Business after Brexit

A Guide to Trading in Goods with the European Union

2017

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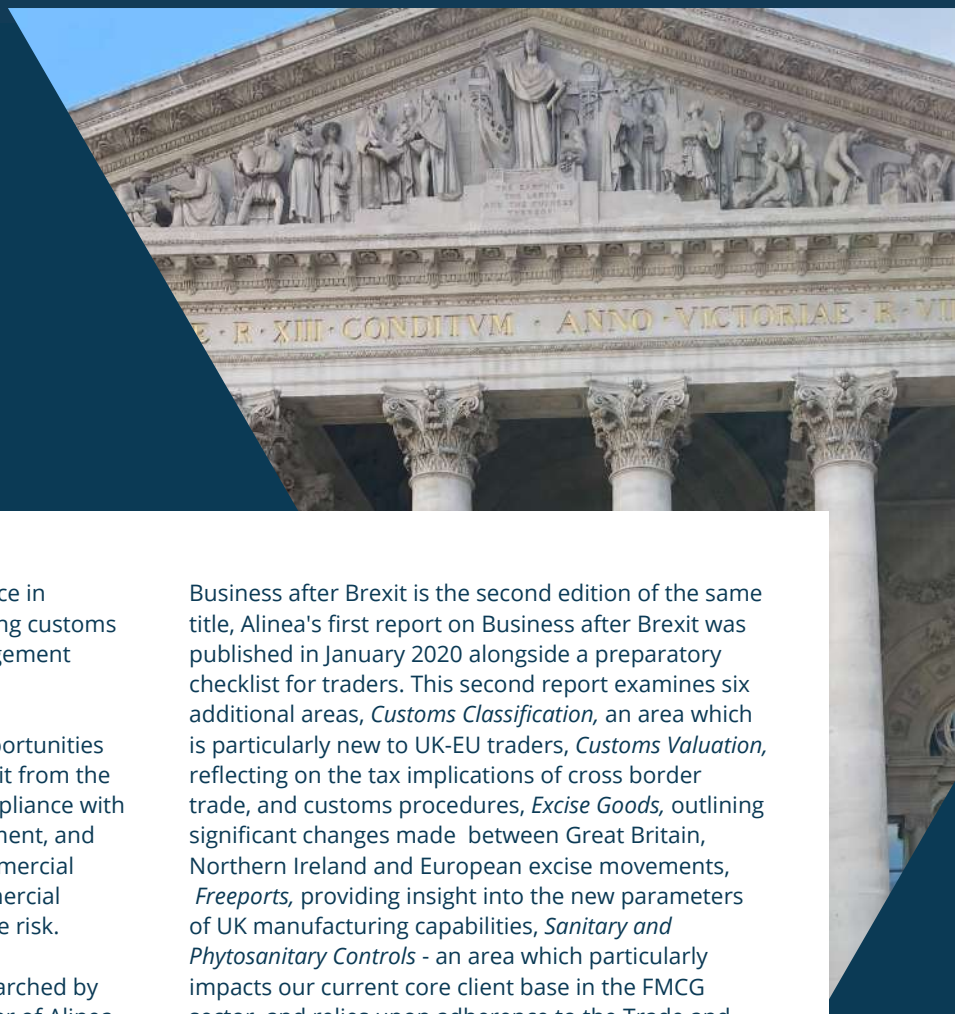

9th June 2021

BUSINESS AFTER BREXIT

This guide is based upon Alinea's experience in working with international traders, providing customs clearance, commercial strategy and management consulting.

It reflects on the economic impact and opportunities brought about by the United Kingdom's exit from the EU, and provides insight into customs compliance with the EU - UK Trade and Cooperation Agreement, and best practice, providing templates for commercial usage and insight into areas such as commercial contracts and managing currency exchange risk.

Business after Brexit was written and researched by Holly Jade O'Leary, Director and Co-Founder of Alinea, with insight from fellow Director and Co-Founder, solicitor Geoff Caesar and Trevor Charsley, Senior Market Advisor at AFEX.

Methodology

Business after Brexit was written predominantly to reflect upon frequently asked questions from Alinea's clients. Each area was identified within a stakeholders' meeting hosted in December 2019, which provided a basis to which Alinea added to following hosting several seminars at The Royal Exchange and other London venues such as Home Grown Entrepreneurs' Club between January and March 2020. A series of qualitative interviews were hosted with solicitor Geoff Caesar, between December 2019 and June 2021, who gave topical insight and indicated relevant legislation to include as a framework for readers to use for information purposes, in addition to providing text for legal commentary.

Business after Brexit is the second edition of the same title, Alinea's first report on Business after Brexit was published in January 2020 alongside a preparatory checklist for traders. This second report examines six additional areas, *Customs Classification,* an area which is particularly new to UK-EU traders, *Customs Valuation,* reflecting on the tax implications of cross border trade, and customs procedures, *Excise Goods,* outlining significant changes made between Great Britain, Northern Ireland and European excise movements, *Freeports,* providing insight into the new parameters of UK manufacturing capabilities, *Sanitary and Phytosanitary Controls* - an area which particularly impacts our current core client base in the FMCG sector, and relies upon adherence to the Trade and Cooperation Agreement, and *Trading with Northern Ireland* outlining technical insight into the implementation of the Northern Ireland Protocol. Statistics are provided using the most recently available information published by the Office of National Statistics.

Legal Disclaimer

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Business after Brexit: Trading with the EU

A practical guide for traders in goods

09 June 2021

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2021 UK-EU Border Obligations

Since 1st January 2021, traders importing and exporting between the United Kingdom (UK) and the European Union (EU) have been required to submit either a full customs declaration or a simplified customs declaration followed by a supplementary declaration. During 2021 it is possible to delay sending HMRC the full information about goods by up to 175 days after import.

Over the coming months further obligations will be required.

From 1st October 2021 the waiver for Exit Summary Declarations, known as EXS, will come to an end. This affects cargo moved on roll on roll off ferries and means that an exit summary declaration will need to be made where safety and security requirements are not or cannot be fulfilled with a customs export declaration.

From the 1st October 2021 pre-notification requirements will come into effect. These use the Import of Products, Animals, Food and Feed System, which is generally referred to as IPAFFS, and apply to:

- Products of animal origin (POAO), which will need to be accompanied by a health certificate so they can have remote documentary checks,
- certain animal by-products (ABP)
- composite products; *and*
- high risk food and feed not of animal origin (HRDNOA).

IPAFFS is used for the application for, and issuing of, Common Health Entry Documents (CHED-P) for imports into Great Britain (GB) of live animals, their products, germplasm; and also submitting notifications related to high-risk food and feed not of animal origin (HRFNOA) via issuance of Common Health Entry Documents (CHED-D). It replaces the use of the EU's Trade Control and Expert System (TRACES).

From 1st October 2021 GB traders importing from the EU must obtain Export Health Certificates from their suppliers which are required from for:

- products of animal origin, enabling remote documentary checks, and
- certain animal by-products where a health certificate is available - if there is no health certificate for your commodity the goods may be able to travel under licence and a commercial document.

In Section 16, Alinea provide list of model health certificates to refer to EU suppliers, which once completed by their authorised veterinarian and competent authorities, must be uploaded by the trader into IPAFFS.

Composite Products

Composite products must be accompanied by a GB health certificate from 1 October 2021 if the following criteria is met:

- It is a composite product that contains processed meat product of any quantity;
- It is a composite product that contains half (50%) or more any other processed products of animal origin in total (such as gelatine, milk products, egg products, or fishery products). For example, if a product contained 30% processed egg and 25% processed fishery products, the total is 55% and a composites health certificate would be required;
- The product does not meet the requirements of Article 6 of Commission Decision 2007/275/EC, even if it is a composite product which contains no meat and less than half processed dairy products.
- The meat product, milk product, egg product and fishery product content of the composite product must come from an approved country and where appropriate from an approved establishment.
- Further information on composite products and exemptions can be found on Importing Composite Products
- For further guidance, please see the Animal & Plant Health Agency Import Information Note (IIN) which outlines the health certificate requirements to import composite products from third countries.

From 1st January 2022 there are new rules for importing animal products, germinal products, and HRFNOA into GB from the EU.

Animal products cover both products of animal original and animal by-products. These will need to enter GB at an established point of entry with an appropriate Border Control Point, or BCP.
The product TARIC code will determine whether goods must be imported through a point of entry with an appropriate BCP.

Germinal products from the EU must, from 1st January 2022:
• be accompanied by a health certificate so they can have documentary checks,
• be pre-notified by the importer using IPAFFS, and
• enter at an established point of entry with an appropriate BCP so they're available for documentary, identity and physical checks.

The level of physical and identity checks from 1st January 2022 will be based on assessments of biosecurity and public health risks.
For High Risk Foods Not of Animal Origin, from 1st January 2022 it

will be necessary to:
• submit import pre-notifications at least one working day in advance of the goods' arrival
• enter them through a BCP so they can have documentary checks, and if necessary, identity and physical checks.

From 1st January 2022 a Supplier's Declaration will be required to support Statement on origin claims for preferential tariffs. These may be self-declared. Alinea provide precedent templates such a Statement on Origin, and a Supplier's Declaration, which will be required to support Statement on Origin rules of origin self-certification claims, in section 14 of this report.

From 1st January 2022 importers of regulated and notifiable fruit and vegetable products must register with the Procedure for Electronic Application for Certificates (PEACH) and obtain a Phytosanitary Certificate from their EU supplier. If the goods are covered by the Specific Marketing Standard (SMS) this should be submitted to PEACH who will issue a Certificate of Conformity, required to clear the consignment. Traders will also be able to make a Horticultural Marketing Inspectorate (HMI) application through PEACH. HMI inspections, if required, will take place at the port of entrance.

From 1st January 2022 it will be necessary for hauliers to make an entry summary declaration (also known as an ENS) before goods arrive:
• into Great Britain,
• into Northern Ireland, or
• from Great Britain into Northern Ireland
The entry summary declaration provides safety and security information about goods. Certain goods are exempt.

Also on 1st January 2022, the Goods Vehicle Movement Service, known as GVMS, will commence.

- GVMS enables declarations to be linked together under one master reference;
- GVMS will be made available to hauliers moving imports and exports; and
- hauliers moving goods under the Common Transit Convention.

From 1st March 2022 new rules will apply for importing live animals, including equines, into GB from the EU. Imported animals must:
• be accompanied by a health certificate so they can have documentary checks,
• be pre-notified by the importer using IPAFFS, and
• enter at an established point of entry with an appropriate BCP so they're available for documentary, identity and

physical checks.

The level of physical and identity checks will be based on assessments of biosecurity and public health risks. All high-risk live animals imported from the EU will continue to be checked.

Alinea's dedicated team of highly trained and experienced staff are on hand to advise on all aspects of the new border model. We are also able to assist with all aspects of customs administration, including entering and submitting customs declarations and also submitting the relevant notifications to authorities.

Introduction

On 23rd June 2016 the EU referendum took place and the people of the United Kingdom voted to leave the European Union by a majority of 52% to 48%[1]. Following over 4 years of negotiations, the EU and UK confirmed the draft Trade and Cooperation Agreement (TCA) on Christmas Eve 2021, a bilateral free trade deal reported by Prime Minister Boris Johnson when he announced the deal from 10 Downing Street, to be worth £668 million[2]. The TCA has identified the legal position of the future trading relationship, and prioritised the sovereignty of the United Kingdom, whilst establishing international trading rules which enable UK and EU based traders to benefit from preferential, zero rated tariffs and guaranteed fair competition. The rules of origin regulations require goods to be either wholly obtained within the EU or UK, sufficiently processed, or to meet product specific tolerance requirements. The UK has left the customs union of the European Union, and Northern Ireland remains within the EU single market. Customs declarations are required for all cross border transactions with the EU, and new regulatory and border controls have been introduced, aligned with procedures for third countries.

In order to benefit from preferential tariffs, traders must self-certify a statement on origin, declaring the UK or EU country of origin of the goods, permitted between 1st January 2021 – 31st December 2021. From 1st January 2022, a statement on origin claim must be supplemented by a supplier's declaration. If a statement on origin cannot be confirmed by the supplier, or by the importer's knowledge, import tariffs will apply on goods in accordance with the UK Global Tariff.

On 15th March 2021, Due to the UK's extension of the grace period on Sanitary and Phytosanitary (SPS) controls for products entering Northern Ireland, the EU issued a formal letter marking the beginning of a formal infringement process against the UK for breach of the Northern Ireland Protocol.[3]

[1] Uberoi, E. European Union Referendum 2016: Briefing Paper Number CBP 7639 2016, 29 June 2016, House of Commons, available from: https://commonslibrary.parliament.uk/research-briefings/cbp-7639/
[2] BBC, 24th December 2021, *Brexit: Boris Johnson hails free trade deal with EU* [video], available from: https://www.bbc.co.uk/news/uk-politics-55435930
[3] European Commission, *Withdrawal Agreement: Commission sends letter of formal notice to the United Kingdom for breach of its obligations under the Protocol on Ireland and Northern Ireland*, Brussels, 15th March 2021, available from: https://ec.europa.eu/commission/presscorner/detail/en/ip_21_1132 8th June 2021

Lord David Frost, Chief Negotiator of Task Force Europe has joined the Cabinet Office to work on domestic reform and regulation, and lead on central coordination and policy resolution on international trade policy, working closely with the Department of International Trade. He previously worked as Chief Negotiator for Exiting the European Union from 2019 to 2020, and as the Prime Minister's Europe Advisor from 2020 – 2021. In Section 16, Alinea outline Lord Frost's proposed introduction of SPS checks for goods travelling into Northern Ireland from the UK. On 5th May 2021, under the Establishment Agreement for the EU delegation to the UK, EU's Ambassador to London, João Vale de Almeida, was granted full diplomatic status.[4]

The UK has cited that an independent trade policy, Global Britain, will be pursued by initiating free trade agreements with other nations,[5] and has prioritised a leadership presence in NATO, which will enable the UK to continue to exert strategic influence in Europe.[6] [7] For those that recall the EU referendum in 2016, the decision to leave by UK voters was largely considered to be attributed to immigration concerns, with a national campaign lead by Nigel Farage and the UK Independence party compelling the Conservative Party to retain power by developing alignment and a divided liberal leave argument, which when premiered by Theresa May, who voted to remain, "broke with 20 years of political consensus behind a form of loose cosmopolitanism," according to Sofia Gaston, Director of the British Foreign Policy Group.[8]

Since 2021, the Road Haulage Association has reported concerns about facing a shortage of workers, with RHA chief executive Richard Burnett identifying in a letter to the Transport Secretary that HGV drivers should be placed on a list of shortage occupations, a factor which is attributed to an exodus of EU workers.[9]

The Global Britain initiative is intended to support and revitalise the export sector and develop the UK economy, with the UK's freeports policy strategically positioned to develop sustainable long-term growth with domestic trade and investment[10]. The

[4] Foreign, Commonwealth and Development Office, Treaty Series No.11 (2021) Draft Agreement between the European Union, the European Atomic Energy Community and the United Kingdom of Great Britain and Northern Ireland on the Establishment and the Privileges and Immunities of the Delegation of the European Union to the United Kingdom, 5th May 2021, available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/986951/UK-EU-Draft-Agreement-establishment-privileges-immunity-eu-delgation-to-uk-CP-436.pdf

[5] Webb, The UK's Independent Trade Policy, Global Britain? [online] Commons Library, 10th January 2020, https://commonslibrary.parliament.uk/the-uks-independent-trade-policy-global-britain/ 8th June 2021

[6] Cabinet Office, Global Britain in a Competitive Age, 16 March 2021, available from: https://www.gov.uk/government/publications/global-britain-in-a-competitive-age-the-integrated-review-of-security-defence-development-and-foreign-policy/global-britain-in-a-competitive-age-the-integrated-review-of-security-defence-development-and-foreign-policy 8th June 2021

[7] Aspen UK, The Future of EU-UK Relation, 14 May 2021 available from: https://podcasts.apple.com/gb/podcast/the-future-of-eu-uk-relations/id1513317713?i=1000521708565 8th June 2021

[8] Gaston, S. The Post-Brexit Paradox of Global Britain, The Atlantic, 10 June 2019, available from: https://www.theatlantic.com/international/archive/2019/06/post-brexit-paradox-theresa-may-global-britain/591244/

[9] RHA, HGA Drivers must be included on the UK 'Shortage Occupation' list, 14th May 2021, available from: https://www.rha.uk.net/news/press-releases/2021-05-may/hgv-drivers-must-be-included-on-the-uk-%E2%80%98shortage-occupation%E2%80%99-list-says-rha accessed 8th June 2021

[10] International Trade Committee (2021) *Fourth Report - UK Freeports,* [online] 20th April 2021, International Trade Committee, [online] available from: https://committees.parliament.uk/work/231/uk-freeports/publications/

sixth Carbon Budget announced on 20th April 2021 introduced plans to limit the volume of UK greenhouse gas emissions by 78% by 2035, compared with 1990 levels[11]. Britain already has established the intention to reduce emissions by 68% by 2030[12] - the world's most ambitious climate change target is established prior to hosting the forthcoming G7 conference in Cornwall 11-13th June 2021, and 26th UN Climate Change Conference of the Parties (COP26) summit held in Glasgow 1st – 12th November 2021 and includes the UK's share of the international aviation and shipping emissions. The legislation will identify means for green investment to flourish, with sector leadership from Mark Carney, former director of the Bank of England to chair the Glasgow Finance Alliance for Net Zero, a joint UK-US initiative ahead of the climate conference, with the first 160 members representing $70 trillion in assets under management[13]. The International Maritime Organisation (IMO) has introduced rules aimed at reducing harmful sulphur dioxide, carbon dioxide, and other greenhouse gas emissions from ships, to meet the 2050 decarbonisation deadline[14]. Both conferences present a platform for the UK to a present a policy perspective independent of the European Union, within a global leadership context.

The Organisation for Economic Cooperation and Development (OECD) has projected 7.2% growth in the UK economy in 2021, and 5.2% in 2022[15] following a 9.9% pandemic driven contraction in 2021,[16] and the Spring Economic Forecast 2021 has projected that the EU economy will expand by 4.2% in 2021, and 4.3% in 2022.[17]

The European Commission intend to publish draft legislation of the reformed Treaty of the Functioning of the European Union VBER and related guidelines (VGL) in mid-2021,[18] The Commission proposes to update their approach on in order to avoid divergent interpretations of VBER in relation to the use of price comparison sites, online advertising restrictions, treatment of new market players, such as online platforms in certain areas of the rules (e.g. agency, dual distribution). They will also align with the objectives of the European Green Deal, in relation to any agreements pursuing sustainable objectives. To establish a level playing field, Vertical Block Exemption Regulations (VBER) have been retained within the UK 1998 Competition Act and are currently under review by the

[11] Department for Business, Energy & Industrial Strategy, Prime Minister's Office, 10 Downing Street, The Rt Hon Kwasi Kwarteng MP, The Rt Hon Alok Sharma MP and the Rt Hon Boris Johnson MP, 2021, *UK enshrines new target in law to slash emissions by 78% by 2035,* [online] available from: https://www.gov.uk/government/news/uk-enshrines-new-target-in-law-to-slash-emissions-by-78-by-2035

[12] Group of Nations, *The Sixth Carbon Budget*, [online], available from: https://www.groupofnations.com/article/the-uks-sixth carbon-budget

[13] Edie *Mark Carney to chair 'Glasgow Financial Alliance for Net Zero' ahead of COP2026*, Edie Newsroom, 21 April 2021, available from: https://www.edie.net/news/6/Mark-Carney-to-chair--Glasgow-Financial-Alliance-for-Net-Zero--ahead-of-COP26/ accessed 8th June 2021

[14] KPMG *The Pathway to Green Shipping*, [online] KPMG, March 2021, available from: https://assets.kpmg/content/dam/kpmg/xx/pdf/2021/03/the-pathway-to-green-shipping.pdf

[15] OECD, *United Kingdom Economic Snapshot, Economic Forecast Summary May 2021*, available from: https://www.oecd.org/economy/united-kingdom-economic-snapshot/ accessed 8th June 2021

[16] Walker, Andrew, *IMF forecasts a strong recovery for the world economy,* [online] BBC, 6th April 2021, available from: https://www.bbc.co.uk/news/business-56650685 accessed 8th June 2021

[17] European Commission Spring 2021 Economic Forecast: Rolling up the Sleeves, 12th May 2021, available from: https://ec.europa.eu/commission/presscorner/detail/en/ip_21_2351 accessed 8th June 2021

[18] Modrall, *EU Commission scales vertical block exemption mountain*, [online], Kluwer Competition Law Blog, 11th January 2021, available from: http://competitionlawblog.kluwercompetitionlaw.com/2021/01/11/eu-commission-scales-vertical-block-exemption-mountain/

Competition and Market Authority (CMA) prior to their expiration in May 2022[19], within an open consultation and hosted roundtable discussions - interested stakeholders are invited to contact: vberreview@cma.gov.uk.

An approach has been identified within the Inception Impact Assessment,[20] outlined below, that will provide clarity in relation to the treatment of possible efficiencies resulting from resale price maintenance 'RPM,' which is a hardcore restriction under the VBER. The new VBER will address reducing costs and administrative burden by not excluding tacitly renewable non-compete obligations from the benefit of block exemption, so that the buyer can periodically terminate or renegotiate the agreement. A further indepth assessment of the following areas has been identified:

Dual distribution – where a supplier sells directly to the end customer, in addition to selling to distributors, thereby competing with its distributors at retail level. With the growth of online sales, dual distribution increased significantly. The assessment proposes to consider options including limiting the scope of the exception to scenarios that are unlikely to raise horizontal concerns by e.g. introducing a threshold based on the parties' market share, and extending the exception dual distribution by wholesalers/importers.

Active sales restrictions – agreements aimed at restricting the territories into which or the customer to whom the buyer can sell are considered hardcore restrictions not covered by the VBER. The buyer should generally be allowed to actively approach individual customers ("active sales") and respond to unsolicited requests from individual customers ("passive sales"). While, with the exception passive sales to unauthorised distributors within a selective distribution system, the current rules do not generally allow restrictions of passive sales, they do allow restrictions of active sales in limited cases, notably to protect investments by exclusive distributors, and prevent sales from unauthorised distributors located in a territory where a supplier operates a selective distribution system. Suppliers consider the current rules to be particularly complex, unclear and prevent them from designing their distribution systems according to their business needs. Stakeholders have expressed the wish to establish "shared exclusivity," between two or more distributors in a particular territory, and to effectively combine exclusive and selective distribution in a particular territory. Suppliers and distributors have also expressed that the current rules prevent the effective protection of the territory in which a selective distribution systems is operated from sales outside of that territory, to unauthorised distributors outside that territory. The assessment proposes greater leniency in this area.

Indirect measures restricting online sales online sales are generally considered a form of passive sales, and restrictions preventing distributors from selling through the internet are considered hardcore restrictions not exempted by

[19] Competition Markets Authority, *Retained Vertical Block Exemption Regulation*, 10 February 2021, CMA, available from: https://www.gov.uk/government/consultations/retained-vertical-block-exemption-regulation

[20] European Commission, Inception Impact Assessment, 23 October 2020, available from: https://ec.europa.eu/info/law/better-regulation/

the VBER. The current rules apply the same approach to certain indirect measures that may make online sales more difficult, such as charging the same distributor a higher wholesale price for products intended to be sold online than offline, "dual pricing." The same applies to imposing criteria for online sales that are not overall equivalent to the criteria posed in bricks and mortar shops ("equivalence principle") in the context of selective distribution. Online sales have developed into a well functioning sales channel over the past decade, whereas bricks and mortar stores are facing increasing pressure. Suppliers and hybrid retailers consider that by not allowing them to differentiate wholesale prices based upon the cost of each channel, the current rules prevent them from incentivising investments, notably in physical stores. Stakeholders should also note that there is a lack of legal certainty in the application of the equivalence principle, as online and offline sales are inherently different, and it is difficult to assess when a divergence in the criteria used for each channel amounts to a hardcore restriction under the VBER. The assessment has proposed to consider the option to no longer view 'dual pricing' as a hardcore restriction.

Parity obligations (so called most-favoured nation clauses), require a seller to offer the same or better conditions to its contracting party than those offered on any other sales channel, or the company's direct sales channels. This distinction may, but does not necessarily correspond to the notions of "wide" and "narrow" parity obligations used in certain competition cases. Parity obligations can be agreed at wholesale or retail level, and can cover price or non-price conditions, (e.g. inventory, or availability of goods or services). All types of parity obligations are currently block exempted under the VBER. The assessment shows an increased in the use of parity obligations across the sectors, notably by online platforms. National competition authorities and courts have identified anti-competitive effects of obligations that require parity with other indirect sales or marketing channels (e.g. other platforms or other online or offline intermediaries). The assessment proposes stricter controls in this area, for example VBER could be excluded for parity obligations that relate to indirect sales and marketing channels, including platforms and other intermediaries.

The Commission proposes to adopt a more lenient approach to long-term non-compete obligations; efficiency-generating resale price maintenance (RPM), sustainability agreements in the context of the European Green Deal; active sales restrictions outside of exclusive distribution; and measures indirectly restricting online sales. The Commission is also considering stricter enforcement of restrictions on price comparison websites; online advertising; dual distribution; and parity obligations[21] Alinea outline the current Vertical Block Exemption regulations in greater detail in section 20 of this report.

[21] Gibson Dunn, *EU Consults on New Competition Policy for Distribution Agreements,* [online] Gibson Dunn, 5th January 2021, available from: https://www.gibsondunn.com/eu-consults-on-new-eu-competition-policy-for-distribution-agreements/ accessed 8th June 2021

Eurocommerce published a response to the Commission's Inception Impact Assessment, expressing a concern that the initial response was limited and did not fully address the requirements of omni-channel operators. Katinka Clausdatter Worsøe, Commercial Relations and Competitiveness Advisor at EuroCommerce identified:

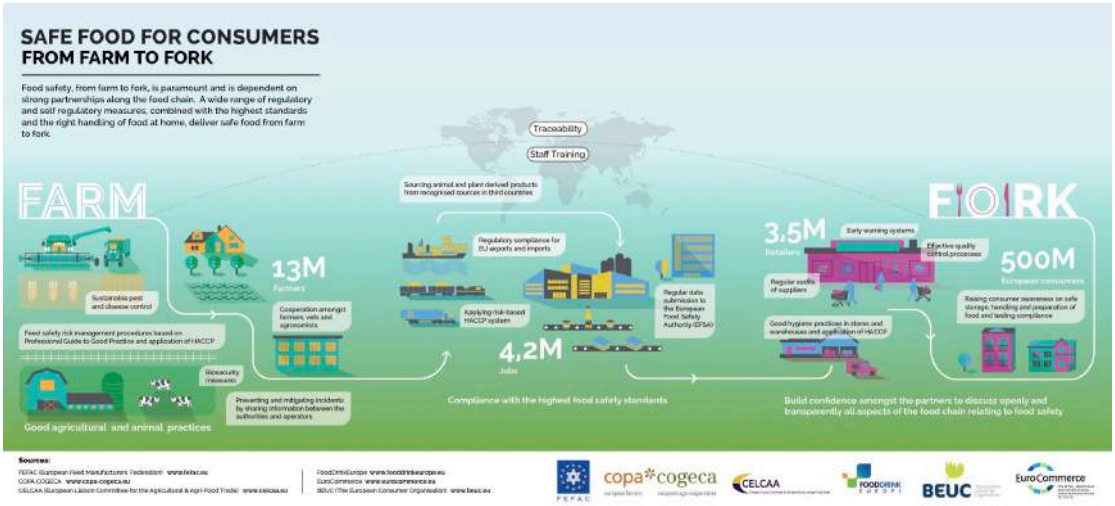
"Retailers and wholesalers operate under tremendous competitive pressure. They work on the basis of high fixed costs and low margins. They have been hit hard by the restrictions addressing the Covid-19 pandemic and many of them are currently facing a high risk of bankruptcies with a possible dramatic knock on effect on the high street. If anything, retailers and wholesalers need policy and financial support to become fully omnichannel and benefit from a level playing field in the digital environment."[22]

Whether the UK adopts the new VBER or not, the updated regulations are likely to impact cross-border supply chain agreements, and UK-based SMEs may gain advantage through insight into the legislation underpinning EU distribution, and permitted anti-compete measures.

Ursula Von Leyen, President of the European Union, introduced the European Green Deal shortly after her inauguration, a climate and nature package of measures to make Europe climate neutral by 2050 [23]. The Farm to Fork policy favours a duty of care within farming that maintains high animal welfare, hygiene and environmental standards at every stage of the farming process, including when sourcing from third countries, rather than rely upon retrospective measures such as microbial rinsing to ensure that the animal products are free of harmful bacteria. The Safe Food for Consumers (From Farm to Fork) agenda has partnered with BEUC The European Consumer Organisation, Celsa European Liason Committee for the Agriculture and Agri-Food trade, Cogeca European Agro-Cooperatives, Copa European Farmers, Fefac, Food Drink Europe and EuroCommerce.

