

Brexit - Trade in goods under the draft Withdrawal Agreement endorsed on 25 November 2018 by the UK and the EU

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Authors: [Fabienne Vermeeren](#), [Jacquelyn MacLennan](#), [Richard Eglin](#)

On 25 November 2018, the EU27 and the UK during a special meeting of the European Council endorsed the draft Withdrawal Agreement as well as a political declaration on the future bilateral relationship, marking an **important milestone in the Brexit negotiations**.¹ This alert focuses on the effects the draft Withdrawal Agreement (if agreed as such) would have on trade in goods² between the UK and the EU27 and between the UK and third countries. At this stage, it is uncertain whether or not the Withdrawal Agreement will take effect on 30 March 2019 as envisaged, as it still has to be approved by both the UK and EU parliaments.³

The overview table summarises the situation envisaged by the Withdrawal Agreement during and after the transitional period, as well as under a “no deal” scenario. (There is of course a remaining scenario which would mean no change to trade in goods: the “no leave” option. This would require withdrawing the Article 50 notice prior to the deadline of 29 March 2019 (unless extended), and would also require UK Parliamentary approval, potentially a 2nd Referendum in the UK and arguably acceptance by the EU.)

Transitional Period

The UK will continue to apply EU law⁴ and remain in the EU customs union and the EU Single Market during a transitional period, which would end on 31 December 2020. However, this transitional period can be extended

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- 1 See the conclusions of this special European Council [here](#). The draft withdrawal agreement is available [here](#) and the political declaration [here](#).
 - 2 This alert does not take into account special rules for trade in fish and fishery products.
 - 3 Despite the political declaration endorsed by the European Council, it is neither possible to predict if/when a bilateral free trade agreement will be agreed between the EU27 and the UK, nor what it would provide for. We have therefore not included an EU-UK FTA scenario.
 - 4 The draft Withdrawal Agreement provides that (unless otherwise stated) any reference in EU law to “Member State” shall be understood as including the UK during the transitional period. However, the UK parliament shall no longer be considered a parliament of a Member State, and UK representatives will only be allowed in EU discussions in committees and expert groups exceptionally and upon invitation, without voting rights of any kind. In other words, the UK has to apply rules in which it will not have any significant say.

once by mutual consent of the UK and the EU (before July 2020) by one or two years ie. an extended transitional period would end either on 31 December 2021 or 2022.

Backstop solution to avoid a hard border on the island of Ireland

In order to avoid a hard border between Northern Ireland and the Republic of Ireland, the draft Withdrawal Agreement contains a detailed “Protocol on Ireland/Northern Ireland” (“the Protocol”) which contains the so-called “backstop” solution if no agreement is reached by the UK and EU by the end of the transitional period on the future relationship (i.e. a comprehensive EU-UK free trade agreement).

The Protocol provides that after the transitional period, the EU and the UK will form part of a “single customs territory”. It is important to understand that this is not the same as remaining in the EU customs union. More formalities will kick in, even if the aim is to minimize these. However, the UK will be free to enter into FTAs with 3rd countries as long as the UK does not apply a tariff which is lower than the EU’s Common Customs Tariff and does not apply or grant in its customs territory any quotas, tariff-rate quotas or duty suspensions without prior agreement of the EU.⁵

Annex 2 to the Protocol lays down the rules which will apply for trade in goods between the EU27 and the UK, and with the rest of the world. If the EU and UK cannot agree detailed provisions relating to their bilateral goods trade by 1 July 2020, Annex 3 will apply as well. That Annex introduces a “A.U.K. Movement Certificate” to demonstrate that the EU’s tariffs and commercial policy measures have been applied by the exporting part of the single customs territory before the goods are shipped to the other part of the single customs territory. In other words, UK exporters wishing to export to the EU27 would have to request this Certificate from the UK authorities to demonstrate that their goods (or goods produced in the UK but incorporating materials imported from third countries) have been subject to the EU’s tariffs and commercial policy measures, and vice versa.

With respect to regulatory requirements for products, Northern Ireland will have to continue to apply EU rules, with which the UK authorities will have to ensure compliance. Special checks and procedures will apply to ensure that goods from Mainland UK entering the EU27 via Northern Ireland comply with EU rules.

