 - In 2017 UK ranked as the EU27 2nd export destination
 - Dual-Use Controlled Export to UK est. value Eur 4.3 Bn
- **What has been done**
 - Technical expert seminar on 14 November 2018
- **What can be done**
 - By stakeholders: Prepare licenses applications
 - At national level: Inform stakeholders, use available flexibilities (intra-EU licenses -> export licenses)

Focus: waste

- **What has been done**

- Notice to stakeholders (8 Feb 2018, updated 8 November 2018)
- Technical expert seminar (3 October 2018)

- **What else should/can be done at national level**

- Contact stakeholders with contracts involving the export to the UK of any type of waste for a disposal operation and the export of municipal waste for recovery as this is covered by export ban.
- Ensure that waste management stakeholders are aware of the new procedures for waste movements involving the UK.
- At the relevant moment, take the decision on whether to ask for a new notification of existing consents

Focus: endangered species (CITES) and timber

- **Issue**

- Complex and varied trade – pets, luxury goods, musical instruments... Plus large volumes of timber under Timber Regulation

- **What has been done**

- Notice to stakeholders on CITES (7 March 2018)
- Notice to stakeholders on travelling (13 November 2018)
- Technical expert seminar (25 May 2018)

- **What else should/can be done**

- At national level: Contact with stakeholders in legal trade of species to ensure they are aware of the CITES procedures that will apply
- At national level: Contact with stakeholders in the timber trade to ensure they are aware of Timber Regulation and FLEGT

Background and reference information

- *Notice to stakeholders on import and export licenses:*
https://ec.europa.eu/info/sites/info/files/file_import/import_and_export_licences_en.pdf
- *Notice to stakeholders on EU waste law:*
https://ec.europa.eu/info/sites/info/files/file_import/waste_law_en_0.pdf
- *Notice to stakeholders on trade in protected species:*
https://ec.europa.eu/info/sites/info/files/file_import/trade_in_protected_species_en.pdf
- *Notice to stakeholders on the fight against illegal logging:*
https://ec.europa.eu/info/sites/info/files/file_import/illegal_logging_and_associated_trade_en.pdf

Apportionment of tariff rate quotas in the EU's WTO schedules

- What is being done
 - Notification under Article XXVIII and ongoing assessment of claims
 - Provisional agreement between Council and EP on a new Regulation
 - Preparations for an implementing act
- What else should/can be done
 - EU-level: keep competent authorities and stakeholders informed
 - National level: guidance to stakeholders