[22] Katinka Worsoe, Feedback from EuroCommerce, F1291491 [online], European Commission, 20th November 2020, available from: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12636-Revision-of-the-Vertical-Block-Exemption-Regulation/F1291491 accessed 8th June 2021

[23] Edie Newsroom, *Europe's 'man on the moon moment': Green Deal to create world's first climate-neutral continent,* [online] Edie, 11th December 2019, available from: https://www.edie.net/news/11/Europe-s--man-on-the-moon-moment---Green-Deal-to-create-world-s-first-climate-neutral-continent/ accessed 8th June 2021



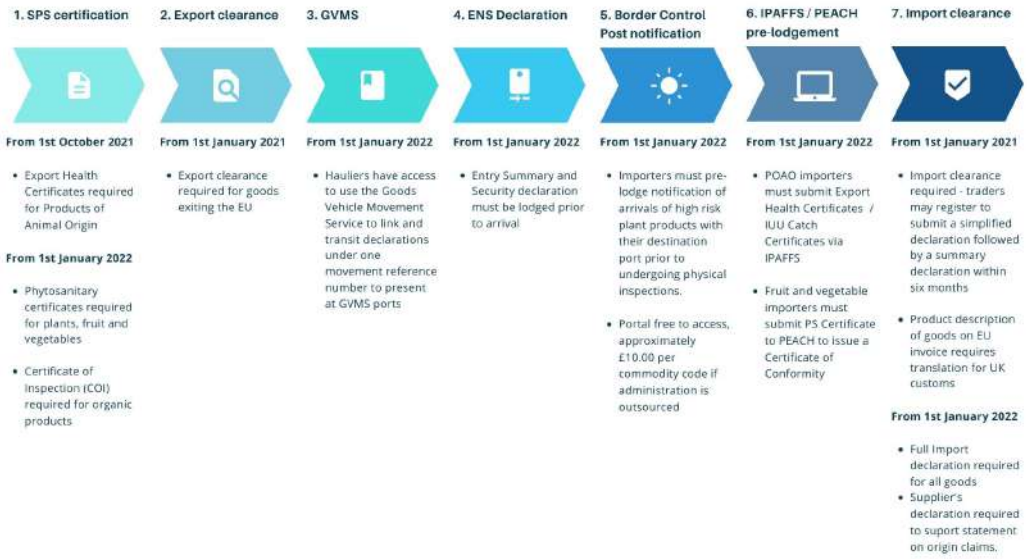
EuroCommerce have established a dialogue with Stella Kyriakedes, Commissioner for Health and Food Safety, to engage the sourcing and marketing strategies of international food distributors[24] - their members include retail organisations such as Amazon, Coop, Edeka, Inditex, Lidl, Marks & Spencer and Tesco amongst many others[25].

Divergence from the EU's sanitary and phytosanitary standards (SPS) regime is costly for the UK agri-food sector due to the increased burden in export health certificates required for each product line, and phytosanitary certificates, alongside increased administrative and logistics costs for businesses, and tension rising in Northern Ireland due to border checks implementation at designated ports.

The UK has extended the grace period for notifications on certain agri-food imports, with pre-notification requirements for Products of Animal Origin, certain animal by-products (ABP), and high risk food not of animal origin (HRFNAO) not required until 1st October 2021. Export Health Certificate requirements for POAO and certain ABP will come into force on the same date. Safety and Security declarations for imports, physical SPS checks, and pre-notification requirements for low risk phytosanitary products will not take place until 1st January 2022, and from March 2022, checks on phytosanitary products will take place at designated Border Control Posts[26].

[24] Verschueren, Christian, *Sustainable Food Strategy – Retail and wholesale contribution,* 29th January 2020, available from: https://www.eurocommerce.eu/media/174274/letter%20Kyriakides%20Sustainable%20Foods%20JAN29.pdf
[25] EuroCommerce, National Associations, EuroCommerce, available from: https://www.eurocommerce.eu/about-us/our-members.aspx accessed 8th June 2021
[26] Frost, Lord, Border Controls Statement made on 11th March 2021, Cabinet Office, UK Parliament, 11th March 2021, available from: https://questions-statements.parliament.uk/written-statements/detail/2021-03-11/hlws833

Controls and administration required from 1st January 2021



This is expressed in the diagram above, by 1st January 2022, an agri-food trader may have to complete an:

- IPAFFS notification
- a PEACH notification
- a ENS safety and security notification, and
- a Port Health notification; *in addition to*
- a C88 (SAD) form,

and is discussed further in Chapter 12, Sanitary and Phytosanitary Controls.

To improve efficiency, The Border Innovation Hub at the UK Cabinet Office are finalising plans and advanced risk analytics with the customs industry to establish a Single Trade Window, which will enable Trusted Traders to lodge each consignment on just one occasion, rather than having to submit the declaration at various points in the notification chain. This will also automatically renew licences, and deliver clearance notifications. The 2025 Border Strategy Report has indicated that the Single Trade Window, coordinated by the new cross-governmental Design Authority will be available by 2025.[27]

[27] HM Government, 2025 *Border Strategy Report,* HM Government, p. 22, available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/945380/2025_UK_Border_Strategy.pdf

The Border Target Operating Model

© HM Government 2020

although review sessions are currently being conducted with stakeholders, including Alinea.

EU Commission Vice-President Maroš Šefčovič initially offered the UK an obligation for both sides to maintain common animal and food safety standards.[28] This was declined by the UK, to retain regulatory sovereignty, however, Trade Secretary Liz Truss has identified that the UK will not lower foods standards in areas in order to establish cooperation with other nations.[29] The Institute for Government has suggested within a written evidence response to a Parliamentary Committee that: "Sanitary and Phytosanitary requirements are a fundamental basis of the international system for trade in animal and plant products. It is possible that some issues – such as limits on minced meat products – could be addressed through separate bilateral UK-EU negotiations on health certification. However, there is likely to be considerable reluctance from the EU to consider such measures while the UK keeps open the option of regulatory divergence on food standards[30]."

On 12 May 2021, Defra launched a new Animal Welfare Action Plan, headlining a promise to recognise animal sentience identified in the 1997 Treaty of Amsterdam, and incorporated into article 13 of the Lisbon Treaty. Whilst the EU Withdrawal Bill 2018, did not include a commitment to transfer the principle, the government made a statement that "the sentience of animals will continue to be recognised and protections strengthened when we leave the EU,"[31] and has introduced the Animal Health and Welfare Pathway, which will launch in 2022.

The proposed changes included:

- Examining the use of farrowing crates for pigs and cages for poultry

[28] Pogatchnik, S. *Deal for common EU-UK food safety standards 0/wordprocessingŠefčovič says*, [online] 14th February 2021, available from: https://www.politico.eu/article/deal-for-common-eu-uk-food-safety-standards-on-the-table-sefcovic-says/
[29] Ridler, J. *Secretary of state reaffirms food standards commitment,* [online], Food Manufacture, 26th April 2021, available from: https://www.foodmanufacture.co.uk/Article/2021/04/26/Secretary-of-state-reaffirms-food-standards-commitment
[30] Insitute for Government, *The Institute for Government – Written evidence FUU0019*, available from: https://committees.parliament.uk/writtenevidence/22987/html/
[31] Ares, E. *Animal Sentience and Brexit*, Briefing Paper Number 8155, House of Commons, 8th July 2019, available from: https://commonslibrary.parliament.uk/research-briefings/cbp-8155/

- Introducing new measures to improve welfare during transport, alongside ending the export of live animals for fattening and slaughter
- Improving animal welfare at slaughter
- Incentivising farmers to improve animal health and welfare through future farming policy under the Animal Health and Welfare Pathway.

Speaking on Radio 4, Defra secretary Rt Hon George Eustice outlined that within an international trade "through all of our trade deals we are promoting important issues of food standards, food safety, but also we have always been cleared that when it comes to issues of animal welfare we are willing to recognise this on any tariff regime we may have". Minette Batters, President of The National Farmer's Union has responded that whilst the Animal Health and Welfare Pathway is welcomed, farmers must insist level and fair trading and regulatory alignment and, that within an international trade context, "we would expect to see zero tolerance."[32]

Maroš Šefčovič and David Frost are currently hosting discussions to review the Protocol on Northern Ireland, as checks on signed export health certificates accompanying consignments received from Great Britain at the new sea border, and increased Border Control Post checks have been opposed by Northern Ireland's unionist parties, who view the Northern Ireland Protocol as undermining their place within the UK[33].

Reflecting on their first face-to-face meeting since pandemic restrictions were imposed, hosted in Brussels on 15th April 2021[34] a discussion which covered 20 areas, Maroš Šefčovič suggested "what we need is the good faith approach and the proper implementation of all the commitments [already] undertaken, so we see the system working, and then we can look at the risks which are associated with different measures being applied. We also ask our UK colleagues to tell us how [they] want to minimise the risk"[35]. The UK is seeking regulatory 'equivalence'[36] rather than legislative harmonisation.

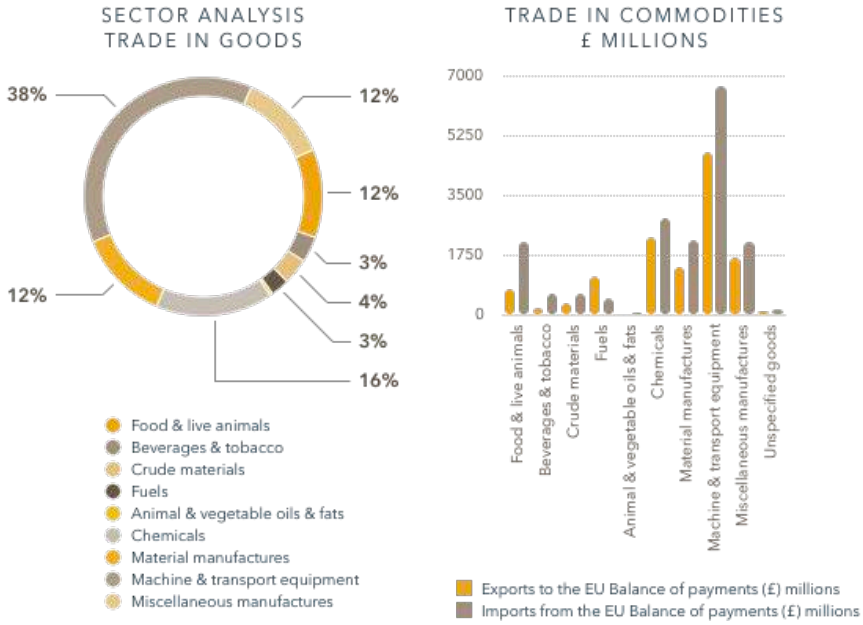
In July 2020, the Trade and Agriculture Commission was established to protect food standards on statutory level, and represent the interests of the UK's farming sector.

The Trade and Agricultural Commission – Final Report March 2021, outlines a set of international trade recommendations, against the backdrop of engaging as an

[32] BBC Radio 4 [radio programme], Farming Today, 15th May 2021,available from: https://www.bbc.co.uk/sounds/play/m000w486
[33] Vardy, E. Brexit: Counting the Cost of the Irish Sea Border, BBC, 1st April 2021, available from: https://www.bbc.co.uk/news/uk-northern-ireland-56597642 accessed 8th June 2021
[34] Ashton, Emily, Nardelli, *Alberto Northern Ireland Dispute Far From Resolved as EU, U.K. Meet,* [online] Bloomberg, 15 April 2021, available from: https://www.bloomberg.com/news/articles/2021-04-15/northern-ireland-dispute-far-from-resolved-as-eu-u-k-meet accessed 8th June 2021
[35] Brunsden, J., Peel, M. Noonan, L. Brussels Brexit chief calls for "good faith" as relations with the UK improve, [online] The Financial Times, 18th April 2021, available from: https://www.ft.com/content/bc5e508f-300d-4330-8b6f-5296b27e51d0 accessed 8th June 2021
[36] Crisp, J. European Commission warns Britain that further unilateral action over Northern Ireland Protocol is unacceptable, , [online] The Daily Telegraph, 16th April 2021, available from: https://www.telegraph.co.uk/politics/2021/04/16/european-commission-warns-britain-unilateral-action-northern/ accessed 8th June 2021

external trading partner of the EU in a global pandemic, and has expressed a concern about the "potentially pernicious impact of signing agreements with countries whose food standards appear to be weaker than our own."[37]

Trade Publication tables March 2021



Source: ONS March 2021 Trade Publication Tables[38]

Data from HM Revenue and Customs (HMRC) make up over 90% of trade in goods value and are the main source of data used by the Office of National Statistics. Since the end of the EU exit transition period, the ONS has changed its collection methodology. Prior to 31st December 2021, data was collected through the Intrastat statistical survey, reporting on trades above £250,000 per year for UK exports, and £1.5 million for trade in imports from the EU.

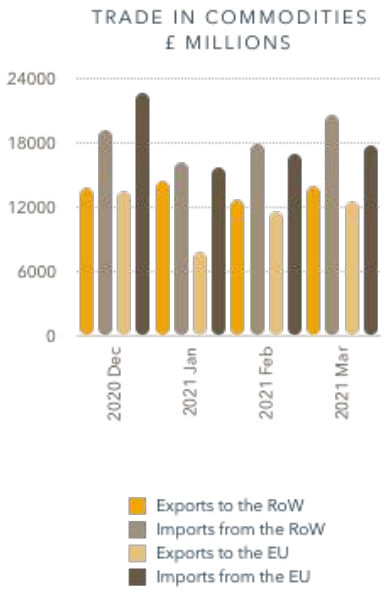
Since 1st January 2021, data on UK exports has been collected through customs declarations. Figures on EU imports for all GB and NI imports continue to be collected through Intrastrat, to account for the current grace period on administration, and to comply with the Northern Ireland Protocol.

Figures published by the Office of National Statistics outlined that in March 2021 food and live animal exports from the UK to the EU in February 2021 represented £1765 million in trade, an increase of £0.1 billion compared to the previous month,

[37] Smith, Tim (2021) Trade and Agricultural Commission – Final Report March 2021, available from:https://assets.publishing.service.gov.uk/government/uploads/system/upads/attachment_data/file/969045/Trade-and-Agriculture-Commission-final-report.pdf

[38] Office of National Statistics, *UK trade: March 2021*, available from: https://www.ons.gov.uk/economy/nationalaccounts/balanceofpayments/bulletins/uktrade/march2021

suggesting that the Uk's export sector is gradually adjusting to the new border administration. This remains a fall of 28% compared with March 2020, and additional new export health and SPS administrative costs of conducting trade with the EU must be considered when examining the supply chain model, in additional to demand from the hospitality industry being impacted by the coronavirus pandemic.



Source: ONS March 2021 Trade Publication Tables[39]

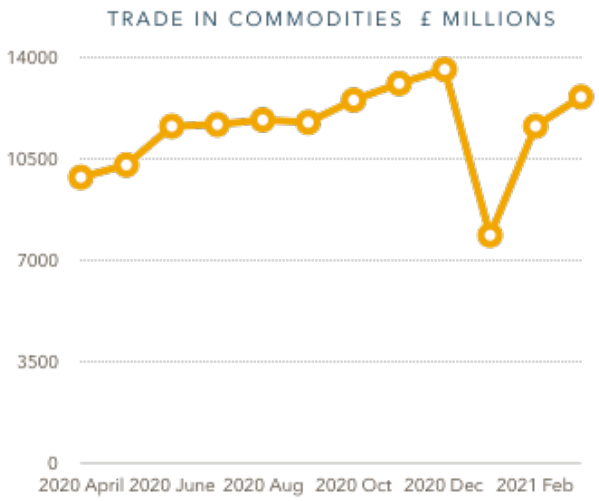
Imports of machinery and transport equipment from EU countries increased by £0.3billion in March 2021, driven by cars, predominantly from Germany.

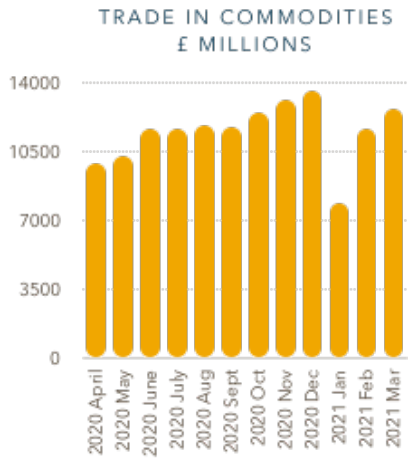
The rise in imports have been attributed to a reopening of car showrooms, and the new number plate change in March, however, the industry continues to be impacted by a severe shortage of semi-conductor microchips.[40]

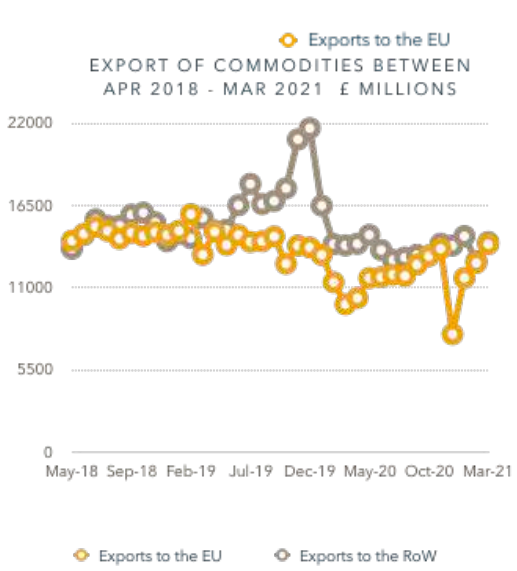
Within the policy paper: Global Britain, local jobs, March 2021 Boris Johnson has outlined the government's long-term position, identifying that the UK's exporting sector is anticipated to lead the UK's economic recovery[41].

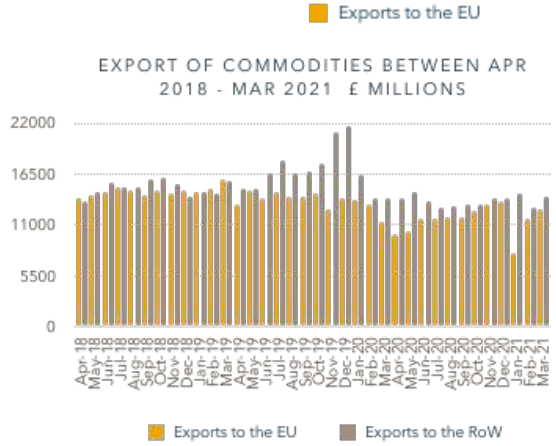
[39] Office of National Statistics, *UK trade: March 2021*, available from: https://www.ons.gov.uk/economy/nationalaccounts/balanceofpayments/bulletins/uktrade/march2021

[40] Sweeney, M. *Global shortage in computer microchips reaches crisis point*, [online] The Guardian, 21 March 2021, available from: https://www.theguardian.com/business/2021/mar/21/global-shortage-in-computer-chips-reaches-crisis-point







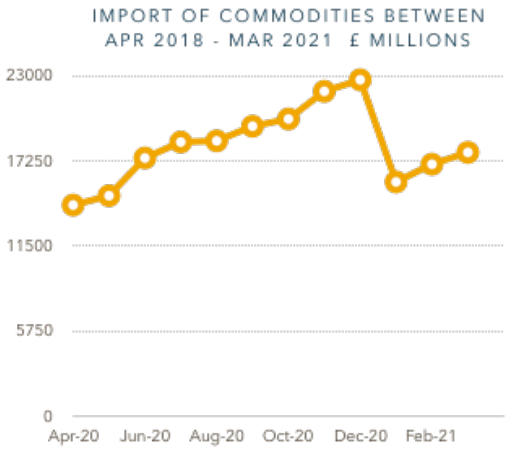


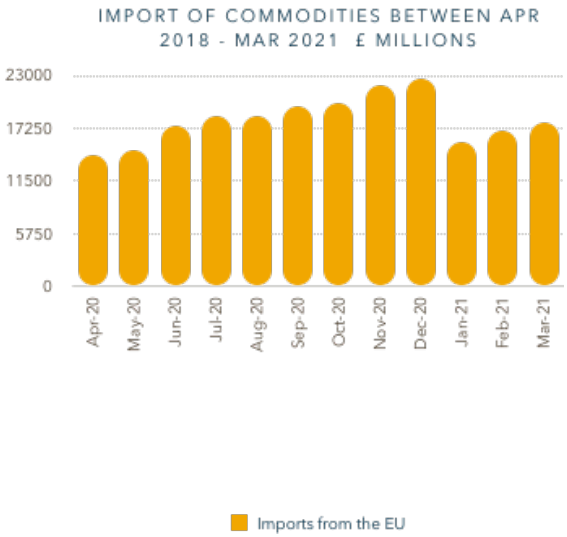
Source: ONS March 2021 Trade Publication Tables[42]

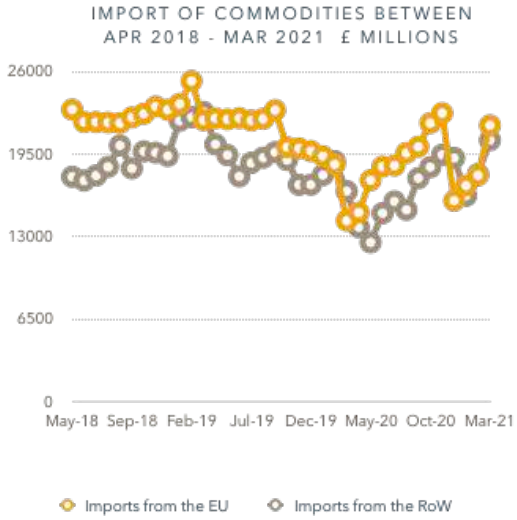
The March 2021 export figures released by the Office of National Statistics, in outlined that following 3 months after of the introduction of the new cross-border model, that the UK exported £12, 653 million in goods. Whilst exports to the EU fell by a dramatic 40.5% in January 2021, compared with the previous month, the March 2021 figures indicate a healthy rebound, and 9.5% growth in comparison to the monthly average of exports in the previous 12 months.

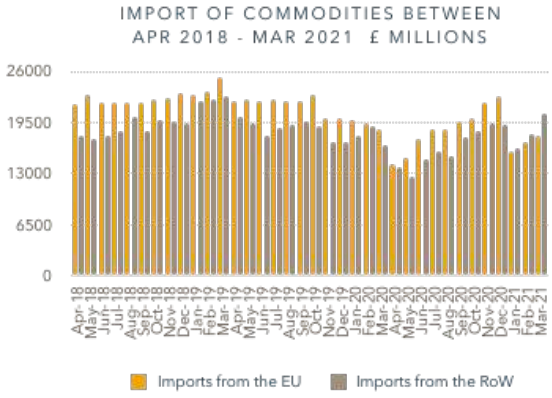
However, exports figures are yet to return to pre-pandemic levels, indicated at 95% of the average monthly exports to the EU between April 2018 – March 2021.

[42] Office of National Statistics, *UK trade: March 2021*, available from: https://www.ons.gov.uk/economy/nationalaccounts/balanceofpayments/bulletins/uktrade/march2021







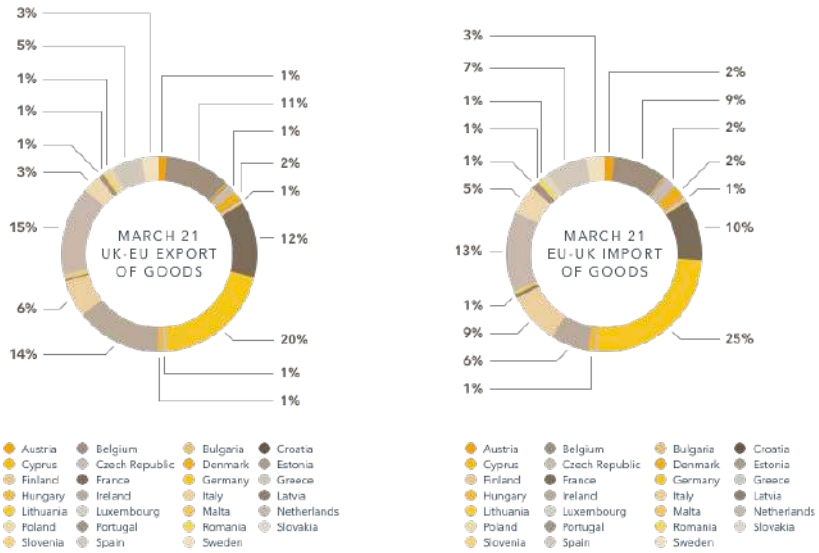


Source: ONS March 2021 Trade Publication Tables[43]

As EU exit is inevitably intertwined with the impact of Covid-19 on global trade, Alinea compared the March 2021 balance of payments statistics on the trade in goods with the average between 2018 – 2020. This indicated a 14% fall in imports received from the EU, and a rise of 12% in imports from the rest of the world. This could suggest that following the UK's exit from the EU, importers are readjusting their supply chain models and sourcing strategy, as imports from the EU in March 2021, compared with the previous month increased by a relatively small 5%, whilst simultaneously rest of world imports increased by 15%, as the pre-tariff hurdles adopt alignment.

[43] Office of National Statistics, *UK trade: March 2021*, available from: https://www.ons.gov.uk/economy/nationalaccounts/balanceofpayments/bulletins/uktrade/march2021

Source: ONS March 2021 Trade Publication Tables[44]



Source: ONS March 2021 Trade Publication Tables[45]

However, the EU remains the UK's closest trading partner, with the UK sourcing 46% of imports from the EU.

[44] Office of National Statistics, *UK trade: March 2021*, available from: https://www.ons.gov.uk/economy/nationalaccounts/balanceofpayments/bulletins/uktrade/march2021
[45] Office of National Statistics, *UK trade: March 2021*, available from: https://www.ons.gov.uk/economy/nationalaccounts/balanceofpayments/bulletins/uktrade/march2021

THE UK'S TOP 5 EXPORTS PARTNERS IN THE EU

Top 5 EU Markets for goods exported from the UK	Monthly exports £ million, seasonally adjusted
Germany	2536
Netherlands	1845
Ireland	1784
France	1579
Belgium	1371

THE UK'S TOP 5 IMPORTS PARTNERS IN THE EU

Top 5 EU Markets for goods exported from the UK	Monthly imports £ million, seasonally adjusted
Germany	4411
Netherlands	2297
France	1749
Belgium	1548
Italy	1515

Within the EU, Germany and the Netherlands are established as the UK's closest trading partners, with Germany the recipient of 20% of UK exports, and accounting for 25% of the UK's import volume. The Netherlands receives 15% of the UK exports, and accounts for 13% of the UK's imports. Whilst the UK exports 14% of goods to Ireland, the nation accounts for 6% of UK imports.

The Global Britain, Local Jobs policy paper[46] has identified that research conducted by the Fraser of Allander Institute at the University of Strathclyde (FAI) on behalf of the Department for International Trade shows an estimated 6.5 million full-time equivalent (FTE) jobs were supported by exports in 2016, the equivalent to approximately 23% of all UK FTE jobs. A government report 'BiS Estimate of the Proportion of UK SMEs in the Supply Chain of Exporters' Methodology note published by the Department for British Innovation & Skills in May 2016 estimated that 9% of UK SME's export to the EU, and a further 15% are in the supply chains of businesses that export to the EU[47].

However, these figures must be considered within the context of the 2019 UK Importer and Exporter Population published by HM Revenue & Customs[48] which published data solely relating to VAT registered cross-border traders. HMRC outlined that in 2019, 184,000 VAT registered companies imported from the EU, and 100,000 VAT registered businesses exported from the UK to the EU, totalling 223, 000 VAT registered UK businesses that trade with the EU, as some traders adopt both capacities.

Alinea requested details of VAT registered businesses from the Office for National Statistics (ONS) in April 2021. The ONS responded stating that using the last data set available as of March 2020, there are 1941,530 VAT based enterprises in the United Kingdom[49]. Therefore, it can be estimated that the impact on the supply

[46] Department of International Trade, *Global Britain: Local Jobs,* 10 March 2021, available from: https://www.gov.uk/government/publications/board-of-trade-report-global-britain-local-jobs/global-britain-local-jobs-html-version accessed 8th June 2021

[47] Department for Business Innovation & Skills, Estimate of the proportion of UK SMEs in the supply chain of exporters: methodology note, May 2016, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/524847/bis-16-230-smes-supply-chains-exporters.pdf accessed 8th June 2021

[48] HMRC, 2019 UK Importer and Exporter Population, HMRC 2019, available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/880439/2019_UK_Importer_and_Exporter_Population.pdf

[49] Steve, Data Analysis Service Manager RE: Information request: UK VAT Registered Businesses, email to Holly Jade O'Leary, Business Registers Strategy and Output, Office for National Statistics, 12th April 2021

chain will immediately affect the 5.2% of UK VAT registered businesses that export to the EU, and the 9.5% of VAT registered businesses that import from the EU.

The Beyond Brexit: Trade in Goods report published by the House of Lords, 25th March 2021 made a series of recommendations to the UK government in response to the deal. Evidence submitted to the House of Lords from business and industry representatives called for the TCA to be viewed Trade and Cooperation Agreement as a 'living document' [50] one that has instantaneous legislative consequences for the 9.3% of UK businesses that trade with the EU. The recommendations included the following:

- AEO - the government should take steps to simplify the application process for AEO and lower the threshold for entry, to enable easier access for small business.
- Trusted Trader - the government has been requested to seek the EU's agreement to a Trusted Trader Scheme, that will enable businesses that do not meet AEO criteria to benefit from certain customs, safety and security simplifications.
- Postponed Accounting - the government has been urged to extend the Postponed Accounting Scheme (PVA) to non-VAT registered businesses. Whilst VAT registered businesses currently benefit from the ability to simultaneously declare and reclaim Import VAT within their VAT return, small businesses must pay Import VAT when receiving goods from the EU, either through the DTI account of their customs agent using the Flexible Accounting Scheme, which is likely to incur further fees due to administration and shared liability, or by opening a Duty Deferment account which requires a bank guarantee, which is not likely to be extended to small businesses that have been trading for under 12 months. There is also the option to apply for a guarantee waiver, however certain small businesses may find the level of accounting administration required within the Proof of Financial Solvency (PFS1) form a barrier to trade.
- Re-export of EU goods Regulation OJL952/2013, Article 154[51] of the Union Customs Code identifies that Union goods lose their EU status when they are taken out of the customs territory of the Union, and released into free circulation- therefore are not subject to transit procedures or processing. In this circumstance, under the TCA's rules of origin criteria the goods will not be qualify as originating in the UK. The government is urged to seek a negotiated exemption with the EU to allow non-processed EU originating goods to be re-exported to the EU without facing tariffs.
- ATA Carnet - the government has been requested to urgently verify the circumstances in which an ATA Carnet is required.

[50] EU Goods Sub-Committee, House of Lords *Beyond Brexit: Trade in Goods*, 25 March 2021, p.12 available from https://committees.parliament.uk/publications/5247/documents/52587/default/

[51] Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code, available from: https://eur-lex.europa.eu/eli/reg/2013/952/oj/eng

- **Fifth Freedom Rights** - the government has been urged to seek liberal bilateral arrangements for cargo with as many member states as possible. Under the terms of the TCA, there are no fifth freedom rights for passengers – meaning, for example, that a UK plane cannot drop customers in France then pick up new customers and take them to Germany. However, the TCA extends permission enable each member state to reciprocally agree fifth freedom rights for cargo with the UK on their own terms.