Trade between the UK and the EU27	Transitional period	Backstop solution	No deal – hard Brexit
Customs duties applicable on bilateral trade?	No (EU customs union)	No (single customs territory)	Yes. The UK has announced that it will mirror the EU Common Customs Tariff at its WTO bound rates
Autonomous tariff suspensions/quotas available?	Not relevant (because no duties apply)	Not relevant (because no duties apply)	Yes. EU and UK would make these available to each other’s products if conditions are met (such measures apply <i>erga omnes</i> , i.e. regardless of origin)
Commercial policy measures applicable?	Not applicable (because such charges apply at the external EU customs union border)	The UK must align with EU measures and apply these at its external border for third country imports	Possible, the EU and the UK will have separate regimes and could target each other’s products in theory
Customs checks and procedures at the border (including on product compliance)?	Not applicable – the EU’s Union Customs Code continues to apply	If no detailed provisions are agreed by 1 July 2020, the “A.U.K. Movement Certificate” will be required to show	Always, as the UK and the EU will be third countries in relation to each other

⁵ Protocol on Ireland/Norther Ireland, Annex 2, Article 3.

Trade between the UK and the EU27	Transitional period	Backstop solution	No deal – hard Brexit
	(certain formalities apply for goods not yet “in free circulation”, as would be the case between other EU Member States, e.g. to discharge a transit procedure, but no checks for goods in free circulation)	<p>goods are “in free circulation” and EU tariffs and commercial policy measures have been applied (including on incorporated third country materials)</p> <p>Northern Ireland continues to apply the EU’s Union Customs Code and EU product rules (and UK authorities must ensure compliance)</p> <p>For goods from Mainland UK destined for the EU27 via Northern Ireland, compliance for industrial goods with EU rules will “to the extent possible” be checked at the trader’s premises in the UK by the UK authorities, and not at the internal UK border (as confirmed by both sides in explanatory documents). For agricultural goods, such checks will take place at Northern Ireland’s ports</p>	
Customs duties on imports into the UK?	The UK must apply EU Common Customs Tariff and apply same rules on origin and customs value	The UK must align with EU Common Customs Tariff and apply same rules on origin and customs value	Yes. The UK has said it will mirror EU Common Customs Tariff in its WTO-bound rates
Tariff preferences under FTAs and autonomous preference regimes applicable?	<p>The UK must apply tariffs under EU FTAs and the EU GSP</p> <p>The UK may negotiate, sign and ratify its own FTAs but cannot yet apply these (unless EU27 agrees)⁶</p>	<p>The UK must align with the EU’s FTAs and the EU GSP and apply same rules on origin and customs value⁷</p> <p>The UK is free to enter into FTAs with 3rd countries as long as it does not apply a lower tariff than the EU without prior agreement of the EU</p>	Yes. The UK may apply FTA rates agreed in the context of EU FTAs, and will aim to agree continued application of EU FTAs or new FTAs with 3 rd countries. The UK will apply its own autonomous preferences for developing countries
Autonomous tariff suspensions/quotas available?	The UK must apply EU measures	The UK must align with EU measures	The UK will grant its own autonomous

⁶ Withdrawal Agreement, Article 129(4).

⁷ Protocol on Ireland/Northern Ireland, Annex 2, Article 3.

Trade between the UK and the EU27	Transitional period	Backstop solution	No deal – hard Brexit
		The UK cannot apply additional suspensions without prior agreement from the EU	suspensions as it sees fit
Commercial policy measures on imports	The UK must apply EU measures	The UK must align with EU measures and apply these at its external border for third country imports if destined (including incorporated in UK products) for the EU27	The UK's Trade Remedy Authority will impose its own commercial policy measures
Customs checks and procedures at the border on imports/exports (including product compliance)	Yes, EU's Union Customs Code continues to apply	Yes, as is the case today, imports from and exports to third countries will be subject to customs procedures and checks at the external borders of the UK In Northern Ireland, the Union Customs Code will still apply; in the UK, the Taxation (Cross-Border Trade) Act 2018 will apply	Yes, the UK Taxation (Cross-Border Trade) Act 2018 will apply

White & Case LLP
Wetstraat 62 rue de la loi
1040 Brussels
Belgium
T +32 2 239 26 20

White & Case LLP
5 Old Broad Street
London EC2N 1DW
United Kingdom
T +44 20 7532 1000

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