The plan for UK freeports is intended to boost the UK's manufacturing output and exports in the medium-to-long term, but in the short-term exporters - particularly SMEs, require assistance in executing their response. The consequences of the trade deal are two-fold for both EU and UK businesses, as within a cost-benefit and compliance analysis both parties must assess whether it is economically viable to continue with business as usual, and whether their goods comply with the terms of the agreement, and how to mitigate the impact of non-tariff barriers.

As the EU did not concede to the UK's request for diagonal cumulation[52], this in addition to the tolerance rules established within rules of origin[53] may force certain businesses to readjust their supply chains, which takes time to execute, and careful planning, potentially entailing new or renegotiated supply chain and sourcing agreements. Within a House of Lords discussion hosted by Select Committee on the European Union on 25th January 2021, Luke Hindlaugh, senior EU and international trade executive at the Food and Drink Federation suggested: "diagonal cumulation will push up UK businesses to reorient their supply chains. To take a specific example, in sugar confectionery, the lack of diagonal cumulation, or a product specific rule that allowed for value thresholds – it was only a volume threshold – means that the majority of manufacturers are unlikely to continue sourcing from fair trade sources or non-EU sources. They will be pushed to use EU and UK producers of sugar". [54]

As the EU did not concede to diagonal cumulation, GSP and GSP+ developing economies, in addition to other nations which are in a mutual free-trade agreement with the UK and the EU, such as Japan and Turkey, will not benefit from inclusion within preferential tariffs rules of origin. An Analytic Overview of the Trade and Cooperation Agreement published by European Parliament identified: "the European Parliament has also been cautious, considering that unrestrictive cumulation rules in the EU-UK FTA could be used by producers as a tool to allow

[52] Hallak, *the EU-UK Trade and Cooperation Agreement: An Analytical Overview,* European Parliamentary Research, EPR, Members' Research, PE 679.071, European Parliament, p.8, https://www.europarl.europa.eu/RegData/etudes/IDAN/2021/679071/EPRS_IDA(2021)679071_EN.pdf

[53] Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, *Annex ORIG-2: Product Specific Rules of Origin, Annex ORIG-2A, Origin Quotas and Alternatives to the Product Specific Rules of Origin in Annex ORIG-2 (Product Specific Rules of Origin, p.423 – 471,* available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/948119/EU-UK_Trade_and_Cooperation_Agreement_24.12.2020.pdf

[54] Hindlaugh L., *Select Committee on the European Union, Goods Sub-Committee, House of Lords, Corrected oral evidence: Future, UK-EU Relations: Trade in Goods, Monday 25 January 2021, Senior EU and International Food Trade Executive,* available from: https://committees.parliament.uk/oralevidence/1591/html/ accessed 8th March 2021

free-riding. Conversely, as shown by its draft text, the UK supported RoO allowing diagonal cumulation of production across other FTA partners, as declared in the UK approach to negotiations".[55]

The automotive industry benefited from an unprecedented six year phase-in period for rules of origin requirements for certain automotive products, such as electric vehicle batteries, electric vehicles and hybrid vehicles with both combustion engine and electric motor from outside of Europe. Annex Orig 2-B: Transitional Product Specific Rules for Electric Accumulators and Electrified Vehicles identifies that assembly of battery packs from non-originating battery cells or battery modules may include up to 70% non-originating (EXW) materials[56] until 31st December 2023. Electric vehicles and hybrid vehicles are permitted to include up to 60% of non-originating materials until 31st December 2023, which reduces to a maximum value of 55% (EXW) until 31st December 2026. From 1st January 2027 there must be 55% UK or EU content to qualify for preferential tariffs, however, an agreement identifies that the tolerance requirements will be subject to review 4 years in advance of this date. This has enabled Nissan to move battery additional production close to the new £400million Sunderland based manufacturing plant, which has 6000 direct employers, and supports nearly 70, 000 jobs within its supply chain. Currently, the electric batteries in its Leaf model are imported from Japan.[57]

"Brexit for Nissan is a positive… we'll redefine… the auto industry in the UK. In certain conditions, our competitiveness is improved. For some of the cases it is at par. It depends which car," Ashwani Guptani, Chief Operating Officer identified in an interview with The Daily Telegraph, and mentioned that the plant could nearly double production from its pre-Covid levels of 320, 000 – 350, 000 cars and SUVs 9[58]. Alessandro Marongiu, International Trade Policy manager at the Society of Motor Manufacturers and Traders, suggested to the Select Committee on the European Union Goods Subcommittee, House of Lords, "that big businesses can handle customs procedures, but it does not mean that they not cause friction. "Clearly a global player such as Nissan can address customs requirements, and potentially comply with them, without facing the difficulties that smaller operators face today".[59]

[55] Hallak, *the EU-UK Trade and Cooperation Agreement: An Analytical Overview,* European Parliamentary Research, EPR, Members' Research, PE 679.071, European Parliament, p.12, https://www.europarl.europa.eu/RegData/etudes/IDAN/2021/679071/EPRS_IDA(2021)679071_EN.pdf

[56] *Annex ORIG-2B Transitional Product Specific Rules for Electric Accumulators and Electrified Vehicles, p.423 – 471,* available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/948119/EU-UK_Trade_and_Cooperation_Agreement_24.12.2020.pdf

[57] Jack, Simon *Brexit: Nissan commits to keep making cars in Sunderland,* BBC, 22 January 2021, available from: https://www.bbc.co.uk/news/business-55757930 accessed 8th June 2021

[58] Tovey, Alan, *Brexit deal gives Nissan a competitive advantage boss declares*, 22 January 2021, The Daily Telegraph, available from: https://www.telegraph.co.uk/business/2021/01/22/brexit-deal-gives-nissan-competitive-advantage-boss-declares/

[59] Marongiu, A. *Select Committee on the European Union, Goods Sub-Committee, House of Lords*, Corrected oral evidence: Future, UK-EU Relations: Trade in Goods, Monday 25 January 2021, Senior EU and International Food Trade Executive, https://committees.parliament.uk/oralevidence/1591/html/ accessed 8th June 2021

Whilst the UK government seeks to prioritise sovereignty, UK-EU traders are collaborating closer than ever before to mitigate the impact on their supply chain costs, with many EU distributors moving to act on Delivered Duty Paid (DDP) Incoterms to facilitate groupage, improve reconciliation with multiple customs agents and reduce complex administration for their clients. As EU importers strive not to lose a pivotal market, simultaneously the combined UK and EU online grocery shopping market has benefited from a 7.4% 2021 pandemic trajectory[60]. In positive news for the logistics, haulier and FMCG industries, within Exclusive research: a who's who of the next retail disrupters, hosted by Retail Connected, Xian Wang, Global Content Creator at Ascental indicated[61]:

- that the 48% growth in global delivery intermediary experienced in 2020 would continue a 23% CAGR 2020 - 2025 trajectory
- Online will provide 57% of global sales by 2025
- 54% of consumers want brands to balance a good product with purpose and activism [the Organic Trade Association has indicated that Covid -19 has increased desire for clean and healthy food

This is supported by additional research by Ascential that has highlighted the acceleration of grocery delivery platformed by companies such as Amazon, offering "free two hour delivery" in select cities[62].

Since 1st January 2021, certain traders have explored inventive supply chains strategies such as moving goods in transit under the 'Regime 42', described in article 291 III 4° of the French *Code Général des Impôts*,[63] an alternative to raising transit declarations via a third party when exporting from the UK[64] and registering for VAT in France and the import deferment scheme to act on DDP terms in EU based to avoid consumers having to pay import VAT, which traders are able to reclaim through quarterly returns.[65]

On 2nd February 2021, Michael Gove, Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office, submitted an official request to the EU for a 2-year extension of the grace period of checks on goods moving from Great Britain to Northern Ireland[66], shortly followed by announcing an extension of the grace period

[60] Ibisworld, 2020, *Online Grocery Retailers in the UK – Market Research Report*, Ibisworld, [online], available from: https://www.ibisworld.com/united-kingdom/market-research-reports/online-grocery-retailers-industry/ accessed 8th June 2021

[61] Wang, X [30th April 2021] *Exclusive research: a who's who of the next retail disrupters*, [webinar], Retail Commerce, available from: https://retail-connected.com/on-demand-forging-the-future-of-food accessed 8th June 2021

[62] O'Leary, J. *Amazon Brief: 2021 Preview*, [online] Edge by Acsential, 21st December 2020, available from: https://content.ascential.com/rs/897-MBC-207/images/Amazon%20Brief%20-%202021%20Preview.pdf

[63] Légifrance, *Droit national en vigueur - Circulaires et instructions - Conditions d'application de l'exonération de la taxe sur la valeur ajoutée (TVA) à l'importation applicable aux biens qui font l'objet d'une livraison intracommunautaire exonérée par l'importateur*, 14 December 2011, NOR: BCRD 1134130C, available from: https://www.douane.gouv.fr/demarche/importer-en-exoneration-de-tva-des-biens-faisant-lobjet-dune-livraison-dans-un-autre-etat

[64] DS Advocats *Import VAT in France and conditions of use of regime 42,* 25 July 2019, available from: https://dscustomsandtrade.com/2019/07/25/import-vat-in-france-conditions-of-use-of-regime-42/

[65] RM Boulanger *Mitigate the Brexit Effect,* available from: https://www.rmboulanger.com/brexit/mitigate-the-brexit-effect/ accessed 8th June 2021

[66] Gove, M. *Letter from the Chancellor of the Duchy of Lancaster to the Vice President of the European Commission: 2 February 2021*, Cabinet Office, 3rd February 2-21, available from: https://www.gov.uk/government/publications/letter-from-the-

on SPS checks and Border Control Posts on food and live animals moving from Britain to Northern Ireland from 1st April until 1st October 2021. Mr Gove asked for the EU to agree to the following steps:

• Extending the grace period for supermarkets and their suppliers in time and scope, so it extends until at least 1 January 2023, and is widened to include "all relevant local businesses and services" as authorised traders, as well as a "proportionate, risk based long-term solution" for retailers;
• find a permanent solution for movement of chilled meat products from GB to NI that will be prohibited at the end of the grace period, with an extension of the grace period until at least 1 January 2023 while this is negotiated;
• extend the grace period for parcels until at least 1 January 2023 to allow for time for a "light-touch permanent solution" for parcels to be agreed, and widen this extended grace period to deal with regulations affecting the delivery of items such as organic foods and plants;
• extend the grace period for medicines for a further year at least to 1 January 2023 and sort out other issues on the movements of medicine into NI; • find a solution to restrictions on the amount of steel that can be imported into NI tariff-free (so called Tariff Rate Quotas); and
• negotiate a bilateral arrangement to deal with barriers on pet travel between GB, NI and Ireland.[67]

On 15th March 2021, the European Commission sent a letter of format notice to the United Kingdom for breach of its obligations under the Protocol for Ireland and Northern Ireland, and threatened to issue a Reasoned Opinion, under Article 12 (4) of the Protocol, and to provide written notice to commence consultations under Article 169 of the Withdrawal Agreement, as a first step in the Dispute Settlement Mechanism process set out in Title III of Part Six of the Withdrawal Agreement[68].

There have been widespread calls from the US president Joe Biden and prime minister Boris Johnson to maintain the covenants of the Good Friday Agreement and the Northern Ireland Protocol. At the time of writing in the early weeks of April 2021, friction has occurred as the implications of the agreement has stirred certain members of the youth population in Belfast, Northern Ireland, to breaches of peace. The Irish Times reported that in a press conference, EU vice president Maroš Šefčovič, who chairs the EU-UK Committee on the Withdrawal outlined that "it's very difficult to operate in an environment where the government that signed and ratified this international law document is actively advising the business community not to follow the rules and not to respect the law…We offered in previous time customs union, common SPS (sanitary and phytosanitary) area… Many of the

chancellor-of-the-duchy-of-lancaster-to-the-vice-president-of-the-european-commission-2-february-2021 accessed 8th June 2021
[67] Curtis, J., Walker, N. *The movement in goods between Great Britain and Northern Ireland,* House of Commons Library, 18th February 2021, available from: https://researchbriefings.files.parliament.uk/documents/CBP-9140/CBP-9140.pdf accessed 8th June 2021
[68] European Commission, Withdrawal Agreement: Commission sends letter of formal notice to the United Kingdom for breach of its obligations under the Protocol on Ireland and Northern Ireland, 15th March 2021, available from:

operational difficulties faced by traders in Northern Ireland are in the power of the British government to solve, and 80 per cent would be solved if Britain agreed to common sanitary and phytosanitary standards.[69]"

The UK chose to enact sovereignty over these areas, presumably for reasons related removing Britain from the obligation to the Cassis de Dijon principle, and obligation to the EU law within the Union Customs Code, which is interpreted by the European Court of Justice, although many elements of the Union Customs Code have been harmonised within The Taxation (Cross-border Trade) Act 2018[70] and The Customs (Import Duty) (EU Exit) 2018 Regulations[71]. It could be anticipated that the UK government may be encouraged to agree to a concession to share SPS regulatory standards in the future, however, given David Frost's sovereign stance when negotiating the agreement, this position would require extensive support.

To mitigate the impact of supply chain breakdown, HMRC have permitted qualifying EU imports to enter without customs documentation, and retain an audit trail. Between 1st January – 31st December 2021, traders may declare goods by entering them in their own records, and apply for authorisation to submit a simplified declaration, followed supplementary declaration, up to 175 days after entry, providing the full information about the goods.[72]

1. Authorised Economic Operators

1.1 Background

Following the 9/11 attacks on the World Trade Centre in New York and on the Pentagon in 2001, the United States introduced extensively prohibitive measures on imports which had dramatic impact on security governance, with the initial effect of bringing commercial international trade to the United States to a standstill. Eventually, dialogue between the US business community and the US Customs and Border Protection (USCBP) led to the creation of a voluntary partnership programme, the Customs-Trade Partnership Against Terrorism (CTPAT), which enabled companies' compliance with a strict security protocol to receive authorisation and a status that enabled them to minimise regulatory impediments to international trading activities. Similar initiatives were introduced on an international basis to provide reassurance to the US authorities that their shipping and supply chain were secure, thereby safeguarding access to the US market.

[69] O'Leary, Naomi 'UK government advising businesses in North to breach law, says Sefcovic', The Irish Times, 15th March 2021, https://www.irishtimes.com/news/world/europe/uk-government-advising-businesses-in-north-to-breach-law-says-sefcovic-1.4514047

[70] The Taxation (Cross-border Trade) Act 2018, available from: https://www.legislation.gov.uk/ukpga/2018/22/contents/enacted

[71] The Customs (Import Duty) (EU Exit) 2018 Regulations, available from: https://www.legislation.gov.uk/uksi/2018/1248/contents/made

[72] HM Revenue & Customs, *Delaying declarations for EU goods brought into Great Britain*, [online], available from: https://www.gov.uk/guidance/delaying-declarations-for-eu-goods-brought-into-great-britain#history

In 2003, the World Customs Organisation set about developing measures to facilitate the supply chain at a multilateral level, culminating in the SAFE Framework of Standards[73]. Since it was first published in 2005, and revised up until the most recent 2018 edition, the framework of international standards designed to identify low-risk economic operators and facilitate cargo movements has been adopted by 160 countries.

1.2 The SAFE Framework of Standards

The SAFE Framework identifies an Authorised Economic Operator to be:

"… a party involved in the international movement of goods in whatever function that has been approved by or on behalf of a national Customs administration as complying with WCO or equivalent supply chain security standards. AEOs may include manufacturers, importers, exporters, brokers, carriers, consolidators, intermediaries, ports, airports, terminal operators, integrated operators, warehouses, distributors and freight forwarders."

Authorised Economic Operator status represents a customs to business partnership between the customs authorities and traders, enabling benefits such as: faster processing of goods through customs through reduced examination rates, and a reduction in reporting requirements. In 2013, the World Trade Organisation established a consensus on a new agreement for trade facilitation, outlining a requirement for members to introduce an Authorised Operator / Authorised Economic Operator programme[74].

1.3 Trusted Trader status

The UK's 2025 Border Strategy Policy intends to minimise the cost to import and export legitimate goods, including obtaining all necessary documentation, and will be designed to minimise the average time for all required document checks to be conducted on legitimate goods and for them to be cleared. The 2025 Border Strategy Policy addresses six major transformations as part of the strategy, across a series of multi-year programmes[75]:

- Development of a user-centric government approach to border design and delivery
- a more cohesive use of government's collection, assurance and use of border data;

[73] World Customs Organisation *SAFE Framework of Standards*, available from: http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/instruments-and-tools/tools/safe-package/safe-framework-of-standards.pdf?la=en

[74] Article 7, Section 7, Trade Facilitation Agreement Facility, World Trade Organisation, available from: https://www.tfafacility.org/article-7

[75] Stone, Aimee, UK Border Strategy 2025, [online], ADS, available from https://www.adsgroup.org.uk/blog/uk-border-strategy-2025/

- establish resilient border crossings in the image of ports in the future
- use upstream compliance to move processes away from the actual frontier;
- increase the capability of staff and the border industry to help improve user experience;
- shape the future development of borders worldwide, to promote the UK's interest.

This will be arranged through the Trusted Trader Programme, with authorisations that will enable authorised economic operators to submit their own declarations and benefit from integration of technology communications across borders. The Trusted Trader Programme will offer a Single Trade Window (STW) to submit data just once to the UK government, which will also:

- renew licenses easily
- auto-populate declarations
- suspend duties
- lower the end cost.

The Trusted Trader Status is offered as an innovative platform that sits between the AEO and ordinary trading activities, with regulatory compliance for its award adjusted to accommodate the requirements of small businesses alongside large organisations. It was primarily designed as a solution to minimise the administrative impact of the EU withdrawal acting as a barrier to trade, but also as a technology-focused Global Britain implementation of border innovation in compliance, by which the government seeks to establish reciprocal customs authority partnerships on a global basis. A Trusted Trader scheme (UKTS) has also been established to ensure that traders do not pay tariffs when they move goods from Great Britain to Northern[76].

1.4 Authorised Economic Operator status

Authorised Economic Operator (AEO) status is a quality mark that is available to all parties involved in the international trade supply chain. There are two types of AEO status:

- Authorised Economic Operations Customs Simplification (AEOC)
- Authorised Economic Operator Security and Safety (AEOS)

It is possible to apply for either Customs Simplification or Customs Security and Safety, or to apply for both, which may be referred to as AEOF.

[76] HM Revenue & Customs *UK Trader Scheme launched to support businesses moving goods from Great Britain to Northern Ireland,* 15th December 2020, available from: https://www.gov.uk/government/news/uk-trader-scheme-launched-to-support-businesses-moving-goods-from-great-britain-to-northern-ireland

Authorised Economic Operator Simplification (AEOC) Status enables companies to benefit from:

England, Scotland, Wales

- a faster application process for customs simplifications and authorisations
- a lower risk score that may reduce the number of checks customs carry out on your consignments
- a guarantee waiver up to the level of your duty deferment account

Northern Ireland

- a faster application process for customs simplifications and authorisations
- your consignments receiving priority treatment for customs controls
- a lower risk score which may reduce the number of checks customs carry out on your documents and goods
- a reduction or waiver of comprehensive guarantees
- a 70% reduction in a business's deferment account guarantee
- a notification waiver when making entries into a declarant's records
- moving goods in temporary storage between different member states

AEO Security and Safety (AEOS)

Businesses that hold AEOS Status benefit from:

- a lower risk score which may reduce the number of checks customs carry out on documents and goods
- consignments receiving priority treatment for customs controls
- reduced declaration requirements for entry and exit summary declarations reciprocal arrangements and mutual recognition on an international basis

1.5 Authorised Economic Operator criteria

AEO status provides acknowledgment that your business has integrated diligent governance procedures that are consistent throughout the company. Details of Authorised Economic Operators are published by HMRC and shared between global mutual recognition schemes.

HMRC will require assurance of the following key elements of business governance:

- Representation
- Classification
- Valuation
- Origin and preference
- Imports and Exports controls (permits and licenses)

Quality management practices must be optimised, providing assurance of:

- Documented procedures covering supply chain practices and customs activities
- Non-conformance logging and reviewing
- Customs entry checking
- Management reviews

HMRC will prioritise companies that have a safety and security certificate from:

- An international organisation
- International standards of the International Organisation for Standardisation (ISO)

View HMRC guidance at: Apply online for Authorised Economic Operator Certification

1.6 AEO and the Trade and Cooperation Agreement

The criteria listed as mandatory to achieve Authorised Economic Operator status in the TCA[77] and adopted within Regulation (EU) No 952/2013 of the European Parliament and of the Council[78] includes:

(a) the absence of any serious infringement or repeated infringements of customs legislation and taxation rules, including no record of serious criminal offences relating to the economic activity of the applicant;
(b) the demonstration by the applicant of a high level of control of his or her operations and of the flow of goods, by means of a system of managing commercial and, where appropriate, transport records, which allows appropriate customs controls;
(c) financial solvency which shall be deemed to be proven where the applicant has good financial standing, which enables him or her to fulfil his or her commitments, with due regard to the characteristics of the type of business activity concerned; and
(d) appropriate security and safety standards which shall be considered as fulfilled where the applicant demonstrates that he or she maintains appropriate measures to ensure the security and safety of the international supply chain including in the areas of physical integrity and access controls, logistical processes, and handling of specific types of goods, personnel and identification of his or her business partners.

[77] Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, Annex CUSTMs-1: Authorised Economic Operators, p. 525, available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/948119/EU-UK_Trade_and_Cooperation_Agreement_24.12.2020.pdf

[78] Regulation (EU) No 952/2013 of the European Parliament and of the Council, available from: https://www.legislation.gov.uk/eur/2013/952/article/39

1.7 Make an application for Authorised Economic Operator status

There are two forms which must be submitted to HMRC within an application for AEO status.

1. An Authorised Economic Operator application C117
2. A Self-Assessment questionnaire C118

2. Classification of Goods

The World Customs Organisation (WCO) has developed the Harmonised Commodity Description and Coding System (HS), generally referred to as "Harmonised System" or simply "HS" – a multipurpose international product nomenclature. An overview of the Harmonised System can be found at WCO: Conventions and Agreements: the Harmonised System[79].

The HS is a global trade nomenclature which comprises of more than 5000 commodity groups: each identified by a six-digit code, arranged in a legal and logical structure supported by uniform rules. The system is used by more than 200 countries and economies as a base for their customs tariffs – over 98% of merchandise in international trade is classified in terms of the HS.

Article 6 of the Harmonised System Convention provides for the establishment of a committee and sub-committees to administer the HS. The HS is used by governments, international organisations, and the private sector for purposes of internal taxes, trade policies, monitoring of controlled goods, rules of origin, freight tariffs, transport statistics, price monitoring, quota controls, compilation of national accounts and economic research and analysis. Therefore, it is a universal economic language and code for goods, and an indispensable tool for trade.

The EU Customs Territory include the territories of the 27 current member nations, and also states that are not covered by the treaties, these include:

· Monaco
· Cyprus (certain territories)
· Channel Islands
· Isle of Man

[79] World Customs Organisation, *WCO: Conventions and Agreements: the Harmonised System*, available from: http://www.wcoomd.org/-/media/wco/public/global/pdf/about-us/legal-instruments/conventions-and-agreements/hs/hsconve21pdf1.pdf?la=en

Andorra, San Marino and Turkey are also within the customs union of the European Union, which is governed by the Union Customs Code.

The UK's interpretation of the Harmonised System is available as an online resource at: UK Trade Tariff Volume 2[80], where product description may be used to obtain the correct classification and ascertain whether any restrictions or licenses are applicable at item level, and identify tariff preferences, duty, excise duty and VAT liability. Obtaining the correct classification is a crucial element of the trade process.

The EU system of classifying goods comprises of a 10-digit coding system. The first 6 digits are determined by the HS developed by the World Customs Organisation, which is hierarchical, organised by sections, chapters (2 digits), headings (4 digits) and sub-headings (6 digits).

The following 4 digits are unique to the European Union and the UK. The Combined Nomenclature (CN) code is the 8-digit code, used for exporting.

The Integrated Tariff (TARIC) is a 10-digit code, used for importing. This identifies all trade policies, preferential tariffs, restrictions, certificates, licenses, tariff suspension and trade policy measures, relating to the commodity code.

Each classification is accompanied by legal notes, known as the General Rules for the Interpretation of the Harmonised System, which must be considered when interpreting the application of the code.

As the system is hierarchical, it must be examined as such. When considering a product such as a Frozen Atlantic Salmon, the classification would be identified as follows:

Nomenclature	Digits	Code	Product description
Section		I	
HS Chapter – International	2 digits	03	Live animals; Animal products
HS Heading – International	4 digits	0303	Fish and crustaceans, molluscs and other aquatic invertebrates

[80] HM Revenue & Customs, *Trade Tariff Volume 2*, [online], available from: https://www.gov.uk/trade-tariff

HS sub-heading – International	6 digits	030313	Fish frozen, excluding fish fillets and other fish meat
CN Code - European	8 digits	03031300	Atlantic Salmon (Salmo salar) Danube salmon (Hucho hucho)
TARIC code – European	10 digits	0303130010	Atlantic Salmon (Salmo salar) Danube salmon (Hucho hucho)

When exporting to the EU, or any other region it is best practice to include the 10-digit TARIC code for your client on the packing list, alongside the 8-digit CN code to be submitted to the exporter's customs agent.

This will ensure that your importer has the correct code upon import and does not have to provide the final classification of the goods internally or hire the third-party services of a customs agent to do so.

3. Commercial Contracts

When examining the impact of the UK's exit from the EU on cross-border commercial contracts there are two main categories that should be assessed:

1.the contractual term continues beyond 31st December 2021;
2. the nature of the contract means that it crosses the UK-EU border.

3.1 Governing Law

Prior to 1st January 2021, EU legislation within the provision of the Rome I Regulation[81] enshrined the parties' ability to choose the governing law of their commercial contracts. Since the UK has left the EU, the UK has harmonised this within The Law Applicable to Contractual Obligations and Non-Contractual Obligations (Amendments etc) (EU Exit) Regulations 2019[82]. Under such arrangement other than minor changes, the same laws continue to apply to an express agreement on the choice of law.

3.2 Territorial Application

When a provision refers to the European Union, or European Economic Area (EEA), such as 'an exclusive right to operate within the EU', parties may be advised to revisit their agreements to clarify the new distinction between the UK and the EU, or designate UK-EEA.

Because it will remain a key territory, many contracts will wish to keep the United Kingdom included within the contract's reference to Europe. The European Union (Withdrawal) Act 2018[83] recognised that a significant amount of EU legislation was transposed into domestic law, and the UK's intention to preserve the majority of UK legislation originally introduced to harmonise with EU legislation. Whilst certain contracts might not appear to interact with Europe, they may rely on EU law and regimes, such as Article 101[84] and Article 102[85] of the Treaty of the Functioning of the European Union's vertical block exemption regulations, which are also indicated in Chapter I and Chapter II of the UK Competition Act 1998[86].

Where existing EU law has been integrated into UK legislation this may be repealed or amended in the future. The effect could be more pronounced for sectors where significant measures have been introduced at regulatory level, and more general for parties that have warranted that they will comply with EU rules. UK companies entering into agreements with EU member nations may expressly wish to indicate the court of England and Wales as governing law.

In circumstances where the contractual provisions relate to the EU as a territory, it may be advisable to confirm whether the relevant legislation covers member states from time to time or specifically refers to each country. If there is a list of countries

[81] REGULATION (EC) No 593/2008 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 17 June 2008 on the law applicable to contractual obligations (Rome I), available from: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008R0593&from=EN

[82] (The Law Applicable to Contractual Obligations and Non-Contractual Obligations (Amendment etc.) (EU Exit) Regulations 2019, 2019)

[83] The European Union (Withdrawal) Act 2018, available from: https://www.legislation.gov.uk/ukpga/2018/16/contents/enacted

[84] Article 101, Consolidated text on the Treaty of the Functioning of the European Union, available from: https://www.legislation.gov.uk/eut/teec/article/101

[85] Article 102, Consolidated text on the Treaty of the Functioning of the European Union, available from: https://www.legislation.gov.uk/eut/teec/article/102

[86] The Competition Act 1998, available from: https://www.legislation.gov.uk/ukpga/1998/41/contents

and the UK is included, the provision will prevail. If there is no express wording to indicate which interpretation prevails, the context to determine whether the UK would be excluded could vary from one case to the next.

If there is any legislation key to the operation of the contract, it may be advisable to check whether there is wording to outline that 'references are to provisions as modified or re-enacted'. In the absence of express wording to state otherwise, the default position within the Interpretation Act 1978[87] is that references to repealed laws are construed as referring to the new law when that new law repeats and enacts the old law being cited in the document unless the contrary intent appears. The combination of the Interpretation Act and the European Union Withdrawal Act 1998 could deliver an outcome of minimal effect on legislation, with a contract's citation of EU law being effectively rewritten as an interpretation of harmonised UK law.

3.3 Force Majeure, Frustration and Materials Adverse Change

It is possible that the UK's exit from the EU may impose significant changes in trading conditions within the immediate, medium and long term, depending on the sector operating. Factors such as the free movement of individuals, financial equivalence, recognition of professional qualifications and the increase of administrative burdens gradually eased into the agri-food fast moving consumer goods (FMCG) sector may have a serious impact on the operational structure of a contract and the parties may indicate that they are tied to a framework based around a different set of commitments than originally intended. On that basis it may be advisable to examine whether these events could fit within a force majeure or materials adverse change clause, or whether there are any other ways to establish them as grounds for renegotiating or ending a contract.

Start with reviewing the definition of a force majeure clause and whether the UK's exit from the European Union could fit within this definition. If the definition seems feasible, consider how the liabilities of the contract may impact the other party.

- Look for a 'materials adverse change' clause, or any wording that may enable the renegotiation of terms should the contract become unprofitable or subject to a change in the law.
- When entering into new contracts, include an express right to suspend, terminate or renegotiate the contract should conditions arise that impact the fulfilment of the obligations of the agreement.
- If there is a concern that the other Party may claim the UK's exit from the EU as a motivating factor in terminating or changing the position of qualifications, for example the increase of administrative burdens gradually eased into the agri-food FMCG sector may have a serious impact on the operational structure of a contract, and changes to immigration may have adverse impact on the structure of service-based contracts. Therefore, the

[87] The Interpretation Act 1978, available from: https://www.legislation.gov.uk/ukpga/1978/30/contents

parties may indicate that they are tied to a framework based around a different set of commitments than originally intended. On that basis it may be advisable to examine whether these events could fit within a force majeure or materials adverse change clause, or whether there are any other ways to establish them as grounds for renegotiating or ending a contract.

3.4 Prices and Pricing

Pricing arrangements between parties may need to be renegotiated to reallocate the cost of administrative duties between the parties.

- Businesses should check the terms of commercial contracts and supply chain agreements to confirm which party will take responsibility for new customs procedures, and address Incoterms.
- If one party is considering entering the UK, leaving the UK or restructuring the company due to the conditions presented by the UK leaving the EU, consider whether the contract's assignment to a group or sister company should be permitted, whether there would be a renegotiation of terms in this circumstance, or whether there is ability to terminate the agreement.
- Cross-border claims can no longer be enforced via the European Small Claims Court, and a decision regarding the UK's accession to the Lugano Convention remains pending (3rd May 2021), therefore the costs of settling a dispute are likely to be more extensive than prior to the UK's exit from the EU. A company may wish to adjust their payment terms to accommodate the increased risk and liability.

3.5 Cost-benefit Analysis

It is a long-standing principal of English law that each party must be free to advance their own interests within contract negotiations. Contractors may wish to enter renegotiations if the conditions impact the fulfilment of the contract under its original terms or place an increased burden on one or both of the parties. This may be due to factors such as cost, risk and compliance. If they are not addressed there is the possibility that the relationship could be impacted, and there could even be the potential of penalties, fines or supply chain breakdown, for example in situations dealing with customs compliance, or an increase in customs duties for goods in free circulation within the EU, but originating in a third country, entering the UK, or vice versa. The ability to arbitrate the contract may be qualified by a number of factors including:

- Bargaining power – the position of parties within a contractual agreement to exert obligation over one another.
- Forbearance - unprecedented circumstances, which may have, led to financial difficulties.
- Prevail clause - the inclusion of a clause, which stipulates that the supplier's contract terms prevail over any terms provided by the buyer, or vice-versa.

- A force majeure clause – whilst cited as a potential factor to consider that will vary from case to case, the coronavirus is not generally considered to be a force majeure clause.
- Course of dealing – when parties have conducted business together over a long period of time there may be evidence of a course of dealing, as a result of which the terms of dealing will generally be considered the terms of the contract. This may enable suppliers to argue that their terms should apply, if a buyer wishes to introduce new terms, or vice-versa.
- Performance measures – certain contracts, such as the manufacturing industry will rely heavily on strict production and delivery schedules. Assessing the timeliness of each phase of the transaction may be critical to performance.
- The impact on the supply chain – additional liabilities and an extended timeframe may impact external stakeholders and other parties across the supply chain.
- Insurance – consider whether the insurance provisions cover the additional liabilities.

The Unfair Contract Terms Act 1977 (UCTA)[88] applies in a number of circumstances including when a party is contracting on its standard written terms. Section 11 (4) of the UCTA specifically applies where a party is seeking to restrict its liability to a specified sum of money. When assessing if the financial limitation satisfies the requirements of reasonableness test in the UCTA, references must be made to the resources of the party seeking to limit liability and how far that company was able to cover itself by insurance.
It may be advisable to consider the following:

- Review mechanisms for pricing, there may be provisions for either party to conduct a review and renegotiation of prices, such as a product pricing review, this is particularly relevant in long term contracts where the price of materials may be impacted by inflation and other factors.

Certain agreements such as manufacturing contracts may indicate review mechanism relating to factors such as:

- changes to the manufacturer's costs of manufacturing and distributing the products;
- the volumes of products ordered by, and supplied to, the customer;
- the price at which the manufacturer supplies the similar products to comparable customers
- the prices at which comparable products are supplied by other manufacturers in the open market;

[88] The Unfair Contract Terms Act 1977, Available from: https://www.legislation.gov.uk/ukpga/1977/50

- any cost reductions achieved by the manufacturer since the last product price review (to the extent that they have not already been taken into account in the product prices); and any deficit.

An agreement may also be referred for arbitration by an independent expert if neither party can agree on the re-evaluation of the pricing structure. Examine whether any clauses relate to regimes that may no longer apply, such as free movement of goods, movement of people or services, or any obligations that the UK is not party to.

3.6 Commercial Disputes

There are 3 potential mechanisms for resolving a cross-border dispute, these include:

· Arbitration
· Litigation
· Alternative Dispute Resolution (ADR)

3.6.1 Arbitration

It may be advisable to agree on an independent arbitrary body and identify claims procedures in case of a dispute prior to entering into an agreement.

The Chartered Institution of Arbitration (CIARB)[89] indicate model arbitration clauses, which take the form of an:

- Attempt to resolve a dispute arising out of or relating to the contract through negotiations between senior executives who have the authority to settle.
- Issuance of a written 'Invitation to negotiate' letter to implement a resolution within 30 days;
- Resolution in good faith by an agreed Alternative Dispute Resolution (ADR);
- In default of an agreement, a recommendation to an ADR being recommended to the parties by the President or the Vice-President of the Chartered Institution of Arbitrators.
- If the matter is not resolved by an ADR procedure within 60 days of the initiation of that procedure, or if one party will not participate in an ADR procedure, the dispute may be referred to arbitration by any party.
- The seat of the arbitration will be in England and Wales, which are governed in England and Wales and Northern Ireland by the Arbitration Act 1996 Arbitration Act[90]

[89] The Chartered Institution of Arbitration (CIARB), available from: https://www.ciarb.org/?gclid=Cj0KCQjwvr6EBhDOARIsAPpqUPEPRzdR3axmlIPhtcUrrEb3Lx1Tfx8Csq3s--TkR9ruiYxhFkpn6LMaAtXUEALw_wcB
[90] Arbitration Act 1996, available at: https://www.legislation.gov.uk/ukpga/1996/23/contents

- Should the parties be unable to agree on an arbitrator, either party may upon giving written notice to the other parties, apply to the President or the Vice-President of the Chartered Institute of Arbitrators for the appointment of an Arbitrator or Arbitrators, and for any decisions on rules where necessary.

There may be different terms relating to the level of the claim indicated. The departure of the United Kingdom from the EU will not affect the enforceability of English arbitration awards. The framework for the recognition and enforcement of arbitrary awards is regulated by the the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards[92], which is a United Nations convention with 162 parties signatories, therefore arbitration may provide a preferable route to litigation. The Foreign Judgements (Reciprocal Enforcement) Act 1933[93] applies to judgements from some European countries including Austria, Belgium, France, Germany, Italy, the Netherlands and Norway and makes specific provision for the enforcement of arbitration awards.

3.6.2 Litigation

The main EU instruments on jurisdiction and enforcement of judgement – namely the Recast Brussels Regulation and the Lugano Convention no longer apply to civil and commercial cases commenced in the UK on or after 1st January 2021.

The UK has applied for accession to The Lugano Convention[95], which is an international treaty negotiated by the EU on behalf of its members, (other than Denmark who chose to opt out) and including EFTA nations Iceland, Norway and Switzerland, but not Liechtenstein. The Lugano Convention seeks to improve the effectiveness and speed of judicial and extrajudicial cooperation between members in civil and commercial matters. The application was made on 8th April 2020, and the Convention provides that parties to the convention "shall endeavour to give consent within one year." Whilst the EFTA nations have consented to the UK's application, the European Commission has expressed an objection on the grounds that the Lugano Convention mirrors the EU's rules of international jurisdiction and its quasi-automatic recognition and enforcement of civil and commercial judgements vis-à-vis the EFTA States. Switzerland's economic and trade relations governed through establishing bilateral agreements have agreed to take over certain aspects of EU legislation in exchange for accessing the EU's single market.[96] Since the UK is

[92] 1958 - Convention on the Recognition and Enforcement of Foreign Arbitral Awards - the "New York" Convention, available from: https://www.newyorkconvention.org/new+york+convention+texts
[93] Foreign Judgments (Reciprocal Enforcement) Act 1933, available at: https://www.legislation.gov.uk/ukpga/Geo5/23-24/13
[95] 88/592/EEC: Convention on jurisdiction and the enforcement of judgments in civil and commercial matters - Done at Lugano on 16 September 1988, available from: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A41988A0592
[96] European Commission, COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL Assessment on the application of the United Kingdom of Great Britain and Northern Ireland to accede to the 2007 Lugano Convention, Brussels, 4.5.2021 COM(2021) 222 final available from: https://ec.europa.eu/info/sites/default/files/1_en_act_en.pdf accessed 8th June 2021

no longer part of the EU-EFTA/EEA internal market, the European Commission has taken the view that the UK should longer share privilege to these freedoms and policies, and promote cooperation through the framework of The Hague Convention.

. There are three main institutions involved in EU legislation:

- the European Parliament – which represents the EU's citizens and is directly elected by them
- the Council of the European Union – which represents the governments of the individual member countries. The Presidency of the Council is shared by the member states on a rotating basis.
- the European Commission – which represents the interests of the Union as a whole.

The final decision on whether the UK will be granted accession to the Lugano Convention rests with the Council of the European Union.

UK gained accession to the Civil Jurisdiction and Judgements (Hague Convention on Choice of Court Agreements 2005[97] the end of the transition period, therefore English law governing clauses will be recognised by EU member states. The European Commission takes the view that the Hague Convention is applicable between the EU and the UK with respect to exclusive choice of courts arrangements agreed after 1 January 2021. The Hague Convention provides a mechanism for recognition and enforcement of judgement in cases where the parties have agreed an exclusive jurisdiction clause, and has been ratified by all EU member states, Mexico, Montenegro and Singapore.

The Hague Convention recognises the registration and enforcement of judgements. In the event of a commercial dispute, parties can validly choose to submit a claim to the designated jurisdiction. The application of the Hague Convention is limited to a choice of court clauses which are:

i.) exclusive
ii.) concluded between professional parties
iii.) in the framework of international situations
iv.) in civil and commercial matters.

The Hague Convention requires that each contracting party must set up a central authority for services of documents within that country from Judicial Officers of another contracting party. The Judicial Officer may be the High Court, practising solicitors, county registrars and District Court clerks. A judgement which is required to be recognised and enforced must be filed in the prescribed manner in the court

[97] The Civil Jurisdiction and Judgments (Hague Convention on Choice of Court Agreements 2005) Regulations 2015, available from: https://www.legislation.gov.uk/uksi/2015/1644/made

of the member state of the defendant; when enforcing a UK judgement, or when enforcing an EU member nation court judgement, the filing must be made in:

a.) the court of England and Wales or Northern Ireland, the High Court,
b.) in Scotland, the court of Session.

This is subject to the completion of formalities in Article 13 of the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters [98], if the registering court considers that it meets the condition for recognition in Article 8 (3) of the Hague Convention. Only filings for a definite sum of money may be claimed. Where a judgement is recognised and enforced, the reasonable costs or expenses of and incidental to its registration shall be recoverable as if they were sums recoverable under the judgement. The Hague Convention does not provide for the enforcement of protective measures and freezing orders.

3.6.3 Alternative Dispute Resolution (ADR)

ADR is an alternative to legal action, and may take the form of negotiation, mediation, conciliation, expert determination or arbitration.

Negotiation is often the first option to consider when taking steps to resolve a dispute. This may be referred to the senior executives of a company who have the authority to make a decision and may decide to establish a compromise.

Mediation is where an independent third party is jointly instructed by both sides, and will assist in identifying the key issues, the party's objectives and establishing a solution. The key difference between mediation and conciliation is the role of the third party – the mediator will try to find common ground, either without assuming responsibility or developing proposals for settlement or by actively expressing an opinion and proposing solutions. The Singapore Convention could be mentioned here.

Conciliation is where the third party will weigh up each side's position and offer their insight and make a proposal for a settlement. This is a recommendation, and it is not legally binding, the parties are free to decide whether to accept it. Conciliation is often used as a preventative measure and may occur when businesses wish to continue to work together. Parties may also decide to appoint an expert to answer a particular question or issue which is in dispute. The expert will have specialist knowledge of the area, and parties agree that the expert's opinion is binding which means there are limited rights of appeal.

[98] Article 13, 14: Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, available from: https://www.hcch.net/en/instruments/conventions/full-text/?cid=17

Arbitration is where a neutral third party who is often a specialist in the field is appointed. The arbitrator will review evidence from both parties prior to making a decision. Depending on the scale of the dispute, the arbitrator may be an individual, or may be a panel, presided over by a chair. Once the arbitrator has reached a final decision, which is binding, the decision can be enforced by court, and on an international basis (an arbitral award has the same weight as a court order).

ADR schemes may act as ombudsman services, and are sometimes a requirement of trading bodies, as ADR is often used to resolve business-to-consumer issues. Since the end of the transition period, the Directive 2008/52/EC (EU Mediation Directive)[99] applying to cross-border civil and commercial disputes involving parties from EU Member States ceases to be applicable between the UK and EU member states.

Business and consumers are no longer able to access the EU Online Dispute Resolution (ODR) platform which previously was an obligation to reference in online consumer terms and conditions. UK consumers may still access Alternative Dispute Resolution (ADR) mechanisms in EU Member States, but not through the ODR.

The purpose of the EU Mediation Directive was harmonisation through the application of minimum standards and rules across a range of matters. On 20th May 2011, England and Wales enacted legislation – the Cross Border Mediation (EU Directive) Regulations Directive 2011[100] to ensure compliance around areas such as confidentiality, enforceability and limitation.

There is no longer a requirement for UK-based ADR entities to offer cross-border services to consumers in EU Member States. Traders are no longer able to offer consumers EU alternatives to UK-based ADR entities.

From the end of the transition period, the following continues to apply to UK traders:

- If the trader is obliged (by law, contract or trade association membership) to use the services of an ADR entity it must include the name and address of an ADR entity on its website or sales terms
- If the trader has exhausted its internal complaint handling procedure following the initiation of a dispute, it must inform the consumer of the name and website address of an ADR entity that would be competent to deal with the complaint (albeit the trader does not need to engage with such ADR).

[99] EU Mediation Directive, available from: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32008L0052&from=EN

[100] Cross Border Mediation (EU Directive) Regulations Directive 2011 https://www.legislation.gov.uk/uksi/2011/1133/made

4. Currency Risk

Blue skies or grey clouds ahead?

Trevor Charsley, Senior Market Advisor at AFEX, May 2021

Since the UK emerged into its new dawn on January 1st, 2021 business has not only had to deal with a deluge of new paperwork and form filling when trading with the EU but has also had to continue to operate under pandemic restrictions. While these conditions could have induced some to think that sterling would weaken, GBP/EUR has strengthened by as much as 5% in the first six months of the year.

Why? Surprisingly, it was mainly down to Covid, or rather the government's action to agree advance orders for Covid vaccines. The UK has indeed managed to vaccinate around 50% of its adult population by early April 2021 and is set to emerge from its lockdown well before other developed nations. This is a real boon for the economy. The UK has also left behind four and a half years of Brexit indecision, and business is now able to focus on navigating the new trade rules. With logistics being disrupted, some businesses are deciding to send larger goods consignments less frequently than before, while some others are deciding to open up distribution hubs and businesses in the EU to service their EU clients. The result is that business is adapting.

This all looks very positive and explains why the pound has done well so far this year. However, there are storm clouds forming. The market has been waiting for economic data showing how trade between the UK and EU has been affected by the newly agreed trade terms. Without the data, the market has been happy to think that January could see the height of trade disruption between the UK and EU, and that business will recover in the future months. This narrative could actually turn out to be correct, with the latest ONS data showing a decrease in goods exports to the EU from the UK of 8.7% from the previous quarter. Hardly a huge collapse as many had feared.

However, it will probably not be all plain sailing, as the new relationship with the EU looks like it may be a little strained at times. With reduced amounts of food and supplies reaching Northern Irish supermarkets since January 1st, the UK unilaterally extended the current trade inspections to avoid more restrictions being enforced. The EU has launched a legal action against the UK, as they claim that the UK has broken treaty rules stipulating that changes are supposed to be jointly agreed. The UK replied by stating that the EU was clearly advised of the issue but was just too slow to respond. Hopefully this is just a storm in a teacup, but it is not a good sign of the relationship to come.

We also must remember that exchange rates are all about relative performance. For Covid, in particular, the EU has announced that 70% of adults should be vaccinated by the summer. If and when this happens that will be good for the euro.

A surprising positive for the pound came in the shape of the Holyrood elections on May 6th. The SNP was unable to achieve a majority on its own by 1 seat and is now expected to rule as a minority government. The question of another Scottish referendum has effectively been delayed by 18 months, and this is a real plus for sterling.

Another area for concern is the City, which was left basically with No-Deal. Amsterdam is now the biggest European equity trading hub, and the City is not allowed to service its European clients from London. We do fully expect the UK's financial centre to recover eventually and thrive, but tax receipts are set to decline in this area, representing an additional problem for the Chancellor.

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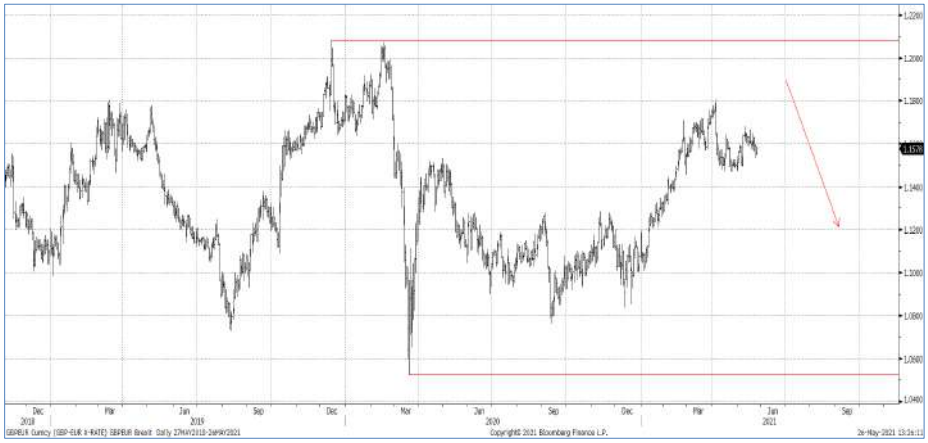

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To conclude, we could have already seen the high for GBP/EUR strength in the short-term when it briefly touched 1.1800. As 2021 progresses, the EU will be able to firstly vaccinate and then release its citizens from lockdown. The market will then be able to gauge the real effect of the new trading rules on the UK economy. Taken together this could easily encourage GBP/EUR weakness. Markets are constantly evolving. It pays to stay up to date and keep an umbrella handy.

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Bringing 25 years of FX sales and trading experience to bear on his market study, analysis and commentary. Trevor provides incisive market analysis and perspective, leavened by his wry humour and ever-present optimism, to AFEX clients and to the broader market through his weekly blog and videos. A sought-after speaker and successful currency forecaster on Bloomberg, Trevor is often quoted in the UK business press.

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5. Customs Valuation

The Customs (Import Duty) (EU Exit) 2018 Regulations[102] outlines procedures for determining the customs value of the goods. The Customs (Import Duty) (EU Exit) 2018 Regulations, Chapter 5, 119 - 126 and the Taxation (Cross-border Trade) Act 2018[103] are harmonised with international customs legislation as advanced by the World Trade Organisation, within the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (GATT)[104] which aims for a fair, uniform and neutral system for the valuation of goods for customs purposes – a system that conforms to commercial realities and which outlaws the use of arbitrary or fictitious customs values. For the purpose of this report, Alinea has abbreviated the legislation.

5.1 Method 1 valuation

Method 1 is the general rule of valuation provided by section 16 (2) of the Taxation (Cross-border Trade) Act 2018. This identifies the value of chargeable goods as the transaction value for the goods when sold for export to the United Kingdom, identified as the price paid or payable for the goods as detailed on the commercial invoice.

5.2 Method 2 valuation

This means the valuation of chargeable goods determined upon the following procedure:

a.) identify the transaction value of identical goods sold to export to the United Kingdom within the 90 day period, based upon circumstances where the goods are made by the same seller of the chargeable goods, or where no such sale exists in the 90 day period, is made by the seller of equivalent goods; and is made to the same buyer as the buyer of the chargeable goods, or where no such sale exists in the 90 day period, is made to the buyer who is in the equivalent position in the supply chain as the buyer of the chargeable goods;

i.) is nearest in time to the time when the chargeable goods are imported
ii.) is of an equivalent quantity as the sale of the chargeable goods
b.) if more than one sale is identified, the sale which produces the lower or lowest transaction value is to be applied.

[102] The Customs (Import Duty) (EU Exit) 2018 Regulations, Chapter 5, 119 – 126, available from: https://www.legislation.gov.uk/uksi/2018/1248/part/12/chapter/5/made
[103] The Taxation (Cross-border Trade) Act 2018, available from, https://www.legislation.gov.uk/ukpga/2018/22/contents/enacted
[104] Valuation for Customs Purposes, Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (GATT), available from: https://www.wto.org/english/res_e/publications_e/ai17_e/gatt1994_art7_gatt47.pdf

c.) apply the value to the chargeable goods as the value of the goods which applies immediately before they are released for free circulation.

5.3 Method 3 valuation

The method 3 valuation means the valuation of chargeable goods presented to Customs on import determined by the following:

a.) identify the transaction value of similar goods sold for export to the United Kingdom within the 90 day period; based upon circumstances where the goods are made by the same seller of the chargeable goods, or where no such sale exists in the 90 day period, is made by the seller of equivalent goods; and is made to the same buyer as the buyer of the chargeable goods, or where no such sale exists in the 90 day period, is made to the buyer who is in the equivalent position in the supply chain as the buyer of the chargeable goods;

i.) is nearest in time to the time when the chargeable goods are imported
ii.) is of an equivalent quantity as the sale of the chargeable goods

b.) if more than one sale is identified, the sale which produces the lower or lowest transaction value is to be applied.

c.) apply the value to the chargeable goods as the value of the goods which applies immediately before they are released for free circulation.

5.4 Method 4 valuation

Method 4 valuation applies to chargeable goods presented to Customs on import which are fresh fruit and vegetables meeting the description and with the commodity codes set out in the document, "Fresh fruit and vegetables under Method 4, valuation, version 1 dated 27th November 2018."[105]

a.) the valuation of the goods is to be determined by reference to the wholesale price of the goods at the date of import, being the price set out in a notice published by HMRC.
b.) the notice must set out the wholesale price as a unit price for 100kg of the goods, and to the period that it applies.

[105] Fresh fruit and vegetables under Method 4, valuation, version 1 dated 27th November 2018, available from: https://www.gov.uk/government/publications/fresh-fruit-and-vegetables-under-method-4-valuation

5.5 Method 5 valuation

Method 5 valuation means the valuation of chargeable goods presented to customs which is determined by

a.) the identification of:

i.) the cost of producing the goods and the cost of the container and the packaging of the goods;
ii.) the costs of transport and insurance of the goods, up to the time the goods are imported into the United Kingdom;
iii.) loading and handling charges of the goods, up to the time the goods are imported into the United Kingdom;
iv.) the amount of expenses that are usually incurred in enabling comparable goods to be sold in the place of export of the goods; and
v.) the amount of profit usually arising on a sale of comparable goods in the place of the export of the goods

b.) total the costs, charges, and amounts in sub-paragraph (a); and,

c.) apply that total as the value of the chargeable goods which applies immediately before they are released for free circulation.

(The costs of producing the goods must include the cost of each item listed in paragraph (4) which is provided outside of the United Kingdom related to the production or development of the goods, if the cost of the item is charged to the buyer.

The items referred to are –

a.) artwork;
b.) designs;
c.) development services;
d.) engineering work or services; and
e.) plans or drawings.

(5) Paragraph (3) applies to an item even if it is not intended to be used by the buyer in processing, use or disposal of the goods.

(6) Where goods are transported by air, the cost of the air transport is the percentage of that cost as set out in the document, Air Transport Costs to be included in the customs value, version 1, dated 27 November 2018. [106]

[106] Air Transport Costs to be included in the customs value, version 1, dated 27 November 2018, available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/759313/Air_Transport_Costs.pdf

5.6 Method 6 valuation

Method 6 valuation means the valuation of chargeable goods presented to Customs on import which is the value determined by applying:

a.) such of the elements of valuation used in any other valuation method; and
b.) the principles for the valuation of goods adopted by the WTO of the General Agreement on Tariffs and Trade 1994;

as are reasonable to apply to determine the value of the chargeable goods immediately before they are released into free circulation.

The Customs (Import Duty) (EU Exit) 2018 Regulations, Chapter 3, Transaction value: Included Items 111[107] (1.) identifies that in determining the customs value, the price actually paid or payable for the goods should be supplemented by the fees incurred related to:

a.) the container of the goods;
b.) the packaging of the goods;
c.) the transport and insurance of the goods, up until the time the goods are imported into the United Kingdom;
d.) loading and handling of the goods, up to the time the goods are imported into the United Kingdom;
e.) commission, except buying commission, and brokerage fees paid by the buyer of the goods; and
f.) export duty charged in the place of origin.

Transaction value: further included items – partial value

a.) commissions and brokerage, except buying commissions;

- the costs of packing, whether for labour or materials
- royalties and licence fees related to the goods being valued that the buyer must actually pay, either directly or indirectly as a condition of the sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;
- the value of any part of the proceeds of any subsequent resale, disposal, or use of the imported goods that accrues directly or indirectly to the seller, and;
- costs of transport and insurance of the imported goods;
- loading and handling charges associated with the transport of the imported goods.

[107] The Customs (Import Duty) (EU Exit) 2018 Regulations, Chapter 3, Transaction value: Included Items 111, available from: https://www.legislation.gov.uk/uksi/2018/1248/part/12/chapter/3

Additions to the price actually paid or payable should only be included on the basis of objective and quantifiable data.

In determining the customs value, none of the following should be included:

> a.) the costs of transport of the imported goods after their entry into the customs territory
> b.) charges for construction, erection, maintenance, and technical assistance, undertaken after the entry into the customs territory of the U other services relating to installation should not be included in the transaction value.

If no sale is made, for example if an individual or business is sent free products, the transaction value must still be provided calculated using the equivalent fee for identical or similar goods, or another method used to calculate the transaction value of the goods in accordance with the World Trade Organisaton's Technical Information on Customs Valuation.[108]

6. Excise Goods

Excise duty is an indirect tax that is often charged on a specific unit, such as a litre or kg, rather than the customs value. Industrial government policies establish what will be prescribed for excise, which is often used as a taxation system to influence consumption of certain goods, and achieve desired policy outcomes.

Excise duty is a hypothecated tax, where public funds are collected on behalf of a specific cause. The proceeds of excise duty are directed to the consequences of excise consumption, for example tobacco excise is used to treat tobacco-related health issues in public funded hospitals, and establish tobacco related public heath campaigns. Fuel duties are used to create roads and highways, and develop new technologies for non-polluting fuels. Alcohol excise duty is directed to treat the consequences of alcohol-related illnesses.

Excise duty in the UK is chargeable, in addition to any customs duty which may be due, on the goods described as follow:

- Wine and made-wine
- Beer
- Cider and perry
- Spirits
- Low alcohol beverages

[108] World Trade Organisation's Technical Information on Customs Valuation, available from: https://www.wto.org/english/tratop_e/cusval_e/cusval_info_e.htm

- Imported composite goods containing alcohol
- Tobacco products
- Hydrocarbon oil
- Climate change levy
- Biofuels

This are established by confirming the commodity code of the goods, and the tax type code, which will be used to determine the type and rate of excise duty payment.

Visit: UK Trade Tariff
Tax type codes and rate of tariff: UK Trade Tariff: excise duties, reliefs, drawbacks and allowances

If goods are released into free circulation, the rate of duty must be manually calculated, according to quantities and values involved in the transaction detailed on the commercial invoice and/or packing list, by the customs agent, and submitted to HMRC on the C88 (SAD) customs declaration.

6.1 Excise Movement and Control System (EMCS)

The Excise Movement and Control System (EMCS) is an electronic system that records and validates movements of duty suspended excise goods.

The EMCS captures information about excise movements online, validates and allows real time notification of the dispatch and receipt of duty suspended goods. Messages exchanged through the EMCS must comply with certain requirements, including specific codes that are required to complete certain data fields in those messages. Once the EMCS declaration has been submitted, the user will receive a submission reference number.

- If the submission is successful, the user will get a 21-digit administrative reference code (ARC);
- the ARC is assigned to the electronic administrative document (e-AD).

Since 1st January 2021, the UK has retained its version of EMCS for recording and validating duty suspended excise goods within the UK, including movements to and from UK ports, airports and the Channel Tunnel. However the UK EMCS version is no longer linked to the EU wide EMCS apart from in respect of Northern Ireland.

The EMCS supports different types of movements to both Great Britain and Northern Ireland and based on location, a GB or XI prefix will be allocated.

The ECMS must be used for all movements of duty suspended excise goods other than energy products that meet the criteria for simplified declarations.

A consequence, immediately on importation to the UK, businesses moving excise goods within the UK, including in duty suspension, will have to place these goods in UK duty suspension once they reach the port of arrival, otherwise duty will become payable.

6.2 Movement Guarantees

Excise goods that are moving within the UK or between the EU and Northern Ireland in excise duty suspension must be covered by a financial security, known as a movement guarantee. The financial security must be provided by a guarantor, such approved by HMRC, who has agreed to pay money to HMRC in the event of an irregularity. This may include:

The movement security required for duty-suspended removals from an excise warehouse may only be provided by the:

- Warehousekeeper of dispatch
- The warehousekeeper of receipt - for movements between UK warehouses
- The warehousekeeper of receipt in an EU member state – where the goods were dispatched either:
    - from a warehouse in Northern Ireland
    - by a registered consignor in Northern Ireland
- Last owner of the goods whilst warehoused - not a duty representative
- *Transporter (someone who normally physically transports excise goods).

Further information is available at HMRC.[109]

6.3 Authorised Consignor

A registered consignor is a person approved by HMRC to dispatch imported excise goods under excise duty suspension on their release into free circulation. When non-UK or non-EU goods are imported into the EU via a UK port or airport, they may only be moved in excise duty-suspension to allowable destinations when a registered consignor has started the movement via the Excise Movement and Control System – (EMCS) following release of the goods to free circulation.

All registered consignors approved by HMRC are able to dispatch goods in duty-suspension to:

- A tax warehouse in the UK
- A place where the goods will be exported from the UK

Registers consignors approved by HMRC will usually be:

[109] HMRC, Receiving, storing and moving excise goods, available from: https://www.gov.uk/guidance/receive-goods-into-and-remove-goods-from-an-excise-warehouse-excise-notice-197 accessed from 6th June 2021

- Import agents
- Authorised warehousekeepers who receive the goods from the place of release to free circulation (for example a UK port, airport or inland clearance depot)
- Authorised persons who dispatch goods from Great Britain which will leave the UK customs territory from Northern Ireland

6.4 Authorised Warehouses

An excise warehouse is any place that allows excise goods to be held without having to pay the excise duties. It is subject to certain specific conditions set by HMRC.

Relevant HMRC authorisations relate to the registration and approval of:

- Warehousekeepers,
- Warehouse premises,
- Owners of goods

The obligations of an authorised Excise Warehousekeeper are:

- to provide, if necessary, a guarantee to cover the risk inherent in the production, processing and holding of excise goods;
- to keep, for each tax warehouse, accounts of stock and movements of excise goods; and
- to comply with any other requirements laid down by HMRC

Further information is available at HMRC Notice 197.[110]

6.5 Registered consignees

Registered consignees are revenue traders who are approved and registered by HMRC to receive and account for the duty on duty-suspended excise products from the EU.

From 1 January 2021 Registered Consignee approval will:

- **Only** apply to **Northern Ireland** businesses and
- **No** longer applies to businesses based in **Great Britain**.

Registered consignees cannot:

- Receive duty-suspended excise goods from outside the UK or EU (not to be confused with registered consignors) and
- Hold or dispatch goods in duty-suspension.

[110] HMRC, Receive goods into and remove goods from an excise warehouse (Excise Notice 197), available from: https://www.gov.uk/guidance/receive-goods-into-and-remove-goods-from-an-excise-warehouse-excise-notice-197 accessed from 6th June 2021

Registered Consignees:

- Must account for the UK excise duty when the goods are received in the UK.
- Cannot receive duty-suspended excise goods from outside the UK or EU (not to be confused with registered consignors).
- Cannot hold or dispatch goods in duty-suspension.

For further information visit the Excise Notice 203a[111]

6.6 Temporary Registered Consignees (TRCs)

TRCs are excise traders that are registered and approved to import duty-suspended excise goods into Northern Ireland from EU member states on a consignment-by-consignment basis.They may not hold or dispatch excise goods in duty suspension.

The TRCs schemes apply to:

- Energy products, for example mineral oils (also known as hydrocarbon oils)
- Alcohol and alcoholic drinks
- Manufactured tobacco (cigarettes, cigars, hand-rolling tobacco, other smoking tobacco and tobacco for heating)

Further information can be found at:

- Notice 204a[112]*and*
- Notice 204b[113]

If excise goods do not enter into the ECMS when they reach the UK, full duty must be paid, either through a customs agent's DTI account, via the Flexible Accounting System or via a duty deferment account.

An average of 30 days credit is available when excise duty is deferred. The accounting period runs from the 15th of a month to the 14th of the next month. The trader must pay either:

- on the 29th of the latter month (or 28 February in non-leap years)
- on the working day before that if the 29th (or 28 February in non-leap years) is not a working day.

[111] HMRC, Excise Notice 203a: registered consignees, available from: https://www.gov.uk/government/publications/excise-notice-203a-registered-consignees/excise-notice-203a-registered-consignees accessed 6th June 2021

[112] HMRC, Notice 204a, available from: https://www.gov.uk/government/publications/excise-notice-204a-temporary-registered-consignees/notice-204a-temporary-registered-consignees

[113] HMRC, Notice Excise Notice 204b: commercial importers and tax representatives - EU trade in duty paid excise goods, available from: https://www.gov.uk/government/publications/excise-notice-204b-commercial-importers-and-tax-representatives-eu-trade-in-duty-paid-excise-goods/excise-notice-204b-commercial-importers-and-tax-representatives-eu-trade-in-duty-paid-excise-goods

It is likely that a customs agent will charge an additional fee to submit an excise declaration, as excise goods require a manual calculation to be made, and submitted.

6.7 Exporting excise goods

Export duty is not payable on products in free circulation leaving the UK by the exporter, although it will be liable for the importer in the destination country, and must paid to that EU Member State government.

To calculate what duty the EU importer will be liable for, check the Taxes in Europe database[114], searching under the reference category:

- Destination country
- Indirect taxes: *then according to the excise product in question*;

- Alcoholic beverages;
- Energy products and electricity;
- Manufactured tobacco;
- Other indirect taxes.

This provides detailed information about the duty liability, legal base, geographic scope, deductions, allowances, credits, exemptions, environmental taxes and other influencing factors.

6.7.2 Exporting duty paid excise goods

From 1 January 2021 traders need to **submit an electronic customs export declaration**.

- Engage a customs agent to complete a C88 form, *or*
- Register for the National Export System to make an export declaration Wales, England, and Scotland[115]
- Customs Declaration Service Northern Ireland[116]

Businesses may be able to recover the excise duty on the exported goods (commercial goods that have not been and will not be consumed in the UK) by claiming excise duty drawback.

- To claim excise duty drawback, visit Excise Notice 207: Excise Duty Drawback.[117]

[114] European Commission, *Taxes in Europe*, available from: https://ec.europa.eu/taxation_customs/tedb/taxSearch.html
[115] HMRC *Register for the National Export System* to make an export declaration, available from: https://www.gov.uk/guidance/export-declarations-and-the-national-export-system-export-procedures
[116] HMRC, *Customs Declaration Service*, available from: https://www.gov.uk/government/collections/customs-declaration-service

6.7.3 Exporting excise goods under duty suspension

From 1 January 2021, exports of excise goods from Great Britain to the EU will be treated the same as exports to the rest of the world. There are different regulations governing excise movements from the UK in to Northern Ireland.

For excise consignments moving under duty suspension into the EU, there are specific rules to follow. The goods must travel under duty suspension in the UK EMCS from the authorised warehouse to the port of exit. If a trader moves goods without following the relevant customs procedures at the place they are exported from, they may be liable for excise duty and penalties. Their goods may also be seized.

Traders will need to either:

- Ensure the authorised warehousekeeper declares the movement on EMCS when the goods are held in excise duty-suspension in their warehouse
- Appoint a registered consignor to move the goods or registered consignor when the goods are being released from a customs control for re-export

The authorised warehousekeeper or registered consignor must:

- Complete and submit an electronic administrative document (eAD) through EMCS before the movement takes place
- Get a unique Administrative Reference Code (ARC) for that specific movement – that EMCS generates
- complete a customs export declaration using the National Export System (NES)

On the customs declaration:

- A valid CPC code must be entered in box 37
- The commodity code declared in box 33 must match the commodity code declared on EMCS.
- Accurate quantities are declared in box 38 (net weight in kilograms) and box 41 (supplementary units)
- A valid ARC is declared in box 40 of the export declaration in a 21 character format
- Receive an 'accepted for export' notification on EMCS after the goods are cleared by customs – this should be generated if the ARC on EMCS matches the details in box 40 of the customs export declaration
- Receive a 'report of export' to ensure the export is closed on EMCS

[117] HMRC, *Excise Notice 207,* available from: https://www.gov.uk/guidance/exporting-excise-goods-to-the-eu#excise-claims

If the ARC does not match the customs export declaration within 30 days of the customs export declaration being submitted, the warehousekeeper or registered consignor will receive a 'rejected for export' notification to remind them that the movement is still open on EMCS. Traders will need to establish why this has happened and take corrective action.

6.8 Excise movements to Northern Ireland

Under the Northern Ireland Protocol there remains alignment with EU processes including EU rules for excise goods. Goods moving Northern Ireland to Northern Ireland must use the EMCS for duty suspended movements.

Northern Ireland (NI) to Great Britain (GB) movements under duty suspension can use the EMCS as before, unless specifically approved to use an alternative control system. For example, an NI to GB movement should be entered on EMCS a destination type code 1, and not destination type code 6.

When excise goods from the EU are released for consumption in Northern Ireland and duty is paid, there is no requirement to pay excise duty if the goods are moved into Great Britain.

6.9 Excise movements from Great Britain to the European Union via Northern Ireland

Excise duty paid movements must be moved in accordance with the guidance for excise movements from Great Britain to Northern Ireland. Once the goods reach Northern Ireland they should be moved into the European Union (EU) in accordance with EU duty paid procedures. Once the goods have left the UK, a drawback for excise duty paid can be made.

For excise duty suspended movements, two EMCS entries will be needed to keep the excise goods in duty suspension for the entire journey. The first will be the EMCS from the tax warehouse to the place of exit from Great Britain, using destination type code 6. On arrival to Northern Ireland, a new EMCS movement should be started as destination type 1, from the Northern Ireland consignor, to the consignor in the EU.

6.9 Excise movements from Northern Ireland to the European Union

Northern Ireland will remain in alignment with the EU for movements of excise goods. For excise duty paid goods, existing EU duty paid processes will continue to be available for movements between Northern Ireland and the EU, in accordance with the EU Directive on Excise Duty.[118] This includes the C88, Single Administrative

[118] EUR-Lex, Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC
https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02008L0118-20140101

Document (SAD), which can be completed by a customs agent, and the HM4 process.

For excise duty suspended movements you must continue to move the goods between Northern Ireland and any EU member state using EMCS. You should do so in the usual way. All EMCS destination types are available.

6.9 Excise movements from the European Union to Northern Ireland

Traders that wish to bring in duty paid excise goods from the EU member states, which have already been duty-paid in the member state of dispatch includes traders in EU countries who are selling such goods remotely to private individuals in Northern Ireland (for example using the internet or mail order), and anyone wanting to act as a tax representative on behalf of such traders.

- The fact that duty has been paid on the goods in an EU member state does not affect the requirement to secure the UK duty on commercial supplies of those goods, before they're dispatched to Northern Ireland. The excise goods scheme applies to:
- energy products, for example mineral oils (also known as hydrocarbon oils)
- alcohol and alcoholic drinks
- manufactured tobacco (cigarettes, cigars, hand-rolling tobacco, other smoking tobacco and tobacco for heating)

These goods are released for consumption in the member state of dispatch (duty-paid). There are two duty paid movement processes, with different accounting procedures:

- the Registered Commercial Importer scheme
- the Unregistered Commercial Importer scheme

6.9.1. Registered Commercial Importer

A Registered Commercial Importer, legally defined in Northern Ireland HMDP as a Northern Ireland Registered Commercial Importer, is someone who is able to import goods into Northern Ireland that are already duty-paid in an EU member state, and defer payment of the duty using their own or someone else's duty deferment account. Under this arrangement the duty is guaranteed by the duty deferment guarantee.

Apart from the difference in payment method and the ability to have the goods delivered to other business addresses, the same procedures apply to Registered Commercial Importers as to those traders using the standard duty -paid scheme.

To apply to become a Registered Commercial Importer you must complete form Application to register as a Registered Commercial Importer (HM3)[119] and return it to the address on the form. Further information on the registration and approval process can be found in section 9.[120]

To become a Registered Commercial Importer the trader must:

- have a place of business based in the United Kingdom – this however, is on condition that movements on which you are accounting for duty are of goods being delivered to a Northern Ireland address – this is where the trader must receive the goods.
- have a duty deferment account, or have written permission to use someone else's deferment account;
- be able to demonstrate a business need to become a Registered Commercial Importer, for example, the trader should be able to provide HMRC with a viable business plan for the proposed business, including details of suppliers and intended of customer base
- be able to demonstrate suitability to be a Registered Commercial Importer, for example, that the trader any any key personnel of the business do not have any unspent convictions or a recent compounded settlement.

6.9.2. Unregistered Commercial Importer

Under the Unregistered Commercial Importer scheme, to take advantage of the standard duty-paid scheme a few basic procedures must be followed:

- before undertaking any duty-paid movements of excise goods, the importer must provide the Duty-paid Movements team[121] with advance information about the consignment by completing and returning form Request to import excise goods bought duty -paid in an EU member state (HM4)[122] and secure payment of the UK duty due on the goods
- provide the supplier with evidence that the UK duty has been secured (the endorsed form HM4)
- notify any changes to the Duty-paid Movements team immediately

[119] HMRC, *HM3*, available from: https://www.gov.uk/government/publications/excise-movements-application-to-register-as-a-registered-commercial-importer-hm3
[120] HMRC, *Excise Notice 204b*, available from https://www.gov.uk/government/publications/excise-notice-204b-commercial-importers-and-tax-representatives-eu-trade-in-duty-paid-excise-goods/excise-notice-204b-commercial-importers-and-tax-representatives-eu-trade-in-duty-paid-excise-goods#sect9
[121] HMRC, *Excise Notice 204b*, available from https://www.gov.uk/government/publications/excise-notice-204b-commercial-importers-and-tax-representatives-eu-trade-in-duty-paid-excise-goods/excise-notice-204b-commercial-importers-and-tax-representatives-eu-trade-in-duty-paid-excise-goods#sect9
[122] HMRC, *HM4*, available from: https://www.gov.uk/government/publications/excise-movements-request-to-import-excise-goods-bought-duty-paid-in-another-eu-member-state-hm4

- advise the Duty-paid Movements team immediately of the arrival of the goods at the delivery address
- on completion of the movement, make sure that the duty and VAT due is paid in full, and
- if required, provide a certificate of receipt to the supplier

6.9.3 How to become a Northern Ireland tax representative

A trader must apply to become a Northern Ireland tax representative by completing an application to register as a tax representative (HM9).[123]

How to account for UK duty as a tax representative

As a tax representative, the trader should account for the duty using deferment arrangements; therefore you should make sure that you have a deferment account in place before you apply for authorisation as a tax representative. The trader is not permitted to use someone else's deferment account to account for the duty on distance sales. For more information on accounting for duty using deferment arrangements, visit HMRC Excise Notice 204b, section 10.[124]

7. Exporting from the UK

The Global Britain, Local Jobs Trade Report March 2021 identified that the UK's exporting sector is reported to support or indirectly support 39% of full time employment in the UK In 2020, where trade with the EU accounted for 47% of the UK's exports.[125]

HM Treasury has identified plans to develop a new export strategy to align support exporters with plans for growth and sectorial priorities within the March 2021 Build Back Better strategy, citing that "according to the OECD, a 10 percentage point increase in trade exposure is associated with a 4% increase in income per head." [126] The UK Presidency of the G7 Nations in 2021, and G7 Cornwall Summit in June

[123] HMRC, Excise Notice 204b, available from: https://www.gov.uk/government/publications/excise-movements-application-to-be-a-tax-representative-hm9
[124] HMRC, *HM9*, available from https://www.gov.uk/government/publications/excise-notice-204b-commercial-importers-and-tax-representatives-eu-trade-in-duty-paid-excise-goods
[125] Board of Trade, Global Britain, Local Jobs Trade Report March 2021, available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/968340/Board-of-Trade-report-Gloabl-Britain-local-jobs.pdf
[126] HM Treasury *Build Back Better,* March 2021, p. 93, available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/968403/PfG_Final_Web_Accessible_Version.pdf

2021 has been identified as an opportunity for the UK to work with international partners and cooperate on issues in the interest of domestic priorities for growth.[127]

Targeted government support for the UK's export sector includes:

- **The Internationalisation Fund**. A £38 million internationalisation fund for 2020 – 2023 has been established to support up to 7,600 SMEs grow their overseas trading opportunities. This is supported by the European Regional Development Fund, and comprises of four regional projects: The Northern Powerhouse Internationalisation Fund, Midlands Internationalisation Fund, South Internationalisation Fund, and London Internationalisation Fund.[128]
- **UK Export Finance** which offers credit facilities of up to £8billion capacity to international buyers, with £2billion of targeted finance to support the UK's clean growth procurement opportunities, in addition to guarantees and insurance.[129]
- **The Export Academy** – a programme designed for registered businesses, with a turnover of up to £500,000, based in North East, North West, Yorkshire, the Humber, South West, East Midlands, West Midlands and East of England who have a product or service that they are interested in selling internationally. It is not yet available for London and the South East.[130]
- The **New Export Development Guarantee** – a programme to support the private UK market on high value transactions. Export facilities access high value loan facilities for general working capital or capital expenditures, covering up to 80% of the risk to lenders for a maximum repayment period of up to 5 years, in consideration of transaction from a minimum value of £25 million, with most transactions anticipated to be between £100 - £500 million.[131]
- General Export Facility – partial guarantees to banks to enable traders to access up to £25million, [132]
- Freeports

Alinea identify procedures for traders that are new to exporting.

7.1 Step one: sale

Apply for an EORI number

[127] HM Treasury *Build Back Better,* March 2021, p. 94, available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/968403/PfG_Final_Web_Accessible_Version.pdf

[128] Department for International Trade, UK Export Finance, and Graham Stuart MP, *HMG launches new Export Growth Plan to help business*, [online] available from: https://www.gov.uk/government/news/hmg-launches-export-growth-plan-to-help-businesses

[129] UK Export Finance [online], available from, https://www.gov.uk/government/organisations/uk-export-finance

[130] Department for International Trade, *The Export Academy,* available from: https://www.events.great.gov.uk/ehome/index.php?eventid=200209668&

[131] UK Export Finance, *The New Export Development Guarantee*, [online] 21st July 2020, available from: https://www.gov.uk/guidance/export-development-guarantee

[132] Uk Export Finance, *General Export Facility*, [online], 7th December 2020, available from: https://www.gov.uk/guidance/general-export-facility

- Agree Incoterms with client to confirm which party is responsible for the fees and administration involved with the transport of the goods.
- Look up the UK Commodity Code to understand what duty and VAT payments are liable (this will usually be paid by the buyer, unless agreed otherwise).
- Check if there are any specific paperwork requirements for the country of destination.
- Consider how the trader will receive payment (e.g., use a letter of credit, BACS, foreign exchange channels).
- Check if there are any specific paperwork requirements for the country of destination.
- Obtain quotations from clearing agents.
- Obtain quotations from carriers, depending on Incoterms agreed.
- Ensure that the country of origin is established for each item the trader is selling
- Check the trader's goods meet preferential rules of origins (if a free trade agreement exists)
- Apply for an EORI number if this is your first export.

7.2 Step two: commercial paperwork

The trader should generate or obtain the following documents by the time the goods are ready for dispatch.

- Commercial invoice.
- Packing list.
- Certificate of origin / statement of origin declaration (may be included on invoice).
- A supplier's declaration will be required or must be produced on demand from 1st January 2022, containing a list of materials / parts, country of origin, economic value of each component.
- Bill of landing / AWB / CMR
- Other certification e.g., phytosanitary, conformance, etc.
- Insurance.
- Register with the New Computerised Transit System - NCTS[134] if goods will be in cross-border transit and require a Transit Accompanying Document (TAD), T1, T2 or Transports International Routiers (TIR) carnet, and this service is not provided by your logistics provider or buyer to suspend the payment of duty and VAT when travelling across borders prior to reaching the final destination.

7.2.1 Register with New Computerised Transit System (NCTS)

[134] HM Revenue & Customs, *Use the New Computerised Transit System*, [online], available from: https://www.gov.uk/guidance/using-the-new-computerised-transit-system-to-move-goods-across-the-eu-and-efta-countries

Registration with the NCTS will only be required if the trader's company is providing their own logistics and haulage. In most circumstances it is likely that a third party freight forwarder will raise a transit declaration on behalf of the exporting company.

- To use the Common Transit Convention service, the trader will to need to add New Computerised Transit Service (NCTS) to their account.
- Visit HMRC Online Services at https://www.gov.uk/log-in-register-hmrc-online-services
- After signing in, look for the link to add a tax.
  Select 'Other Tax'
  Select 'Imports & Exports'
  Select to add NCTS
  Key in the trader's EORI number
- An activation code will be sent from the Government Gateway. The trader will need to sign back into the account using the same link in this email to activate.

7.3 Step three: goods in transit to the port of loading

Most couriers will arrange to collect the goods from your premises. Sea freight cargo must be weighed in order to obtain a verified gross mass (VGM).

- Sea freight cargo must be weighed in order to obtain a verified gross mass (VGM).
- Air freight cargo has to be weighed in order to obtain a verified gross mass (VGM).
- Air freight cargo will need to be x-rayed by either a regulated agent or at the airport.
- Road freight hauliers are required to pre-register with GVMS[135] which will be live by 1st July 2021.

7.4 Step four: export entry

The customs agent will complete the C88 form, which is received by HMRC, who in turn will issue an ESS (entry acceptance advice, produced for all satisfactory entry or amendments inputs.) with a Movement Reference Number (MRN).

The agent will require:

- Export name and EORI number.
- Include the commodity codes, net weight, gross weight, quantities, and commercial value for each product (ideally this should be clearly stated on the invoice and provided within an excel file), as export codes are 8-digit, also include the 10-digit import code for your client and translate the

[135] HM Revenue & Customs *Register for the Goods Vehicle Movement Service*, [online] available from: https://www.gov.uk/guidance/register-for-the-goods-vehicle-movement-service

product descriptions into the language of your destination country to ease the administrative burden for your client. Multiple types of Items which fall under one commodity code can be listed as one line on the packing list, under one description.
- CPC codes (or confirmation of the procedure required e.g., permanent export).[136]

7.5 Step five: goods cleared to depot in the UK

Once the goods have been shipped, the trader will need to observe their ETA to ensure timely clearance on arrival.

- Sea and air freight can be tracked on the courier website using the AWB / BOL number.
- The carrier should email you a notice of arrival in advance of the goods arriving to confirm when they are in the port of arrival.
  If any licenses are required, you should apply for these in advance of sending the goods.

7.6 Step six: goods exported

Once the goods are exported the agent will receive an SAD Movement Departure Advice as the departure confirmation print.

- Make sure your agent provides you will a copy of the export entry (ESS with the Movement Reference Number) which you should keep for a minimum of 4 years.

Track your shipment until you are assured that it has arrived at its destination.

8. Freeports

Freeports are secure customs zones located at ports where business can be carried out inside a country's land border, but where different taxation rules apply. In the Ancient World, Greek and Roman ships piled high with trader's wines and olive oils found safe harbour in the Free Port of Delos, a small Greek Island in the waters of the Aegean. The Delosian model of a "Free Port" has rarely been out of use since.[137]

[136] HM Revenue & Customs, Customs Procedure Codes (Box 37), [online], available from: https://www.gov.uk/government/publications/uk-trade-tariff-customs-procedure-codes/customs-procedure-codes-box-37
[137] Sunak, Rt Hon. R., Truss, , Rt Hon E, Jenrick, , Rt Hon R., Shapps, , Rt Hon G. *Freeports Consultation, Boosting Trade, Jobs and Investment across the UK, p. 5 – 9* available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/878352/Freeports_Consultation_Extension.pdf

Freeports represent a potential blueprint for economic opportunities and a boost to the UK's manufacturing output. The Free Ports Opportunity report drafted by Rishi Sunak and published by the CPS identifies that free port zones are likely to incentivize domestic production, in sectors such as pharmaceuticals, vehicle manufacturing, and chemicals, and in global companies where supply chain components move back and forth. Based upon evaluation of similar projects in the United States, the Chancellor of the Exchequer has identified that that the UK may benefit from the creation of up to 86,000 jobs through their implementation. With the anticipated economic tapestry of the Global Britain policy placing neoliberal faith in markets as a primary means of allocating resources, the government's industrial innovation strategy is funding the capability to lift manufacturing to resolve the UK's 5.9% deficit in the export of goods, representing 4.3% of GDP, the highest deficit of the G7 nations. The Freeport strategy is a priority of the government's industrial investment allocation. Ports currently account for 96% of trade volume, and 75% of trade value.[138]

Employment in the UK is estimated at 75.1%, 1.4 percentage points lower than a year earlier, and unemployment was estimated at 5.1%, 1.3 percentage points higher than a year earlier[139]. This stemmed from the government furlough scheme, with Statista identifying 11.4 million workers on the job retention scheme in March 2021[140].

In 2020, the UK's manufacturing sector exported £170.6 billion in goods[141], and accounted 10% of GDP[142]. This is a significant fall from 30% in the 1970s and places the UK thirtieth of thirty-five OECD countries for manufacturing output.

As the UK is no longer part of the EU, it is no longer obliged to comply with EU State Aid provisions, which are established in order to harmonise fair competition between Member States. EU State Aid rules outline that a government can assist commercial enterprises with small subsidies worth up to €200,000 over 3 consecutive years. General Block Exemption Regulation (GBER),[143] permits investment in areas such as regional state aid, research and development, SMEs, public infrastructure spending and environmental aid. There are specific industrial investment terms addressing the allocation of public resources to port infrastructure outlined in Article 15, General Block Exemption Regulation (GBER) Commission

[138] Sunak, Rishi *The Free Ports Opportunity – How Britain could boost trade, manufacturing and the North,* [online] The Centre for Policy Studies (CPS), United Kingdom, November 2020, Available from: https://www.cps.org.uk/files/reports/original/161109144209-TheFreePortsOpportunity.pdf

[139] ONS, *Employment in the UK: April 2021*, available from: https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/bulletins/employmentintheuk/latest

[140] Clark, D. Cumulative number of jobs furloughed under the job retention scheme UK 2020-2021, Statista, 29th March 2021, https://www.statista.com/statistics/1116638/uk-number-of-people-on-furlough/

[141] ONS, *UK Balance of Payments, The Pink Book: 2020,* Office of National Statistics, United Kingdom, Available from: https://www.ons.gov.uk/economy/nationalaccounts/balanceofpayments/bulletins/unitedkingdombalanceofpaymentsthepinkbook/2020

[142] Rhodes, C. *Manufacturing: Statistics and Policy,* House of Commons Library, 10th January 2020, *p.3* http://researchbriefings.files.parliament.uk/documents/SN01942/SN01942.pdf

[143] General Block Exemption Regulation (GBER) Commission Regulation (EU) No 651/2014, available from: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02014R0651-20170710

Regulation (EU) No 651/2014, in application with Articles 107[144] and 108[145] of the Treaty of the Functioning of the European Union, establishing clear guidelines across permitted thresholds, reaching up to 60% of the eligible costs where the total eligible costs of the project are above €50 million, and up to €130million per project (or €150 million per project in a maritime port included in the work plan of a Core Network Corridor).

The other forms of State Aid such as business rates relief, relief on non-residential Stamp Duty Land Tax and employers' National Insurance Contribution Relief and corporate tax alleviation outlined in The Free Ports Opportunity – How Britain could boost trade, manufacturing and the North[146] and Freeports – Responses to the Consultation[147] would require an application to be made to the European Commission.

On 12 July 2020, the UK government published details of a £705 million funding package for border infrastructure, jobs and technology was announced to ensure that GB border systems were fully operational by the end of the transition period. The funding included up to £470 million to build the airport and inland infrastructure needed to ensure compliance with the new customs, sanitary and phytosanitary (SPS) compliance and other border procedures and controls[148]. The government has also introduced investment in a £5 billion "Outside-in" programme to deliver gigabit speeds across the UK, including hard-to-reach areas.[149]

Manufacturing: statistics and policy, a briefing paper published by the House of Commons Library (2020) identified that manufacturing trade bodies have expressed a concern addressing how Brexit would impact issues such as future investment, the operation of cross border supply chains and access to skilled labour, as a result of the UK's exit from the EU.

On 3rd March 2021, the Spring Budget included an announcement of the 8 winners of the Freeport procurement bids:

[144] Consolidated version of the Treaty on the Functioning of the European Union - PART THREE: UNION POLICIES AND INTERNAL ACTIONS - TITLE VII: COMMON RULES ON COMPETITION, TAXATION AND APPROXIMATION OF LAWS - Chapter 1: Rules on competition - Section 2: Aids granted by States - Article 107 (ex Article 87 TEC)
, available from: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A12008E107

[145] Consolidated version of the Treaty on the Functioning of the European Union - PART THREE: UNION POLICIES AND INTERNAL ACTIONS - TITLE VII: COMMON RULES ON COMPETITION, TAXATION AND APPROXIMATION OF LAWS - Chapter 1: Rules on competition - Section 2: Aids granted by States - Article 108 (ex Article 88 TEC)
, Treaty of the Functioning of the European Union, available from: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A12008E108

[146] Sunak, Rishi *The Free Ports Opportunity – How Britain could boost trade, manufacturing and the North,* [online] The Centre for Policy Studies (CPS), United Kingdom, November 2020, Available from: https://www.cps.org.uk/files/reports/original/161109144209-TheFreePortsOpportunity.pdf

[147] Department for International Trade and HM Revenue & Customs, *Freeports Consultation,* last updated 7th October 2020, *available from:* https://www.gov.uk/government/consultations/freeports-consultation

[148] Cabinet Office, Gove, Rt Hon M. £705 Million investment for UK-EU Border, 12th July 2020, available from: https://www.gov.uk/government/news/705-million-investment-for-gb-eu-border

[149] Department for Digital, Culture, Media & Sport, *Building Digital UK,* available from: https://www.gov.uk/guidance/building-digital-uk

· **East Midlands Airport** – owned by Manchester Airports Group, the largest British owned airport operator
· **Felixstowe and Harwich**, owned by Hutchison Ports Groups a subsidiary of CK Hutchison Holdings Ltd, the world's largest port group and the UK's largest inward investor
· **Humber**, owned by Associated British Port Holdings, who own and operate 21 ports in the UK, managing 25% of the UK's seaborne trade.
· **Liverpool**, owned by Peel Ports Group, Britain's second biggest ports group
· **Plymouth**, owned by Plymouth City Council, Devon County and South Hams District Council, and the Heart of the South-West LEP
· **Solent**, owned by Premier Marinas (parent company Wellcome Trust) who operate 9 marine harbours in the UK
· **Teesside**, owned and operated by PD Ports (parent company Brookfield Asset Management)
· **Thames** – owned and operated by Hutchison Port Holdings, a subsidiary of CK Hutchison Holdings Ltd, the UK's largest inward investor.

The freeports are anticipated to foster innovation in areas such as green energy, new technology, deep sea traffic, and develop localised employment in manufacturing and production within deprived areas. Investment is underpinned by a decarbonisation policy in adherence to the UK's COP2050 targets and cited as a pivotal driver.[150]

8.1 Freeport customs procedures

The freeport business model's main advantage is the removal of tariffs on non-EU imports, as EU imports already benefit from 0.00% preferential rates. Therefore, is likely that the deep-sea cargo facilities at freeports are likely to optimise trading opportunities along the busy Asia/US - Europe transatlantic route for non-EU suppliers.

It is also likely that freeports will become popular trading, storage and showroom destinations for high value art dealers and art collectors. Geneva freeport, described as "a trailblazer in the Luxury Freeport business" in Switzerland is widely known as a pivotal art destination. Switzerland's freeports are estimated to holding collector's works which are reported to be worth $100 billion, with 40% of goods stored at Geneva freeport estimated to be art and antiques.[151] [152]

Businesses that operate from freeports will benefit from zero duty to pay when the goods enter the freeport. If they sell outside of the UK, there will be no duty liability.

[150] HM Government, Freeports – Responses to the Consultation, October 2020, HM Government, [online], available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/924644/FINAL_-_200923_-_OFF_SEN_-_Freeports_Con_Res_-_FINAL.pdf
[151] Bonnett, Andrew (2014) *Off the Map: Lost Spaces, Invisible Cities, Forgotten Islands, Feral Places and what They Tell Us About the World,* Islington, London: Arum Press Ltd, pp. 161- 165
[152] Steiner, Katie L. (2017) D*ealing with Laundering in the Swiss Art Market: New Legislation and its Threat to Honest Traders. Case Western Reserve Journal of International Law*, pp. 6 / 355, available from: https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=2515&context=jil

There will only be duty to pay on the goods, or final products which have undergone processing, which enter the UK.

IMPORT DECLARATIONS & FREEPORTS

Non-Controlled goods	Controlled Goods
Businesses that bring non-controlled goods into Freeports are permitted to make a customs declaration into their commercial records.	Traders that bring controlled goods into a freeport are required to submit a simplified declaration.

The benefits for businesses and manufacturers are as follows[153]:

- **Duty deferral** available when goods are on the site.

  Goods entering the country will only be charged tax when the goods leave the free port zone, this enables companies to warehouse and process goods, improving inventory, and making just-in-time inventory much easier.

- **Duty inversion** available when the tariff on the finished goods is lower than on the components.

  The duty on raw materials is traditionally higher than on the finished products, a measure to incentivize importing finished goods rather than importing high tariff components and using domestic manufacturing to create the actual product. A free zone enables companies to import the raw materials and pay a lower duty rate when the goods enter the economy.

- **Duty exemption** where goods are imported into a freeport for processing and subsequently re-exported;

When products enter free zones without incurring import tariffs and duties, this enables products to be processed, cumulated, or engineered into finished goods, for eventual re-export into a third country.

- **The suspension of import VAT**; and
- **Simplified import procedures**[154]

[153] International Trade Committee *Fourth Report - UK Freeports,* [online], International Trade Committee, 20th April 2021, pp.21 available from: https://committees.parliament.uk/work/231/uk-freeports/publications/
[154] HM Government, Freeports Bidding Prospectus, November 2020, pp 20, available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/935493/Freeports_Bidding_Prospectus_web_final.pdf

Tax incentives in the free trade zones will have reduced rates of corporation tax for companies located within the zone, reduced employers' NIC contributions, business rates relief, and relief on non-residential SDLT. Import VAT will be suspended in tandem with Postponed VAT Accounting (PVA), and excise duties will be suspended when goods move into a free port. Whilst the EU also offers duty suspension, complex Inward Processing rules requires an application for IP activities, and also a customs guarantee to the value of the total suspended tariff payments to be provided by a bank, making the procedure cost-prohibitive for small business.

Additional benefits include:

· **Direct delivery** – parts can be imported and immediately used on a production line with reporting to customs done at a later date, enabling supply chain flexibility.
· **Duty is never paid on scrap material**, which includes shrinkage, seepage and evaporation.
· **Show room space** - free zones can act as 'show room space' for capital goods, while the goods remain in the free zone, no duty is paid, therefore manufacturers can exhibit goods to potential buyers to sample goods before they are purchased. Many overseas firms claim that without a show room they would never have developed a market share.
· **Subsidised land** The land for free port activities such as factories will be provided to businesses at minimal costs, enabling SMEs to benefit from the same tax breaks as corporations.

Harwich Ports Europe operates two terminals in Rotterdam, one in Barcelona as well as ports in Sweden, Germany, Poland and Belgium, totalling 15 European assets. As a global spread, CK Hutchison owns 53 ports, in 27 countries, and handle 11% of global trade.[155] Freeport East is backed by Hutchison Port Holdings - the UK's largest inward investor and winner of the Freeport procurement bid for Felixstowe and Harwich, and Thames. It is anticipated that Freeport East port will create 13000 jobs and attract £500 million of investment by 2026. This will design a springboard into mainland Europe and trigger job creation through trade and green energy, with decarbonisation a pivotal focus in adherence to the COP2050 objectives through The Green Maritime Plan. This is a roadmap developed by Hutchison Ports Group Environmental Committee (GEC) to reduce carbon emissions. [156]

"Infr*astructure investment is undoubtedly a key enabler of growth – and is rightly prioritised by the UK Government to ensure the country bounces back from COVID and post-Brexit," We have exciting plans, […] to drive innovation in digital technology and decarbonisation for our port operations, which could act as a pathfinder for other ports and other industries.*"

[155] CK Hutchison Holdings Ltd, available from: https://www.ckh.com.hk/en/about/
[156] Institute of Export and International Trade [Webinar] Freeport East – A Global Freeport for a Global Britain, 12th March 2021 , available from: https://www.export.org.uk/

Clemence Cheng, Managing Director, Hutchison Ports Europe[157]

The innovative 5G Create project at Freeport East received a £1.6m government contribution to an overall £3.4m funding in January 2021, and has been developed with Blue Mesh Solutions, Cambridge University, and Three UK, alongside subcontractors Ericson and Siemens. The project will test the potential of 5G across 2 new use cases enabling remote controlled crane via the transmission of CCTV, and deploying Internet of Things sensors and Artificial Intelligence to optimise the predictive maintenance cycle of Felixstowe's 31 quayside and 82-yard cranes. This will be conducted using local nuclear and offshore wind power to advance developments in hydrogen power for maritime, road freight and rail uses, all of which intersect at ports.[158]

The port of Felixstowe is the main port for manufacturers in the Midlands and North to access overseas markets, particularly the overseas market of Asia. Hutchison Group Holdings Trust have establish a significant hold of the Asian market, with HGH holding investment in in Hong Kong, Shenzen and Huizou[159], in all but two of China's 13 busiest dedicated container ports, accounting for 58% of container through-output in 1998.[160] On 1st February 2021, the UK applied to join the Comprehensive and Progressive Agreement for Transpacific Partnership (CPTPP) – a free trade agreement between 11 countries around the Pacific Rim. The CPTPP members are Australia, Brunei Darussalem, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Singapore and Vietnam, accounting for £58million (8.4% of UK exports), and £53billion (7.3% of UK imports)[161]. Of the CPTPP countries, Australia, Canada, Japan and Singapore are the UK's largest trading partners, accounting for 80% of trade. The UK has free trade agreements with 8 of the CPTPP members and is currently in negotiations with Australia and New Zealand. It is anticipated that Freeport East manufacturers will develop exporting opportunities to the CPTPP territories, benefiting from Hutchison Port Holdings channels, in addition to Europe, the main recipient of sister port Harwich International's Ro-Ro goods.

9. Geographical Indications

In 1919, France was the first country to establish a national system to protect and secure the quality of traditional products of regional origin, especially wine. Geographical indication refers to an intellectual property right that is recognised by

[157] ICAEW, Investment in ports a key enabler of growth, 8th February 2021, available from: https://www.icaew.com/insights/viewpoints-on-the-news/2021/feb-2021/investment-in-ports-a-key-enabler-of-growth
[158] Newsians, *Port of Felixstowe Lands Funding for Government 5G Trial,* 14th January 2021, available from: https://newsians.com/port-of-felixstowe-lands-funding-for-uk-government-5g-trial/
[159] Hutchison Ports *Annual Report 2020: Sailing with agility and resilience,* [online], Hutchison Ports Trust, available from: https://www.hphtrust.com/misc/ar2020/HPHTAR2020(low-res)_bookmarkversion.pdf
[160] Airres, C. The Regionalisation of Hutchison Port Holdings in Mainland China, Journal of Transport Geography, 12th January 2001, pp.270 available from: https://www.researchgate.net/publication/223534597_The_Regionalization_of_Hutchison_Port_Holdings_in_Mainland_China/citation/download
[161] Ward, D., Webb, M. *The Comprehensive and Progressive Agreement for Trans-pacific Partnership (CPTPP), available from: https://commonslibrary.parliament.uk/research-briefings/cbp-9121/*

the legal bodies of various countries and international organisations. Products registered as geographical indications often consist of place names, or a designation for a generic product combined with the name of a country, region or specific place, for example, 'Cheddar cheese', 'Roquefort Cheese', 'Jersey Royal potatoes', 'Cornish clotted cream', 'Champagne or Scotch whisky'. Although there are high-tech products such as Swiss watches, the majority of certified products belong to the food or agricultural sector. In the UK, permission to bear geographical indication (GI) labelling is allocated by the Department for Food, Environment and Rural Affairs (DEFRA). Due to their premium nature and verified production standards, goods which bear geographical indications are widely recognised as popular attributes specific to a nation, and boost tourism and regional reputation. As the incomes of different economic operators are dependent on the reputation of products bearing the same title and labelling, partnership collaboration, monitoring of compliance and collective marketing are factors for success.

Protected Food Names (PFNs) include food, beer and agricultural products. Any producer can use a geographical indication, providing that they manufacture within the specified region according to the techniques, are verified by a relevant trading standards authority or UKAS accredited body, or other approved body for non-EU applicants, and are published on the GI Register. [162]

The TRIPS agreement obliges member countries to establish the necessary legal means to prevent unfair competition and passing off[163]. The specific framework of legal mechanisms to protect GIs vary on a global basis. Australia and the United States govern GI's by the rules applicable to trademark registration. The European Union has established a specific sui generis system for this type of intellectual property which offers greater protection than that given to trademarks.

The TCA indicates a review mechanism for Geographical Indications, as no agreement was concluded, enabling discussions to continue. From 1st January 2021, GIs with UK origin will continue to be protected in the EU, with equivalent rights of protection offered to EU GIs by the new UK GI scheme.

New and pending EU GI's will not be automatically recognised by the UK GI scheme, therefore EU company's registering a new GI will have to apply via the UK's GI scheme implemented by Defra[164].

The new UK GI scheme protects GI names for products sold in Great Britain. It does not apply to Northern Ireland, who will continue to use the EU GI scheme to protect goods sold in the country.

There are 3 areas of Geographical Indication:

[162] United Nations (2010) *A Guide to Creating an Origin Consortium,* United Nations Industrial Development Organization (UNIDO), available from: https://www.unido.org/sites/default/files/2011-07/ENG_Publication%20ORIGIN_0.pdf
[163] WTO intellectual property (TRIPS), 1994, available from:: https://www.wto.org/english/docs_e/legal_e/27-trips_01_e.htm
[164] Department for Environment, Food and Rural Affairs, Protected Geographical Food and Drink Names: GI Register, [online], 4th January 2021, available from: https://www.gov.uk/guidance/protected-geographical-food-and-drink-names-uk-gi-schemes

- protected designation of origin (PDO);
- protected geographical indication (PGI);
- traditional speciality guaranteed (TSG)

Both the EU and UK regimes allow for third country applications, meaning that producers whose products do not originate in the EU or UK can register in each party. The UK has also established an agreement with the USA to protect certain wines and spirit names originating in the USA and in the UK. Whilst they are not protected as GIs, the UK will protect use of the relevant product name for USA originating goods.

9.1 Product names on the UK's GI register

All product names registered under the UK's GI schemes, or as a traditional term for wine, are held on the following registers.

1. Protected geographical food and drink names : Protected Designation of Origin and Geographical Indications
2. Protected geographical food and drink names: Traditional Speciality Guaranteed
3. Protected geographical food and drinks names: Spirits Register
4. Protected geographical food and drinks names: Wines Register
5. Protected geographical food and drinks names: Aromatised Wines
6. Protected geographical food and drinks names: Traditional terms for Wine Register

Producers in Great Britain

There are four UK GI schemes. These include:

- food, agricultural products, beer, cider and perry;
- wine;
- aromatised wine
- spirit drinks

It is also possible to protect a traditional term for a wine product.

9.2 Producers in Northern Ireland

Northern Ireland producers can apply to protect a product name in Northern Ireland and the EU under the EU GI scheme. They may also wish to apply to the UK GI scheme for protection in Great Britain.

The trader must notify Defra if they are applying to both schemes.

9.3 Use a product name on the UK GI register

To use a product name that is on the UK GI scheme, a producer must:

· follow the published product specification
· be verified to make and sell the registered product;
· use the registered GI product name and relevant logo correctly.

It is worth noting that if a producer does not use the UK GI scheme rules or logo, they could be in breach of the regulations.

9.4 UK GI schemes and product labelling

There are three UK GI logos that represent the designations of GI product:

· protected designation of origin (PDO)
· protected geographical indication (PGI)
· traditional speciality guaranteed (TSG)

Producers must follow the rules for adding a GI logo to UK registered products or packaging before they can sell it. For products that were registered prior to 1st January 2021, producers will have until 1st January 2024 to add the correct logo within their product labelling.

9.5 PFN products from Great Britain (GB) registered before 1st January 2021

Rules for using the relevant logos on a UK PFN depend on where it is sold, according to the following criteria:
· the relevant UK logo must be applied to a product sold in GB by 1st January 2024;
· choose whether to add the relevant UK logo to a product sold in Northern Ireland;
· choose to add the UK logo to relevant products sold in the rest of the world, unless it conflicts with local regulations;
· choose to add the EU logo to a UK PFN registered under the EU scheme to a product sold in the UK and the rest of the world.

9.5.1 PFN products registered after 1st January 2021

For a GB PFN, registered under the UK GI scheme it is mandatory to add the relevant UK GI logo as soon as it goes on sale in GB as a GI product.

You can choose to add the relevant UK logo to a product if it is sold in:

- NI;

- The rest of the world, unless it conflicts with local regulations.

It is only possible to use the EU GI logo if you have registered under the EU GI scheme.

9.5.2 PFN products from NI registered after 1st January 2021

Rules for using the EU GI logo on NI PFNs registered under the EU GI scheme depend on where it is sold.

A trader:

- must add the EU logo to a product sold in Northern Ireland or the EU
- can choose to add the EU logo to a product sold in GB
- can choose to add the EU logo to a product sold in the rest of the world, unless it conflicts with local regulations

The trader may choose to use the relevant UK GI logo on a PFN product from NI sold anywhere in the world as long as local regulations allow it.

10. Immigration

The introduction of the Trade and Cooperation Agreement (TCA) and Britain's exit from the EU has impacted mutual recognition of qualifications, which is likely to impact industries on a sector specific basis.

The TCA has included provisions on temporary mobility rights that are significantly restricted in comparison to free movement, for business visitors for establishment purposes, contractual service suppliers, independent professionals, intra-corporate transferees and short-term business visitors subject to meeting relevant conditions and qualifications[165]. The business visitor category is extended to include additional permitted activities, specified in Annex Servin-3[166], and short-term work visas are extended for experienced workers and intra-company transfers. The provisions related to temporary business activities can be categorised into the five following areas:

- Contractual Service Providers (CSPs);

[165] Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, Part two: Trade, Transport and Fisheries, Title II, Services and Investment, Chapter 3: Services and Investment, Article SERVIN.4.1: Scope and definitions, pp.86-89, available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/948119/EU-UK_Trade_and_Cooperation_Agreement_24.12.2020.pdf

[166] Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, Part two: Trade, Transport and Fisheries, Title II, Services and Investment, Chapter 3: Services and Investment, Annex Servin-3 Business visitors for establishment purposes, intra corporate transferees and short-term business visitors, available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/948119/EU-UK_Trade_and_Cooperation_Agreement_24.12.2020.pdf

- Independent Professionals (IPs);
- Intra-corporate transferees;
- Business visa for establishment purposes; and
- Short term business visitors

Short term business visitors will not require any prior work or travel authorisation. CSPs and IPs are required to apply under the Temporary Worker Visa (T5) route, which has been expanded to accommodate the TCA. Permanent moves are required to follow the domestic law of the member state. Concerns have been raised by the arts and creative sectors, as touring musicians and theatre companies do not fall under the exemptions for short-term business visitors.

The Recognition of professional qualification (RPQ) is a system which enables professionals qualified in one country to practise in another with minimal administrative requirements. This is particularly relevant for architects, medics, lawyers or statutory auditors who seek to establish services or export to another country. Under the current terms of the TCA, RPQ is limited, although the agreement has stated that both sides will seek a reciprocal agreement in the future. The agreement established that the competent authorities of the UK may recognise the equivalent qualifications of certain professions in the UK, subject to reciprocity.[167]. This will be determined by the authorities and licensing bodies of each member nation. The UK government retains a RPQ framework with Switzerland and the EEA countries.

Since the 1st January 2021, EU nationals who have not previously resided in the UK are required to apply for a visa to work and live in the UK. There are a number of potential visa routes available to apply for:

10.1 The Skilled Worker visa

The skilled worker visa is a reformation of the tier 2 general visa route and will last for up five years and may be extended. After five years the worker may also apply for indefinite leave to remain in the UK. Points are awarded for skills, profession and salary, with a minimum of 70 points required.

To access a skilled worker visa, the work offer must meet the following requirements

- The offer must be extended by a Home Office approved employer;[168]
- If the employer is not on the list of approved employers, they must apply for a sponsor licence[169] if they are eligible. Small businesses and charities will pay a fee

[167] Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, Part two: Trade, Transport and Fisheries, Title II, Services and Investment, Chapter 3: Cross-border trade in services, and2020 Reservation No. 2 – Professional services (all professions except health-related, available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/948119/EU-UK_Trade_and_Cooperation_Agreement_24.12.2020.pdf

[168] UK Visas and Immigration, *Register of Licensed Sponsors,* [online] available from: https://www.gov.uk/government/publications/register-of-licensed-sponsors-workers

of £536, whereas larger organisations will be charged £1476. The application usually takes 8 weeks to process.

- The offer must be accompanied by a 'certificate of sponsorship' from the employer with information about the role that is offered in the UK. This contains an electronic reference which is used to support the application and lasts for a 3-month period.
- The role must be on the list of eligible occupations.
- The role must pay a minimum salary of £25, 200 and match the 'going rate' for the role, or it will not qualify.
- There are different minimum salary requirements for education and healthcare, where the minimum threshold is based on national pay scales.
- There are certain other circumstances in which a lower salary offer with a minimum of £20, 480 may be permitted

For further information, visit: Skilled Worker Visa[170]

10.2 The Global Talent visa

The global talent visa is designed to attract the best and the brightest to the UK, and is open to prize, scholarship and award winners. Previously known as the Tier 1 'exceptional talent' visa, the Global Talent visa was introduced in February 2020 to encourage talented and promising individuals in specific sectors to work in the UK.

To be considered for entry, the individual must gain endorsement from one of six institutions:

For science, technology, engineering, humanities, social sciences and other academic and research roles, the Home Office will refer the application to:

- The British Academy
- The Royal Academy of Engineering
- The Royal Society
- UK Research and Innovation

For non-academic fields of arts, culture and digital technology, the Home Office will refer the application to:

- Arts Council England
- Technation

For further guidance, please visit: Global Talent[171]

[169] UK Visas and Immigration, UK Visa sponsorship for employers, [online] available from: https://www.gov.uk/uk-visa-sponsorship-employers
[170] UK Visas and Immigration, *Skilled worker visa*, available from: https://www.gov.uk/skilled-worker-visa/your-job
[171] UK Visas and Immigration, *Immigration Rules Appendix Global Talent*, available from: https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-global-talent

10.3 Graduate Visa

The two year (or three year for doctorate graduates) post-study work visa is an open visa for international work students, available from 1st July 2021. The new graduate route is open to any candidates who have successfully completed a course of study in any subject at undergraduate level at an approved UK Higher Education institution. Home secretary Priti Patel stated:

"The new Graduate Route will mean talented international students, whether in science and maths or technology and engineering, can study in the UK and then gain valuable work experience as they go on to build successful careers."[172]

The status of the university will be shown on the government register of licensed sponsors. The application will not require a job offer from an approved Home Office employer and there are no minimum salary thresholds.

The new immigration route is a measure designed to assist high growth start-up firms with recruitment.

10.4 Intra-company transfer

An intra-company visa enables an employer to transfer between geographic locations within the same company. There are two types of intra-company visa:

10.4.1. Intra-company transfer visa

Apply for an intra-company transfer visa if the individual is transferred by an employer to a role in the UK. The employee must have worked for the employer for a minimum of 12 months, unless they have a salary of £73,900 or above.

10.4.2. Intra-company graduate trainee visa

This visa is for transfers to the UK as part of the graduate training programme for a managerial or specialist role. The employee must have worked for the employer for more than 3 months. The intra-company graduate trainee visa enables an employee to stay in the UK for:

- the time given on your certificate of sponsorship plus 14 days
- 5 years
- the length of time that takes you to the maximum total stay allowed

The maximum total stay allowed for an Intra-company Transfer visa is:

[172] Reiss Edwards, *Your guide to graduate visa for international students*, available from: https://www.lexology.com/library/detail.aspx?g=37c54427-5059-4957-9292-6ca0c61af2bd

- 5 years in any 6-year period if the worker is paid less than £73,900 a year
- 9 years in any 10-year period if the worker is paid £73,900 a year or more

To qualify for an intra-company visa, the following conditions must be met:

- be an existing employee of an organisation that has been approved by the Home Office as a sponsor
- have a 'certificate of sponsorship' from the employer with information about the role you've been offered in the UK
- do a job that's on the list of eligible occupations
- be paid at least £41,500 for an Intra-company Transfer visa or at least £23,000 for an Intra-company Graduate Trainee visa

For further guidance, visit: Intra-company Visa[173]

10.5 The Standard Visitor

It is possible to stay in the UK as a standard visitor. The reasons for this might include the following:

- for tourism, for example on a holiday or to see your family and friends
- for certain business activities, for example attending a meeting
- to do a short course of study
- to take part in research or an exchange programme as an academic
- for medical reasons, for example to receive private medical treatment

HMRC advise to check whether the visitor meets the criteria required to stay without a visa, or whether you must pay for a standard visitor visa of up to 6 months (£95) or extend this for 11 months (£195) if you are staying for private medical treatment. You cannot:

- do paid or unpaid work for a UK company or as a self-employed person
- live in the UK for long periods of time through frequent visits
- claim public funds (benefits)[174]
- do a course of study that lasts longer than 6 months
- marry or register a civil partnership or give notice of marriage or civil partnership. You'll need a Marriage Visitor visa instead[175]

EU nationals who were resident in the UK prior to 31st December 2021 may make an application to continue to live and work in the UK.

[173] UK Visa and Immigration *Intra-Company Visa, available from:* https://www.gov.uk/intracompany-transfer-worker-visa
[174] UK Visas and Immigration, *UK Guide: public funds*, available from: https://www.gov.uk/government/publications/public-funds--2
[175] UK Visas and Immigration, *Marriage visa*, available from: https://www.gov.uk/marriage-visa

10.6 EU National Settled Status in the UK

All EU nationals (and their dependent family members) must register via the Home Office's Settlement Scheme:

- Pre-settled status will be granted (if a migrant has spent less than 5 years in the UK)
- Settled status will be granted (for migrants who have resident in the UK for at least 5 continuous years), unless UK Citizenship has already been awarded.

EU nationals must still register for settlement status if you have been granted permanent residency. Applications can be made via Android devices or via post/online. Proof of ID (passport/ID card) and residence in UK will be required, and certain cases additional evidence may be requested.

The deadline for applying under the Settlement Scheme is currently 30 June 2021, it is advisable to apply as soon as possible to circumvent any potential ongoing administration. Further information can be found at: Apply for settled status.[176]

Other visa types include:

- The Hong Kong British National Overseas visa
- Tier 2 Minister of Religion
- Tier 2 Sportsperson
- Representative of an Overseas Business
- Innovator

11. Importing in the UK

Since 1st January 2021, all imports into the UK require customs clearance through administration of a C88 (SAD) form. As this requires familiarity with the technical information detailed in the UK Trade Tariff Volume 3[177], HMRC advise to delegate to a customs intermediary.

The allocation of the responsibility for arranging customs clearance is indicated by the Incoterms, in most circumstances other than Delivered Duty Paid (DDP), a term which is often used for business to consumer sales, the liability for import clearance, duty and Import VAT will be the responsibility of the importer. Import duty and VAT are allocated through provision of an EORI number.

The steps for importing into the UK are as follows:

[176] UK Visas and Immigration, *Apply for settled status*, available from: https://www.gov.uk/settled-status-eu-citizens-families/applying-for-settled-status
[177] HM Revenue & Customs, *UK Trade Tariff: Volume 3 for CHIEF*, [online] available from: https://www.gov.uk/government/collections/uk-trade-tariff-volume-3-for-chief

11.1 Step one: purchase from supplier

- Decide which mode of transport is most appropriate.
- Consider how payment will be arranged (e.g., letter of credit, BACS, foreign exchange channels).
- Confirm Incoterms with supplier
- Check the UK Trade Tariff Volume 2[178] to apply the Commodity Codes and understand what import rates will apply (the buyer of the goods is liable unless agreed otherwise).
- Check if goods require import licenses or additional controls.
- Obtain quotations from carriers (depending on incoterms agreed).
- Apply for EORI number if this is the first import.
- Make sure insurance is in place if using
- Set up a Duty Deferment account, if using, that will enable the trader to make a monthly payment via direct debit for Customs Duty and Import VAT
- If purchasing live animals, agri-food or plant goods, check with the relevant agencies or your customs broker when or if licensing and notifications are required.

11.2 Step two: commercial paperwork

Your supplier should provide you with the following documents in advance of the goods arriving in the UK. Often the original documents are held back until the supplier has received payment. You should also decide which mode of transport is most appropriate.

- Commercial invoice.
- Packing list.
- Certificate of origin / origin declaration (may be included on invoice).
- Preference certification / preference declaration (may be included on invoice).
- Bill of landing / AWB / CMR
- Other certification e.g., phytosanitary, conformance, etc.
- Insurance if the supplier is arranging this.

11.3 Step three: goods are on their way

- Sea and air freight can be tracked on the courier website using the AWB / BOL number.
- The nominated clearing agent can monitor arrival once they have the documents.
- The carrier should email the trader a notice of arrival in advance of the goods arriving to confirm when they are in the port of arrival.

[178] HM Revenue & Customs, *Trade Tariff: look up commodity codes, duty and VAT rates*, [online] available from: https://www.gov.uk/trade-tariff

- If any licenses are required, the trader should apply for these in advance of the goods arriving.

11.4 Step four: import entry

The customs agent will complete the C88 form, which is received by HMRC, who in turn may issue an H2 pre-lodgement, with details of any duty and VAT liability prior to the goods arrival at the border, will issue an E2 (entry acceptance advice, produced for all satisfactory entry or amendments inputs.) The agent will require:

- Import name and EORI number.
- Commodity codes for each product (ideally this should be clearly stated on the invoice).
- CPC codes (or confirmation of the procedure required e.g., permanent import).
- Method of payment for duty and VAT (e.g., deferment account or FAS - the agent's account or Postponed Accounting (PVA) for VAT registered businesses).
- Any relevant import license and certification details (e.g., phytosanitary, CHED).

11.5 Step five: goods arrival in the UK

- From 1st October 2021, imports of live animals, products of animal origin, high risk food and feed not of animal origin must be notified through the Import of Products, Animal, Food and Feed (IPAFFS) System 24 hours prior to arrival. This is accessed using the government gateway code of the importer.
- From 1st January 2022, a CNS security notification will be required.
- If importing agri-food, from 1st January 2022, a Border Control Post / Port Health notification must be made via the local authorities, prior to the goods arrival at the port. It is advisable to check with the port of arrival and register as a trader on their platform prior to submitting the declaration. You may already know the port or airport you intend to use. If you're unsure you can get a list and full contact details from the Association of Port Health Authorities (APHA). You can contact the Association of Port Health Authorities.[179]
- On arrival, the customs entry will be automatically processed.
- Customs will determine whether the goods will be cleared instantly, or if they require a document check, x-ray or physical examination.
- Other government departments may also place holds or examinations on the goods, e.g., Port Health, Forestry, or Trading Standards.
- Customs duty and taxes will be collected at this stage by customs if using the Flexible Accounting Scheme and the DTI account of your customs agent.

[179] The Association of Port Health Authorities, *Port Directory*, [online] available from: http://www.porthealthassociation.co.uk/contact/

11.6 Step six: delivery

Check the condition and number of packages before the driver's delivery note is signed. If damaged or missing, clearly state this on the receipt.

· Make sure that the agent provides with a copy of the import entry (C88 and E2) which should be kept for a minimum of six years (this can be stored digitally).

· Pay any duty liability via duty deferment;

The trader should give the E2 notification to their accountant to retain details of VAT and duty liability. If the customs agent is using CHIEF software, HMRC will also send a C79 certificate.[180]

11.7 Importer of Record

In some circumstances, such as when an EU-based company is delivering to an Amazon based warehouse or acting on Delivered Duty Paid (DDP) Incoterms to send goods to a consumer, a company may wish to instruct their customs agent to act as 'Importer of Record', as an Indirect Representative. In this circumstance, the customs agent will provide use of their EORI number and shared payment liability for any duty and VAT liability, usually for an additional fee, and payment in advance. This means that the consumer will not have unexpected customs arrangements and payments to make after purchase and delivery.

11.8 Duty

Duty is a tax which is payable to HMRC when goods enter from abroad. It is established to protect domestic industries from competition and international subsidies, and collect revenue. Tariffs give price advantage to locally produced goods over similar goods that are imported, and accordingly – free trade agreements enable participating countries greater market access.

The UK has established a free trade agreement with the EU, resulting in preferential tariffs. For goods that are originating in the EU, and qualified by a Statement of Origin, there will be no duty to pay on EU imports, however, products originating in third countries will be liable for import duty when they enter from the EU. Excise duty will also be chargeable on goods entering the UK from the EU, unless they are moving in duty suspension. If they are moving in duty suspension via EU Excise Movement Control System (EMCS), a full import declaration must be made, and goods must be entered into the UK EMCS by an authorised consignor in the UK, prior to entering an authorised warehouse.

Duty can be paid upon import via a:

[180] HMRC, Get your import VAT certificate, available from: https://www.gov.uk/guidance/get-your-import-vat-certificates

- Duty Deferment account[181]
- The DTI FAS account of the importer's customs agent[182]

12. Incoterms

Alinea provides an accessible guide to the Incoterms® 2020 published by the International Chamber of Commerce

	EXW		FCA		FAS		FOB		CFR		CIF		CPT		CIP		DAP		DPU		DDP	
	Ex Works		Free Carrier		Free Alongside Ship		Free on Board		Cost & Freight		Cost, Insurance & Freight		Carriage Paid To		Carriage & Insurance Paid to		Delivered at Place		Delivered at Place Unloaded		Delivered Duty Paid	
Seller Location	Cost	Risk	Cost	Risk	Cost	Risk	Cost	Risk	Cost	Risk	Cost	Risk	Cost	Risk	Cost	Risk	Cost	Risk	Cost	Risk	Cost	Risk
Packing	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Export Customs Clearance	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Pre-Carriage Not Unloaded	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Delivery at Named Place Port/Terminal	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Loading Alongside Vessel	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Onboard Ship/ Aircraft	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Buyer	Seller	Buyer	Seller	Seller	Seller	Seller	Seller	Seller
Main Carriage	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Buyer	Seller	Buyer	Seller	Seller	Seller	Seller	Seller	Seller
Discharge at Port of Destination	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Buyer	Seller	Buyer	Seller	Seller	Seller	Seller	Seller	Seller
Delivery at Named Place Port/Terminal	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Buyer	Seller	Buyer	Seller	Seller	Seller	Seller	Seller	Seller
Onward Carriage Not Unloaded	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller
Import Customs Clearance & Duties	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller
Buyer Location Unloaded	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Buyer	Buyer

FAS, FOB, CFR and CIF are solely for ships and waterways. The seller is responsible for loading charges if the terms state FCA at the seller's facility. If applicable, the seller must provide the buyer with assistance in arranging an export license, or other official authorisation necessary for the clearance of the goods. Origin terminal charge until ships hook. Goods and service (GST) and Value Added Tax (VAT) are excluded.
Incoterms ® is a registered trademark of the International Chamber of Commerce.
This is a guide provided for reference only, for full insight please refer to the ICC website.

ALINEA

Incoterms® are trade terms for the cross-border delivery of goods, established by the International Chamber of Commerce.[183] Incoterms are standardised as best practice within international trading contracts. Comprehensive knowledge of Incoterms will enable you to understand which customs procedures you are responsible for and what you can expect your buyer or seller to complete, within an allocation of risk, obligations and costs as your goods travel on an international basis. The use of Incoterms establishes a consensus rule applied on a global basis, and answers to the following questions:

- Who pays for the main transport?
- Where does the delivery take place?
- Where and when the risk is transferred from the Seller to the Buyer?

[181] HM Revenue and Customs, Check which type of account to apply for to defer duty payments when you import goods or release goods from an excise warehouse, [online] available from: https://www.gov.uk/guidance/check-which-type-of-account-to-apply-for-to-defer-duty-payments-when-you-import-goods
[182] HM Revenue and Customs, Notice 100: customs Flexible accounting system, [online] available from: https://www.gov.uk/government/publications/notice-100-customs-flexible-accounting-system
[183] International Chamber of Commerce, Incoterms Rules ®, [online] available from: https://iccwbo.org/

- Who bears all the fees arising from transport - the issue of documents, unloading of goods at destination, customs clearance at export and import, and the insurance of goods etc?

If parties would like Incoterms 2020 rules to apply, it is advisable to identify this within the sales contract and on their export, agreements as follows:
"[the chosen incoterms rule], [named port, place, or point] Incoterms 2020".
For example:

- CIF Shanghai Incoterms® 2020, or
- DAP No 123, ABC Street, Importland Incoterms® 2020.

When a trader displays the Incoterms rule you are using, it should be followed by a location and which version of Incoterms—Incoterms 2020, Incoterms 2010, or Incoterms from some other year—that you are using.

The location depends on which Incoterm are used. This will identify whether Incoterm rules from the seller's premises or the buyer's, or the Incoterm rule with the ocean port of shipment and or the ocean port of destination will be used.

In addition to the value of the sale, the most commonly used being transaction method 1 - identified by the World Trade Organisation as "the price actually paid or payable for the goods,"[184] the importing customs authority - HMRC, or EU member states will include the following with the transaction value to calculate the import VAT payable:

- Costs of freight to the UK or EU member nation's border
- Cost of insurance to the UK or EU member nation's border

1. **Ex Works (EXW)** The seller makes the goods packaged and available at the seller's location, so the buyer can take over all the transportation costs and also bears the risks of bringing the goods to their final destination and paying for export customs clearance, and import customs clearance.

2. **Free Carrier (FCA)** The seller is responsible for delivery of goods to a named carrier and export clearance costs. Once the goods reach the name destination, the buyer is responsible for cost and the risk then passes to the buyer.

3. **Carriage Paid To (CPT)** The buyer contracts for collection from the agreed point. The exporter needs the ability to obtain Proof of Export from the seller. The buyer has the risk and responsibility of shipping the goods. The exporter has the risk of loading the goods at the seller's premises. The exporter is also responsible for the export license, if appropriate.

[184] World Trade Organisation, *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994,* available from: https://www.wto.org/english/docs_e/legal_e/20-val_01_e.htm

4. **Carrier and Insurance Paid to (CIP)** The seller pays for the carriage and insurance to the named overseas destination point, but risk passes when the goods are handed over to the first carrier. The default level of insurance cover under CIP is Institute Cargo Clauses (A). This is a higher level of cover for CIP than Incoterms 2010, which specified Institute Cargo Clauses (C).

5. **Delivered at Place (DAP)** The seller clears the goods for export and bears all the risks and costs associated with delivering the costs to the named destination not unloaded. The buyer is responsible for the customs clearance import declaration, and the costs and risks associated with unloading the goods in the named country of destination.

6. **Delivered at Place Unloaded (DPU)** The exporter arranges carriage and delivery of the goods, ready for unloading at the named place. The seller is required to unload the goods at this destination. After the goods' arrival, the customs clearance in the importing country needs to be completed by the buyer at his own cost and risk, including payment of all customs duties and taxes. This is a retitling of the Incoterms 2010 term Delivered at Terminal (DAT), making it clear that delivery can happen anywhere, not just at a terminal.

7. **Delivered Duty Paid (DDP)** The seller is responsible for export clearance, the costs of freight and delivering the goods to the named place in the country of the buyer, and customs clearance, Import VAT and all duty in the country of destination. In short, the exporter is responsible for payment of all the costs associated into bringing the goods to the destination. This term is most frequently used in business to consumer transactions.

Incoterms for Sea and Inland Waterway Transport

8. **Free Alongside Ship (FAS)** The seller must place the goods alongside the ship at the named UK port. The risk of loss or damage to the goods passes when the goods are alongside the ship, and the buyer bears all the costs from that moment on.

9. **Free on Board (FOB)** The seller is responsible for all costs involved in the process up until the goods are loaded on to a vessel at the named UK port. Once goods have been loaded, the buyer is responsible for any costs and risks involved in the onward shipment.

10. **Cost and Freight (CFR)** The seller must clear the goods and pay for the freight to bring the goods to the overseas port of destination. The buyer assumes all risk for the goods from the time the goods have been delivered on board the vessel at the port of shipment.

11. **Cost, Insurance and Freight (CIF)** This is similar to CFR. The seller clears the goods for export and delivers them when they are on board the port of

shipment. The seller bears the costs of freight and insurance to the named port of destination. However, the seller must also obtain and pay for at least the default level of insurance cover under Institute Cargo Clauses (C). This applies to both 2010 and 2020 Incoterms.

Visit the International Chamber of Commerce for more information.

13. Intellectual property

The Trade and Cooperation Agreement addressed the protection of intellectual property rights, and collective management, and both the European Union and the United Kingdom have affirmed their commitment to comply with the following international treaties:

a) the TRIPS Agreement;[185]

The Trade Related-Aspects of Intellectual Property Rights (unamended) published by the World Trade Organisation. Part II addresses standards concerning Copyright and Related Rights, Trademarks, Geographical Indications, Industrial Designs, Patents, Layout-Designs (Topographies) of Integrated Circuits, Protected of Undisclosed Information, and the Control of Anti-Competitive Practices in Industrial Licenses. Part III address the enforcement of these rights.

The TRIPS Agreement is an important mechanism for enforcing the rights of cross-border contracts under civil proceedings and provides provisions for injunctions to prevent the entry into commerce of imported goods that involve the infringement of an intellectual property right, immediately after the customs clearance of such goods. It also provides the right to claim damages, recovery of profits and attorney fees, and indicates other remedies, such as in the case of counterfeited goods the removal of the unlawful trademark may not be enough to allow the goods to enter free circulation.

(b) the Rome Convention;[186]

The Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations secures protection for performances, phonograms and broadcasts. The World Intellectual Property Organisation (WIPO) is responsible for the administration of the convention, jointly with the International Labour Organisation (ILO) and the United Nations Educational, Scientific and Cultural Organisations.

[185] WTO intellectual property (TRIPS), available from: https://www.wto.org/english/docs_e/legal_e/27-trips_01_e.htm
[186] The Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, available from: https://www.wipo.int/treaties/en/ip/rome/

(c) the Berne Convention;[187]

The Berne Convention deals with protection of Literary and Artistic works and the rights of their authors. It is based on three basic principles and a series of provisions relating to the minimum protection to be granted, as well as special provisions for developing countries:

1. a.) Works originating in Contracting States must be given the same level of protection in each of the other Contracting States as the latter grants to the works of its own nationals;

b.) Protection must not be conditional upon compliance with any formality (principal of "automatic" protection)

c.) Protection is independent of the existence of protection in the country of origin of the work (principle of "independence" of protection). If, however, a Contracting State provides for a longer term of protection than the minimum prescribed by the Convention and the work ceases to be protected in the country of origin, protection may be denied once the country-of-origin ceases.

(d) the WIPO Copyright Treaty[188], adopted at Geneva on 20 December 1996;

The WIPO Copyright Treaty (WCT) is a special agreement under the Berne Convention that secures the protection of works and the rights of authors within the digital environment and grants additional economic rights. The WCT also deals with computer programmes and databases. The WCT grants the rights of distribution, the rights of rental and a broader right of communication to the public to authors. It obliges parties to the WCT to provide legal remedies against the circumvention of technological measures such as encryption, and against the removal or altering of information, such as certain data necessary for the management (e.g., licensing, collecting or distribution of royalties) and their rights ("rights management information").

(e) the WIPO Performances and Phonograms Treaty,[189] adopted at Geneva on 20 December 1996;

The WIPO Performances and Phonograms Treaty (WPPT) deals with the rights of two kinds of beneficiaries, particularly in the digital environment: i.) performers (actors, singers, musicians, etc) and ii.) producers of phonograms (persons or legal entities that take the initiative and have the responsibility for the fixation of sounds).

[187] The Berne Convention, available from: https://www.wipo.int/treaties/en/ip/berne/summary_berne.html
[188] The WIPO Copyright Treaty (WCT), available from: https://www.wipo.int/treaties/en/ip/wct/
[189] The WIPO Performances and Phonograms Treaty (WPPT), available from: https://www.wipo.int/treaties/en/ip/wppt/

(f) the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks[190], adopted at Madrid on 27 June 1989, as last amended on 12 November 2007;
The Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks makes it possible to protect a trademark in a large number of countries by obtaining a designation that has effect in each of the designated Contracting Parties.

(g) the Trademark Law Treaty,[191] adopted at Geneva on 27 October 1994;
The aim of the Trademark Law Treaty (TLT) is to standardize and stream national trademark registration procedures. This is achieved through the simplification and harmonisation of certain features of these procedures, with the result of making trademark registration less complex and more predictable.

(h) the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled,[192] adopted at Marrakesh on 27 June 2013;

The Marrakesh Treaty forms part of the body of international treaties on copyright administered by WIPO. It has a clear humanitarian and social development aspect with the main goal to create a set of mandatory limitations and exceptions for the benefit of the blind, visually impaired, or otherwise print disabled.

(i) the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs,[193] adopted at Geneva on 2 July 1999.

The Hague Agreement governs the international registration of industrial designs. First adopted in 1925, it establishes an international system – The Hague System, that allows industrial designs to be protected in multiple countries or regions with minimal formats, through registration via WIPO. The term of protection is five years, then an additional five year through the 1960 Act or up to two renewal periods of five years through the 1999 Act. If the legislation of the Contracting Party permits, the length may be extended for the duration of the period indicated.

2. Each Party shall make all reasonable efforts to ratify or accede to the following international agreements:

(a) the Beijing Treaty on Audiovisual Performances,[194] adopted at Beijing on 24 June 2012; addresses the need to extend the economic and moral rights of actors and performers in audio-visual performances including films, videos and television.

[190] The Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, available from: https://www.wipo.int/treaties/en/registration/madrid_protocol/
[191] The Trademark Law Treaty, available from: https://www.wipo.int/treaties/en/ip/tlt/
[192] The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, available from: https://www.wipo.int/treaties/en/ip/marrakesh/
[193] Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs, available from: https://www.wipo.int/treaties/en/registration/hague/

(b) the Singapore Treaty on the Law of Trademarks[195] adopted in Singapore on 27 March 2006. The objective of the Singapore Treaty is to create a modern and dynamic international framework for the harmonisation of administrative trademark procedures. Building on the Trademark Law Treaty (TLT) of 1994[196] has a wider scope of application and addresses more recent developments in the field of communications technology.

13.1 Copyright

Copyright is an automatic intellectual property right assigned to the creator of an original work that confers the right to reproduce the work of the owner. The law gives the creators of literary, dramatic, musical, artistic works, sound recordings, broadcasts, films and typographical arrangement of published editions, rights to control the ways in which their material may be used. Following the TCA, copyrighted works will still be enforceable in the EU because of the UK's participation in international trade treaties and reciprocated as EU copyrighted works will continue to be protected in the UK. The TCA reaffirms the artist resale right that gives the original author of graphic or plastic art the right to receive a royalty on resale. Whilst this right is recognised within many international territories, it is not recognised in China or the USA.

13.2 Trade Marks

Trademarks are registered rights that enable consumers and businesses to differentiate the goods and services of one trader from another. They commonly take the form of words, logos or a combination of both. On 1st January 2021, EU wide trademarks previously registered via The Madrid System[197] were automatically cloned and added to the UK registrar as to exist as separate UK national marks, adding 1.5 million new marks to the UK database. Once these rights have reached their 10-year term, they must be renewed through the UK Intellectual Property Office.

The new cloned trademark registration from the registered EU trademark (EUTM) will:

- decentralise risk of attack – meaning that if the EUTM is challenged, the outcome would not affect the validity of the UK trademark.
- Have the same date of registration at the EUTM filing.
- Be fully independent UK trademark that can be challenged, assigned, licensed or renewed separately from the EUTM.

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[194] the Beijing Treaty on Audiovisual Performances, available from: https://www.wipo.int/beijing_treaty/en/#:~:text=The%20Beijing%20Treaty%20on%20Audiovisual,force%20on%20April%2028%2C%202020.
[195] Singapore Treaty on the Law of Trademarks, available from: https://www.wipo.int/treaties/en/ip/singapore/
[196] Trademark Law Treaty, available from: https://www.wipo.int/treaties/en/ip/tlt/
[197] The Madrid System, available from: https://www.wipo.int/madrid/en/

EUTM trademark owners whose rights are cloned to the UK register, and who mainly use the UK for trademark-related activities must consider their vulnerability to non-use in the EU when renewing their term. Simultaneously, EUTM owners who do not use the UK for trademark related activities must consider their liability to revocation.

From 1st January 2021, international firms who wish to register for a new trademark in the UK must provide a UK address for this service, in addition to other forms of intellectual property protection such as design rights, patents, hearings and trademark proceedings. The World Trademark Review has reported that since 1st January 2021 many international companies have legally circumvented this requirement by using the UK address of a third-party broker.

In addition to this, UK attorneys will be unable to represent clients on new applications or new proceedings at the EU Intellectual Property Office. UK based brand owners will be required to appoint an EEA attorney to represent them in new applications in the EU. The Withdrawal Agreement ensures that UK legal representatives can continue to represent their clients before the EU IPO for ongoing cases. From the end of the transition period, the EU IPO will no longer issue certification for UK legal representatives.[198]

13.3 Unregistered design rights

Since 1st January 2021, Unregistered Community Design Right (UCDR), which automatically provides 3 years of protection from when it is first disclosed to the public is no longer applicable to designs first disclosed in the UK and will not be recognised for new designs placed on the market in the UK from 1st January 2021. In accordance, if a first disclosure takes place in an EU Member State, the UCDR will not be extended to the UK. For fashion designers and other fast-moving design-lead brands established in both the UK and the EU, who rely on UCDR, the situation presents a complexity. A commercial solution could be to present first disclosure in the EU to secure protection throughout the 27 member nations and register the designs in the UK. Another alternative could be to simultaneously disclose the designs in the UK to benefit from the UK's new Supplementary Unregistered Design (SUD) scheme, and the EU, however this could present a risk as it is yet to establish a precedent in court. There are 3 types of unregistered design rights which exist in the UK from 1st January 2021.[199]

These are as follows:

[198] Intellectual Property Office, *Intellectual Property after 1st January 2021*, [online], available from: https://www.gov.uk/government/news/intellectual-property-after-1-january-2021#:~:text=UK%20trade%20mark%20owners%20will,and%20proceedings%20before%20the%20EUIPO%20.&text=From%20the%20end%20of%20the,s%20list%20of%20professional%20representatives.

[199] *Changes to unregistered designs,* [online], available from: https://www.gov.uk/guidance/changes-to-unregistered-designs

1. Continuing Unregistered Design (CUD) this is a new category, created to provide any unregistered community design right active in the UK prior to the end of the transition period equivalent CUD protection until the end of the three-year term. CUD is not protected or enforceable in the EU where the designs will continue to benefit from UCDR.

2. Supplementary Unregistered Design (SUD) is a new category that will provide similar rights of three years of protection to the UCD to two dimensional or three-dimensional designs first disclosed in the UK from 1st January 2021. First disclosure in the EU will not secure SUD protection in the UK.

3. UK Unregistered Design (UDR) rights will continue to apply in the UK as they did prior to the end of the transition period. UDR differ to UCDRs in that they are allocated to three dimensional designs created by trade professionals and have provide a right to prevent copying which does not require registration and is valid for the lesser of 10 years from the first marketing of the articles made to the design, or 15 years from the creation of the relevant design document, subject to the license of rights in the last five years of the term.

13.4 Registered Community Designs

From the 1st January 2021, UK nationals with no domicile in an EU Member State are no longer entitled to file an international design application through the EUIPO as the office of origin. Registered Community Designs (RCD) rights cease to automatically apply, and RCD rights holders will have equivalent RCD rights cloned to the UK design registrar, with the same filing, priority, UK seniority and renewal dates as their EU equivalents. The existing RCD registration will continue to apply in the 27 EU Member States until expiration.

As far as international design applications are concerned, UK entities will still be able to file these through the European Intellectual Property office[200], as the Hague Agreement came into force in respect of the UK in June 2018.

13.5 Patents

As the European Patent Office is not an EU agency, the UK's exit will not affect the administration of European Patents and the process will largely remain the same. Applicants may continue to apply for a patent from the UK Intellectual Property Office[201] or may apply via the European Patent Office (EPO)[202] or may submit an international patent application filed under the Patent Cooperation Treaty[203].

[200] Intellectual Property Office, *Protecting your design abroad,* available from: https://www.gov.uk/government/publications/protecting-your-uk-intellectual-property-abroad/protecting-your-design-abroad
[201] UK Intellectual Property Office, Patents: detailed information, available from: https://www.gov.uk/topic/intellectual-property/patents
[202] European Patent Office, available from: https://www.epo.org/
[203] World Intellectual Property Office, *PCT - The International Patent System*, available from: https://www.wipo.int/pct/en/

If an applicant files a request via the EPO, they will be able to designate the UK and other countries of interest. The UK remains a member of the Paris Convention[204], and applicants who have filed for patent protection in the UK may claim priority of that application for any overseas application.

From 1st January 2021, the UK government has decided that the UK will not participate in the Unitary Patent System which previously allowed patent holders to designate throughout the EU, therefore a separate patent application must be made to the UK IPO.

13.6 Parallel Trade

Parallel trade is the resale of goods outside of the manufacturer's distribution network without their consent. This may occur when goods protected by intellectual property are placed into free circulation with the consent of the rights holder. Within the concept of parallel trade, the rights are said to have been 'exhausted', as the IP rights holder cannot rely on the IP rights protecting the goods to prevent further distribution or resale of the goods. A trader is free to sell on the goods they have purchased but are not entitled to copy them. Variations in exchange rates can differentiate regions and impact parallel trade.

There is commercial contention as to whether regional protectionism and limitations on exhaustion should apply, or whether an increase in fair competition should be encouraged, advocating that exhaustion is beneficial for consumers as it leads to a fall in prices and less barriers to market.

Intellectual property rights owners may determine that parallel trade differentiates markets, and therefore cross-border exhaustion does not incentivise research and development activities. An alternative argument is that exhaustion may encourage distribution and competition, and lower prices for consumers. It is a topic which is particularly relevant to the pharmaceutical sector- the UK's parallel import licensing scheme enables a medicine authorised in an EU member state to be marketed in the UK, assisting consumers by enabling access to reasonably priced products. A report Exhaustion of Intellectual Property Rights commissioned by the Intellectual Property Office and conducted by Ernst & Young in 2018 identified that the NHS is reported to make £400 - £500 million in savings per year through parallel trade.[205] Comments by stakeholders identified that parallel trade with the EEA could be in excess of £5bn within the UK and were suggested to represent around 5% of the UK's pharmaceutical market by volume (30mn packs of an estimated 5 - 10bn dispensed per annum). In addition to direct savings, the downward pressure on the market could be expected to encourage lower prices on products sourced from rights holders.

[204] World Intellectual Property Office, *Paris Convention for the Protection of Intellectual Property*, available from: https://www.wipo.int/treaties/en/ip/paris/

[205] Ernst & Young, Exhaustion of Intellectual Property Rights, UK Intellectual Property Office 2019, [online], available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/808871/Exhaustion-of-intellectual-property-rights.pdf

For trademark owners the situation may posit complexity. The concept of exhaustion is part of UK and EU trademark law.

The Trade and Cooperation Agreement briefly addresses exhaustion within Article IP. 5 stating that: 'This title does not affect the freedom of the parties to determine whether and under what conditions the exhaustion of intellectual property rights determines.' Accordingly, the UK and the EU remain free to establish their own rules in relation to exhaustion.[206]

The European Commission commissioned The Economic Consequence of The Choice of A Regime Of Exhaustion In The Area Of Trademarks, NERA, S.J. Berwin & Co. and IFF Research (1999)[207] investigating parallel trade across 10 sectors. It found that premium goods were most likely to adopt parallel trade, across the following categories:

PARALLEL TRADE IN THE EU & THE UK

Category	Percentage
Cosmetics and perfumes	Up to 13%
Clothing	5 - 10%
Soft drinks	0 - 15%
Musical recordings	5 - 10%

Parallel trade can particularly present concerns for the luxury goods sector, who operate selective distribution agreements that require brand owners to monitor the market. The Select Committee on Trade and Industry Eighth Report identifies that there is a relatively high level of parallel trade and grey market activities within this sector.[208]

[206] Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, P*art two: Trade, Transport, Fisheries and Other Arrangements, Title V: Intellectual Property, Heading one: Article IP-5: Exhaustion*, pp. 126 available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/948119/EU-UK_Trade_and_Cooperation_Agreement_24.12.2020.pdf

[207] European Commission Official Journal, 'Opinion of the Economic and Social Committee on the "Exhaustion of registered international trademark rights' *Official Journal C 123 , 25/04/2001 P. 0028 - 0033*
, [online], available from: https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52001IE0042:EN:HTML

[208] House of Commons, *Trade and Industry: Eighth Report*, available from: https://publications.parliament.uk/pa/cm199899/cmselect/cmtrdind/380/38002.htm

The UK government has introduced The Intellectual Property (Exhaustion of Rights)(EU Exit) Regulations 2019,[209] , indicating that Articles 34 and 36 of the Treaty of the Functioning of the European Union will apply as retained EU law.

Exhaustion of rights has been integrated into UK legislation as follows:

- section 12 of the Trademark Act 1994[210] implemented article 7 of the Trade Marks Directive 89/104/EC (now article 15 of Directive (EU) 2015/2436);
- section 18 of the Copyrights Designs and Patents Act 1998[211] (as recently amended by SI 2018/995) on issuing copies to the public implemented article 4 of the Copyright Directive 2001/29/EC; *and*
- section 7A of the Registered Design Act 1949[212] implemented article 15 of the Designs Directive 98/71/EC.

The Intellectual Property (Exhaustion of Rights) (EU Exit) Regulations 2019 provides an asymmetrical system of exhaustion. Intellectual property in protected goods placed on the market in the EEA will be exhausted in the UK. However, intellectual property in goods placed on the market in the UK will not be exhausted in the EEA. The result is that trademark goods placed on the market in the UK will require the express consent of the IP rights holder to be exported to the EEA. This may present challenges for retailers who sell into the EEA, and have not established agreements with the IP rights owner, as the IP rights owner may wish to extend their IP right by negotiating a regional licensing, retail or distribution agreement, or prohibiting the export of the trademark protected goods by issuing a cease or desist notice to the seller or submitting an Application for Action to the UK customs authorities. In this circumstance it would be advisable to approach the IP rights own for permission such as a license, to sell into the EEA. In accordance, UK IP rights owners may find an opportunity to enhance their regional IP exploitation by developing an authorised EEA distribution or retail network.

The Intellectual Property Office have published guidelines as follows: Exhaustion of IP Rights and Parallel Trade [213]

[209] *The Intellectual Property (Exhaustion of Rights)(EU Exit) Regulations 2019*, available from: http://www.legislation.gov.uk/uksi/2019/265/introduction/made
[210] *Section 12 of the Trademark Act 1994*, available from: https://www.legislation.gov.uk/ukpga/1994/26/section/12#:~:text=12%20Exhaustion%20of%20rights%20conferred%20by%20registered%20trade%20mark.&text=(1)A%20registered%20trade%20mark,proprietor%20or%20with%20his%20consent
[211] *section 18 of the Copyrights Designs and Patents Act 1998*, available from: https://www.legislation.gov.uk/ukpga/1988/48/section/18
[212] *section 7A of the Registered Design Act 1949* available from: https://www.legislation.gov.uk/ukpga/Geo6/12-13-14/88/section/7A#:~:text=%5BF17A%20Infringements%20of%20rights,right%20of%20the%20registered%20proprietor
[213] Intellectual Property Office, *Exhaustion of IP Rights and Parallel Trade*, available from: https://www.gov.uk/guidance/exhaustion-of-ip-rights-and-parallel-trade

14. REACH regulations

REACH is a European Union regulation concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) which is integrated across European Economic Area (EEA) which includes the EU in addition to Norway, Iceland and Lichtenstein. The enforcement regime has been implemented by the REACH enforcement agency 2008, under the REACH Regulations 2008, which provide for the enforcement of Regulation (EC) No. 1907/2006[215] of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)(OJ No L 396, 30.12.2006, p1).[216]

REACH requires substances that are manufactured or imported into the EEA to be registered with the European Chemicals Agency (ECHA),[217] alongside safety information about the chemical and its uses. This is referred to as the "no data, no market" principle. Without providing the necessary safety data, companies cannot place their products on the market. It then provides a regulatory framework to control or restrict the use of hazardous substances based on those registrations. The EU REACH serves to[218]:

- Protect human health and the environment from the risks that can be posed by chemicals;
- Place responsibility onto industry (manufacturers and importers of chemicals) for understanding the risks associated with chemicals;
- to allow the free movement of chemicals and substances in the EEA market, whilst also enhancing innovation and competitiveness in the industry.
- To minimise animal testing by promoting the use of alternative methods of safety assessment and by facilitating data sharing of testing results.

The chemical industry is a key manufacturing sector in the UK, accounting for 9% of total UK goods exported. The EU and UK's trade links within the chemical industry are closely interwined, 57% of chemical exports in the UK went to the EU, and 73% of imported chemicals were received from the EU.[219]

14.1 UK REACH

The UK government stated that the UK would not participate in the ECHA or the EU's regulatory framework for chemicals after the transition period, however the Northern Ireland Protocol establishes that the EU REACH regulations remain within Northern Ireland.

[215] Regulation (EC) No. 1907/2006[215] of the European Parliament and of the Council, available from: https://www.legislation.gov.uk/european/regulation/2006/1907
[216] The REACH Enforcement Regulations 2008, available from: https://www.legislation.gov.uk/uksi/2008/2852/regulation/1/made
[217] *European Chemicals Agency*, available from: https://echa.europa.eu/
[218] European Chemicals Agency, available *Understanding REACH,* available from: https://echa.europa.eu/regulations/reach/understanding-reach
[219] Rhodes, C., Rough, E. and Hutton, G. *End of Brexit Transition: chemical regulations (REACH),* available from: https://researchbriefings.files.parliament.uk/documents/CBP-8403/CBP-8403.pdf

REACH is not straightforward to copy from EU law into UK law, as retained EU law, as the regulations rely on the integrated role of the ECHA. The UK REACH regime has established a UK-wide market for chemicals manufactured in and imported into the UK. The UK REACH statutory instrument is The REACH etc. (Amendment etc.) (EU Exit) Regulations 2020 No.1577.[220] The Environment Bill 2019-2021 contains provisions that would give the Secretary of State powers to amend the UK REACH regime with the exception of certain listed provisions.

The UK REACH regime was initially designed to establish a UK wide market for chemicals applying to all chemical substances manufactured or imported into the UK, with the Health and Safety Executive (HSE) at the UK REACH agency, taking over the functions of the ECHA. A GB registered entity intending to manufacture or import a substance into GB above 1 tonne per year is required to submit a registration to REACH for that substance (HSE, 2021).

The Trade and Cooperation Agreement between the UK and the EU contains an Annex on the trade, regulation, import and export of chemicals.[221] The agreement has established that while both parties may provide their own regulatory framework, it is recognised that international organisations and bodies including the OECD and the Sub-Committee of Experts on the Globally Harmonised System or Classification and Labelling of Chemicals (SCEGHS) of the United Nations Economic and Social Council (ECOSOC) are relevant for developing scientific and technical guidelines with respect to chemicals. It includes provisions for data sharing, where the information is non-confidential, and cooperation around international standards.

14.2 How does REACH work?

Companies are required to register substances that they manufacture or import into the UK in quantities of more than one tonne. The registration (called a registration dossier) must include information about the properties and hazards of the substance, and any risk management measures associated with its use. The dossier must be supported with scientific evidence such as the results of safety testing experiments.

REACH is based on the one registration per substance, per legal entity.

14.3 Guidance for new registrants under UK REACH

This guidance is for:

[220] The UK REACH statutory instrument is The REACH etc. (Amendment etc.) (EU Exit) Regulations 2020 No.1577, available from: https://www.legislation.gov.uk/uksi/2020/1577/contents/made

[221] The Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, Annex TBT-3 Chemicals, p.504-507, available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/948119/EU-UK_Trade_and_Cooperation_Agreement_24.12.2020.pdf

- GB based companies that manufacture in or import substances into GB in quantities of 1 tonne per year or greater;
- GB based companies that have submitted a registration dossier to REACH via ECHA via REACH-IT but it did not receive a registration number prior to the date of Exit;
- EU based companies intending to appoint a GB-Only based Representative or take on the responsibilities of GB-based importers.

When it is determined that a new registration is required, and the provisions for grandfathering and downstream user import notifications do not apply, a complete UK registration will be required prior to import of the chemicals.

UK based companies wishing to import chemicals into the EU must appoint an EU based agent to act as representative.

Whilst the chemical industry has welcomed the provisions in the Trade and Cooperation Agreement, concerns have been raised about the absence of access to the ECHA's REACH database, containing detailed information about the intrinsic properties of chemical substances, for the purposes of human and environmental safety – thereby increasing the likelihood that this information will need to be re-registered on a UK only database.[222]

Please visit: HSE UK REACH Programme for further information. [223]

15. Rules of Origin

Rules of Origin are the criteria used to determine the economic nationality of a product, as opposed to the geographic nationality of product. Restrictions and tariffs are applied at different levels according to the nationality of the product. For example, tariffs on goods originating in China may differ to those on goods originating in Europe. Rules of origin do not apply in the EU single market, so companies which have previously only traded within the EU must establish administrative procedures to take them into account. The origins of a product are used to determine the tariffs when crossing borders. In addition to this, Rules of Origin are also used to charge anti-dumping duties, and put safeguard measures in place, for government procurement purposes, marketing or labelling, or gathering trade statistics.

Cumulation is a deviation from the core concept of origin and occurs when manufacturing processes take place in several countries. Where two of more countries have the same rules of origin, and free trade agreements in place between

[222] Rhodes, C., Rough, E. and Hutton, G. *End of Brexit Transition: chemical regulations (REACH),* pp. 29 available from: https://researchbriefings.files.parliament.uk/documents/CBP-8403/CBP-8403.pdf
[223] HSE, UK Registration, Evaluation, Authorisation & restriction of Chemicals (REACH), available from: https://www.hse.gov.uk/

them, if the product of one country of an FTA is further processed to a significant level in partner country, it can be labelled as originating in the final country of production.

15.1 Establishing a claim for preferential tariffs

The Trade and Cooperation Agreement has established preferential tariff treatment for products that are originating in either the UK and EU. To claim the preferential tariff the importer is responsible for correctness of a claim for preferential tariff treatment.

A claim for preferential tariff treatment shall be based on:

a.) a statement on origin that the product is originating made out by the exporter; or b.) the importer's knowledge that the product is originating supported by evidence if requested by the custom's authorities.

The importer must keep the statement on origin and, when required by the customs authority of the importing Party, shall provide a copy thereof to that customs authority.

The importer making the claim for preferential tariff treatment based on a statement on origin must keep a statement of origin and bears responsibility for compliance.[224]

The four key elements for traders to note when claiming preferential tariffs on the Trade in Goods between the EU and UK are as follows:

- **Statement of Origin on Commercial Invoice** a statement on origin must be included on the commercial invoice or another accompanying document, such as the packing list;

- **Clear Description of Goods** the accompanying document, such as the invoice, must describe the originating product in sufficient detail to enable the identification of that product;

- **Third country goods in free circulation in the EU or the UK will not benefit from EU preferential tariffs**, when crossing the border. The trade deal is established to benefit producers within the UK and the EU - the Trade and Cooperation Agreement identifies that goods must be of EU or UK preferential origin.

- **Supplier's declaration** From 1st January 2022, a supplier's declaration will be required to support statement on origin claims.

[224] Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, Article Orig-18, TCA, pp.33 available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/948119/EU-UK_Trade_and_Cooperation_Agreement_24.12.2020.pdf

Rules of origin refer to the country of origin of a product. The terms of The Trade and Cooperation Agreement identify that goods must be of EU or UK preferential origin to qualify for preferential tariff treatment.

When conducting trade, if the supplier of products from the EU or the UK wishes to claim preferential origin, they must accompany goods with a Statement on Origin. An example of this is detailed within Annex 4: of the Trade and Cooperation Agreement.

15.2 Non-preferential rules of origin

Non-preferential rules of origin are usually set in national policy and legislation where there are no preferential trade agreements in place between two or more countries. Countries must establish the non-preferential origin of a product in accordance with World Trade Organisation terms and associated tariffs.

15.3 Preferential rules of origin

Preferential rules of origin are agreed within a bilateral, regional trade agreement or customs union, or for non-restrictive trade preferences (i.e., for developing countries). These are generally more restrictive than non-preferential counterparts to avoid "trade deflection". They also act as a non-preferential tariff protectionist measure, if they set domestic production levels too difficult to meet. The Trade and Cooperation Agreement[225] lays down specific conditions in determining the origin of goods for the purpose of application of preferential tariff treatment. **A product can access originating status if it is either wholly obtained or has been sufficient worked or processed within the UK or EU.**

15.3.1 Wholly Obtained goods (text from the article of TCA ORIG-5)[226]

Products that are wholly obtained in the UK or an EU Member State may be made using natural resources or obtained from natural resources, or they made have been produced entirely in either party, using domestic materials.

1. The following products are considered as wholly obtained in a Party:

[225] Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, Chapter 2: Rules of Origin, p.27 - 41 available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/948119/EU-UK_Trade_and_Cooperation_Agreement_24.12.2020.pdf

[226] Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, Chapter 2: Rules of Origin Article ORIG-5, pp.28-29 available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/948119/EU-UK_Trade_and_Cooperation_Agreement_24.12.2020.pdf

(a) mineral products extracted or taken from its soil or from its seabed;
(b) plants and vegetable products grown or harvested there;
(c) live animals born and raised there;
(d) products obtained from live animals raised there;
(e) products obtained from slaughtered animals born and raised there;
(f) products obtained by hunting or fishing conducted there;
(g) products obtained from aquaculture there if aquatic organisms, including fish, molluscs, crustaceans, other aquatic invertebrates and aquatic plants are born or raised from seed stock such as eggs, roes, fry, fingerlings, larvae, parr, smolts or other immature fish at a post-larval stage by intervention in the rearing or growth processes to enhance production such as regular stocking, feeding or protection from predators;
(h) products of sea fishing and other products taken from the sea outside any territorial sea by a vessel of a Party;
(i) products made aboard of a factory ship of a Party exclusively from products referred to in point (h);
(j) products extracted from the seabed or subsoil outside any territorial sea provided that they have rights to exploit or work such seabed or subsoil;
(k) waste and scrap resulting from production operations conducted there;
(l) waste and scrap derived from used products collected there, provided that those products are fit only for the recovery of raw materials;
(m) products produced there exclusively from the products specified in points (a) to (l).

2. The terms "vessel of a Party" and "factory ship of a Party" in points (h) and (i) of paragraph 1 mean a vessel and factory ship which:
. (a) is registered in a Member State or in the United Kingdom;
. (b) sails under the flag of a Member State or of the United Kingdom; and
. (c) meets one of the following conditions:
(i) (ii)
it is at least 50% owned by nationals of a Member State or of the United Kingdom; or it is owned by legal persons which each:
(A) have their head office and main place of business in the Union or the United Kingdom; *and*
(B) are at least 50% owned by public entities, nationals or legal persons of a Member State or the United Kingdom.

15.3.2 Substantial transformation

Products from third countries that have undergone sufficient processing in the partner country are permitted to be labelled as originating in the country of processing, in line with the relevant Product-specific rule. It has been substantially transformed in line with the relevant Product-specific rule. HM Revenue and

Customs identify that there are three basic rules used to decide if goods are sufficiently transformed[227]:

- the ad-valorem, or 'value added' rule
- the change of tariff classification
- manufacture from certain products or through specific processes

15.3.2.1 The Value Added Rule

Once the identification of a product has been made, the next step will be to determine the product's economic origin, rather than its geographic origin, calculating through assessing the contributions made by adding value to a product. The 'value added' rule, establishes a limit on value of non-originating materials which can be used before a product is considered non-originating.

Under a value limitation rule, the value non-UK or non-EU originating materials may not exceed a given percentage of the ex-works price of the product. Sometimes, the limit might apply only to the value of specific types of inputs to a product. If the use of an ingredient, material or component is limited by value, the rule concerning tolerance cannot be relied upon in addition to the threshold.

Note 4 of Annex ORIG-1 (Introductory Notes to Product Specific Rules of Origin) sets out the definition of 'ex-works price'.

Manufactured goods example: HS code: 920120
Product: Grand pianos
Rule: MaxNOM 50% (Maximum 50% non-originating material)

The rule states that the product must contain a maximum of 50% (of the ex-works value) material that does not originate in the UK or EU. This means that if a grand piano has an ex-works value of £1000, no more than £500 worth of non-originating parts may be used in its manufacture.

Average pricing rules

The value of the non-originating materials used in production may be calculated on the basis of the weighted-average value formula, or other inventory valuation method under generally accepted accounting principles in the UK. This only applies to the price paid for the materials. The accounting method utilised for determining the average value of input non-originating materials may be different to the accounting principles adopted by the business for its general accounting purposes.

[227] HM Revenue and Customs, *The Product Specific Rules,* available from: https://www.gov.uk/government/publications/rules-of-origin-for-goods-moving-between-the-uk-and-eu/product-specific-rules

Weight/value limitations

For some agricultural products, limitations on non-originating materials can apply by weight, by value or there can be choice of meeting either criteria in certain instances.

15.3.2.2 The Change of Tariff Classification Rule

If a product-specific rule of origin requires a change from any other chapter (2-digit level of the Harmonized System), heading (4-digit level of the Harmonized System) or subheading (6-digit level of the Harmonized System), any non-non-originating material used in the production of the product must be classified in a chapter, heading or subheading other than that of the final product. There are no limits on the amount of originating material businesses can use, regardless of their HS code.

To demonstrate the rule has been met, businesses will need to know the HS code of their exported product, all of its inputs, and the origin of the inputs.

Change of chapter (CC)

Any non-UK or non-EU originating materials or components used in the product must be classified in a different HS chapter (2-digit HS code).

Agri-food example: HS code: 160419
Product: Prepared or preserved trout (Oncorhynchus mykiss)
Rule: CC

The rule can be fulfilled if prepared or preserved trout is manufactured from non-originating trout from HS Chapter 3. This is because the non-originating materials used are not classified under HS Chapter 16.

Manufactured goods example: HS code: 8903
Product: Yachts
Rule: CC

The rule is fulfilled if a yacht is manufactured from non-originating parts from chapters other than HS Chapter 89 (ships, boats and floating structures). For example, unlimited non-originating parts of steel (HS Chapters 72 and 73) or glass (HS Chapter 70) could be used, regardless of their value, as they are classified in a different Chapter to the final product. But the rule would not be met by a yacht imported from a third country with only fitting-out work carried out in the UK before being exported to the EU, because the finally exported yacht would remain in the same HS chapter as one of the inputs.

15.3.2.3. Manufacture from materials of any heading, including other materials of the same heading

If a product-specific rule of origin allows production from non-originating materials of any heading, the product can include non-originating materials of the same heading. This means that a change of heading does not need to take place. Originating materials of any heading can also be used. To satisfy this rule, there must be some level of processing by the exporting party. This must go beyond the processes listed in the 'Insufficient Production' clause.

Agri-food example: HS code: 090412
Product: Crushed or ground pepper
Rule: Production from non-originating materials of any heading.

Pepper and ground/crushed pepper are classified in the same heading. If crushing or grinding takes place the rule is fulfilled regardless of the originating status of the pepper, as the processing goes beyond 'insufficient operations.

Specified Operations

Specified operations are particular to certain specialised industries or products. Rules may include the re-treading of tyres to take place in the UK for a tyre to be originating, or a chemical reaction to take place for chemical products. As well as the chemicals sector, such rules are common in textiles and clothing and may specify that the weaving and cutting of fabric to make garments must take place in the free trade area for the product to be originating.

15.3.3 Tolerance rules

Tolerances rules described in the Trade and Cooperation Agreement, Product-specific rules of origin, enable products from third countries to be made from a limited economic value of third-country materials, and qualify for 'originating' preferential tariffs.

To understand how to calculate whether the materials within a product meet tolerance requirements, the trader must identify the commodity code of the product in the UK Trade Tariff.

The product-specific rules of origin are established using the Harmonised System classification (2017). The HS Chapter - International is identified within the first two digits of a commodity code and the HS Heading - International, is identified within the first four digits of a commodity code. Permitted tolerances vary between products.

1. If a product does not satisfy the requirements set out in Product-specific rules of origin due to the use of a non-originating material in its production, that product shall nevertheless be considered as originating in a Party, provided that:

(a) the total weight of non-originating materials used in the production of ***food*** products classified under Chapters 2 and 4 to 24 of the Harmonised System, other than processed fishery products of Chapter 16, does not exceed 15% of the weight of the product;

(b) the total value of non-originating materials for all other products, except for the ***textile products*** classified under Chapters 50 to 63 of the Harmonised System does not exceed 10% of the ex-works price of the product*; or*

(c) for ***textile products*** which are classified under Chapters 50 to 63 of the Harmonised System, the tolerances set out in the TCA Note 6, 7 and 8 of ANNEX ORIG-1[228] apply.

2. Paragraph 1 does not apply if the value or weight of non-originating materials used in the production of a product exceeds any of the percentages for the maximum value or weight of non- originating materials as specified in the requirements set out in ANNEX ORIG-2 [Product-specific rules of origin].[229]

3. Paragraph 1 of this Article does not apply to products wholly obtained in a Party within the meaning of Article ORIG.5 [Wholly obtained products]. If ANNEX ORIG-2 [Product-specific rules of origin] requires that the materials used in the production of a product are wholly obtained, paragraphs 1 and 2 of this Article apply.

15.4 Bilateral cumulation

Bilateral cumulation is permitted, meaning that products or materials from each trading partner can be processed in the other's territory, and will be allocated the origin and preferential status of the country they were processed in.

A product will be considered as originating in the UK or the EU, if that product is used as a material in the production of another product in the partner country. Production carried out in a party on a non-originating material may be taken into account for the purpose of determining whether a product is originating in the other Party. The production must go beyond insufficient production.

[228]The Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of thw one part, and the United Kingdom of Great Britain and Northern Ireland, Note 6, 7 and 8 of ANNEX ORIG-1 [Introductory Notes to the Product-Specific Rules of Origin, available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/948119/EU-UK_Trade_and_Cooperation_Agreement_24.12.2020.pdf

[229] Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, ANNEX ORIG-2 [Product-specific rules of origin], p.423 -476 available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/948119/EU-UK_Trade_and_Cooperation_Agreement_24.12.2020.pdf

In order for the export to complete the statement on origin, the exporter shall obtain from its suppliers a supplier's declaration or equivalent document that contains the same information to describe the non-originating materials. This will be a requirement from 1st January 2022.

15.5 Insufficient production (text from the article of TCA ORIG-7)230

A product shall not be considered as originating in a Party if the production of the product in a Party consists only of one or more of the following operations conducted on non-originating materials:

(a) preserving operations such as drying, freezing, keeping in brine and other similar operations where their sole purpose is to ensure that the products remain in good condition during transport and storage;
(b) breaking-up or assembly of packages;
(c) washing, cleaning; removal of dust, oxide, oil, paint or other coverings;
(d) ironing or pressing of textiles and textile articles;
(e) simple painting and polishing operations;
(f) husking and partial or total milling of rice; polishing and glazing of cereals and rice; bleaching of rice;
(g) operations to colour or flavour sugar or form sugar lumps; partial or total milling of sugar in solid form;
(h) peeling, stoning and shelling, of fruits, nuts and vegetables;
(i) sharpening, simple grinding or simple cutting;
(j) sifting, screening, sorting, classifying, grading, matching including the making-up of sets of articles;
(k) simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations;
(l) affixing or printing marks, labels, logos and other like distinguishing signs on products or their packaging;

2 Preserving operations such as chilling, freezing or ventilating are considered insufficient within the meaning of point (a), whereas operations such as pickling, drying or smoking that are intended to give a product special or different characteristics are not considered insufficient.

This document has been agreed between the European Union and the United Kingdom and is provided for information only. No rights may be derived from it until the date of application. The numbering of the articles is provisional.

230 Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, Article ORIG-7 p.30 available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/948119/EU-UK_Trade_and_Cooperation_Agreement_24.12.2020.pdf

(m) simple mixing of products, whether or not of different kinds; mixing of sugar with any material;
(n) simple addition of water or dilution with water or another substance that does not materially alter the characteristics of the product, or dehydration or denaturation of products;
(o) simple assembly of parts of articles to constitute a complete article or disassembly of products into parts;
(p) slaughter of animals.

2. For the purposes of paragraph 1, operations shall be considered simple if neither special skills nor machines, apparatus or equipment especially produced or installed are needed for carrying out those operations.

15.6 Diagonal cumulation

The European Union did not concede to the United Kingdom's request for diagonal cumulation, meaning that goods from a territory that both partners have a free trade deal with, such as Japan or South Korea, or emerging markets and developing economies that have been included within the General System of Preferences (GSP) of beneficiary countries and General System of Preferences + (GSP+) of beneficiary countries that fall under the arrangement for sustainable development and good governance, by the World Trade Organisation (WTO) requirements, in particular with the Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries (the 'Enabling Clause'), adopted under the General Agreement on Tariffs and Trade (GATT) in 1979, and GATT 'The Uruguay Round' 1994, and the United Nations Conference on Trade and Development (UNCTAD)[231] that are incentivised to benefit from tariff-free access to both the European Union and the United Kingdom, cannot benefit from preferential access if the goods are sent to a territory for distribution or processing, then sold into the partner territory.

This means that goods which benefit from GSP and GSP+ preferential tariffs cannot be processed with EU or UK originating materials in a partner territory and benefit from GSP and GSP+ preferential tariffs on import, if they are exported from a partner country, beyond the product-specific rules of origin established using the Harmonised System classification (2017). Beyond these measures, third country tariffs will apply in accordance with the World Trade Organisation's Most-Favoured Nation (MFN) policy.

The United Kingdom has permitted goods that fall under the Trade Preference Scheme to be stored under customs supervision, or subject to minor manipulation

[231] UNCTAD, General System of Preferences, available from: https://unctad.org/topic/trade-agreements/generalized-system-of-preferences

such as labelling in the European Union, and continue to benefit from the GSP tariffs.[232]

The Trade and Cooperation Agreement, Part two: Trade, Transport, Fisheries and Other Arrangements, Heading One: Trade Title I: Trade in Goods, Chapter 2: Rules of origin Section 1: Rules of origin lays down specific conditions in determining the origin of goods for the purpose of application of preferential tariff treatment.[233]

15.7 Statement on Origin

A statement on origin shall be made out by an exporter of a product on the basis of information demonstrating that the product is originating, including information on the originating status of materials used in the production of the product. The exporter shall be responsible for the correctness of the statement on origin and the information provided.

A statement on origin shall be made out using one of the language versions set out in ANNEX ORIG-4 [Text of the statement on origin][234] in an invoice or on any other document that describes the originating product in sufficient detail to enable the identification of that product.

The exporter shall be responsible for providing sufficient detail to allow the identification of the originating product. The importing Party shall not require the importer to submit a translation of the statement on origin.

Statement of Origin – Example taken from TCA, Annex ORIG-4

(Period: from_____ to _____ (1)) The exporter of the products covered by this document (Exporter Reference No ... (2)) declares that, except where otherwise clearly indicated, these products are of ... (3) preferential origin.
…….. (4)
(Place and date)
……..
(Name of the exporter)

1 If the statement on origin is completed for multiple shipments of identical originating products within the meaning of point (b) of Article ORIG.19(4) [Statement

[232] The Customs (Origin of Chargeable Goods: Trade Preference Scheme) (EU Exit) Regulations 2020, available from: https://www.legislation.gov.uk/uksi/2020/1436/regulation/20/made

[233] Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, Chapter 2: Rules of Origin, p.27 - 41 available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/948119/EU-UK_Trade_and_Cooperation_Agreement_24.12.2020.pdf

234 Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, ANNEX ORIG-4 p.482 available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/948119/EU-UK_Trade_and_Cooperation_Agreement_24.12.2020.pdf

on Origin] of this Agreement, indicate the period for which the statement on origin is to apply. That period shall not exceed 12 months. All importations of the product must occur within the period indicated. If a period is not applicable, the field may be left blank.

2 Indicate the reference number by which the exporter is identified. For the Union exporter, this will be the number assigned in accordance with the laws and regulations of the Union. For the United Kingdom exporter, this will be the number assigned in accordance with the laws and regulations applicable within the United Kingdom. Where the exporter has not been assigned a number, this field may be left blank.

3. Indicate the origin of the product: The United Kingdom or the Union.

4. Place and date may be omitted if the information is contained on the document itself.

5. A statement on origin shall be valid for 12 months from the date it was made out or for such longer period as provided by the Party of import up to a maximum of 24 months.

A statement on origin may apply to:

(a) a single shipment of one or more products imported into a Party; or

(b) multiple shipments of identical products imported into a Party within the period specified in the statement on origin, which shall not exceed 12 months.

6. If, at the request of the importer, unassembled or disassembled products within the meaning of General Rule 2(a) for the Interpretation of the Harmonised System that fall within Sections XV to XXI of the Harmonised System are imported by instalments, a single statement on origin for such products may be used in accordance with the requirements laid down by the customs authority of the importing Party.

15.8 Third country goods in free circulation in the EU

One of the key aspects of the EU-UK trade deal which may raise contention concerning customs compliance, is the free circulation of third country goods already cleared in the EU, when crossing the UK border. For goods which are not originating in the EU or the UK, a third country duty may be liable. It is possible to identify this by referencing the commodity code of the product against the UK Trade Tariff Volume 2.

Exporters are required to declare the origin of their goods when trading with the UK. This is used by importing countries to protect their producers, for trade statistics and other purposes.

15.9 Supplier's Declaration Template

The supplier's declaration, the text of which is provided below, must be made out in accordance with the footnotes. However, the footnotes do not have to be reproduced.

I, the undersigned, the supplier of the products covered by the annexed document, declare that:

1. The following materials which do not originate in [indicate the name of the relevant Party] have been used in [indicate the name of the relevant Party] to produce these products:

Description of the products supplied (1)	Description of non-originating materials used	HS heading of non-originating materials used (2)	Value of non-originating materials used (2) (3)
		Total value	

All the other materials used in [indicate the name of the relevant Party] to produce those products originate in [indicate the name of the relevant Party] I undertake to make available any further supporting documents required.
……
…… (Place and Date)
……(Name and position of the undersigned, name and address of company)
……
…… (Signature)(6) _____

15.10 Long term supplier's declaration template

The long-term supplier's declaration, the text of which is given below, must be made out in accordance with the footnotes. However, the footnotes do not have to be reproduced.

I, the undersigned, the supplier of the products covered by the annexed document, which are regularly supplied to (4) ……., declare that:

1. The following materials which do not originate in [indicate the name of the relevant Party] have been used in [indicate the name of the relevant Party] to produce these products:

Description of the products supplied (1)	Description of non-originating materials used	HS heading of non-originating materials used (2)	Value of non-originating materials used (2) (3)
		Total value	

2. All the other materials used in [indicate the name of the relevant Party] to produce those products originate in a Party [indicate the name of the relevant Party]; This declaration is valid for all subsequent consignments of these products dispatched from ..... to ..... (5) I undertake to inform ..... (4) immediately if this declaration ceases to be valid.

……

…… (Place and Date)

……(Name and position of the undersigned, name and address of company)

……

…… (Signature) (6)

Footnotes

(1) Where the invoice or other document to which the declaration is annexed relates to different kinds of products, or to products which do not incorporate non-originating materials to the same extent, the supplier must clearly differentiate them.

(2) The information requested does not have to be given unless it is necessary. Examples: One of the rules for garments of HS Chapter 62 provides "Weaving combined with making-up including cutting of fabric". If a manufacturer of such garments in a Party uses fabric imported from the other Party which has been obtained there by weaving non-originating yarn, it is sufficient for the supplier in the latter Party to describe in his declaration the non-originating material used as yarn, without it being necessary to indicate the HS heading and the value of such yarn. A producer of wire of iron of HS heading 7217 who has produced it from non-originating iron bars should indicate in the second column 'bars of iron'. Where that wire is to be used in the production of a machine for which the rule contains a limitation for all non-originating materials used to a certain percentage value, it is necessary to indicate in the third column the value of non-originating bars.

(3) 'Value of non-originating materials used' means the value of the non-originating materials used in the production of the product, which is its customs value at the time of importation, including freight, insurance if appropriate, packing and all other costs incurred in transporting the materials to the importation port in the Party where the producer of the product is located; where the value of the non-originating materials is not known and cannot be ascertained, the first ascertainable price paid for the non-originating materials in the Union or in the United Kingdom is used.

(4) Name and address of the customer

(5) Insert dates

(6) This field may contain an electronic signature, a scanned image or other visual representation of the signer's handwritten signature instead of original signatures, where appropriate.

16. Sanitary and Phytosanitary (SPS) Controls

Sanitary and Phytosanitary controls are implemented to protect human, animal, and plant life or health in the territories of the parties, whilst facilitating trade between the parties. The EU and the UK have agreed to enhance cooperation in the fight against antimicrobial resistance, promotion of sustainable food systems, protection of animal welfare and on electronic certification.[237]

[237] The Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, Article SPS-1 Objectives, pp.33 available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/948119/EU-UK_Trade_and_Cooperation_Agreement_24.12.2020.pdf

The UK has established a grace period for importers, to enable IT systems and traders to prepare for the new regimes.

16.1 Exporting

Since the 1st January 2021, the European Union has introduced strict regulatory compliance requirements for traders in food and agricultural products exporting from the UK. Businesses who sell into Northern Ireland will have their certification funded by the UK government, however traders who sell into the European Union will have to pay a fee for licenses.

The Border with the European Union has outlined that[238]:

Products of Animal Origin (POAO) and Animal By-Products not intended for human consumption (ABP) being exported from GB to the EU will be subject to EU import controls in line with goods exported from the Rest of the World (Row).

This will include the requirement for:

- goods to be accompanied by an Export Health Certificate or other official documentation in order to undergo documentary checks.
- EU import pre-notifications submitted by the importer at least one working day in advance of arrival for certain products.
- Entry via a suitable BCP in order to undergo documentary, identity and physical checks at the border for certain products.

Exports of certain composite products containing animal products will also be subject to these controls. Guidance on what this includes is available here.

Exporters should check if the CN code for their product is listed in Regulation 2019/2007[239] to find out if the POAO or ABP must meet the above requirements.

To find out if the POAO or ABP must meet the above requirements. All goods will need to be accompanied by an Export Health Certificate (EHC) or other official documentation. The exporter will need to contact APHA to obtain the appropriate EHC which must be filled out by an Official Veterinarian or Official Inspector on inspection of the consignment. Food Competent Certifying Officers, who are usually local authority Environmental Health Officers, can sign for seafood. The original EHC or other official document must be physically presented at the BCP on arrival in the EU. Exporters can apply for their health certificates on EHC Online (EHCO) and further information on EHCs can be found here. EHCO is a new digital online application service for EHCs that has been developed by Defra and APHA, replacing

[238] Border Protocol Delivery Group The Border with the European Union, pp.103 available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/949579/December_BordersOPModel__2_.pdf

[239] Commission Implementing Regulation (EU) 2019/2007 of 18 November 2019 available from: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R2007

the manual PDF process for applying for non-EU EHCs. If no EHC currently exists for the country of destination, the GB exporter must confirm the Member State-specific import conditions with their importer and contact CITC for any licensing or documentation where applicable. Contact details for CITC can be found here.

The new import controls introduce pre-notifications for goods arriving in the EU to be lodged via the TRAce Control and Exports System (TRACES)[240] system.

16.2.1 Export Health Certificates

Export Health Certificates are required to export or move live animals and animal products from the UK to the EU. They are not required by Northern Ireland-based traders who export to the EU.

Export Health Certificates are required for:

- Products of animal origin (POAO), fish/shellfish and all other related products
- Animal bones, protein and other by-products
- Food (including composite food), drink and agricultural products (including cereals)
- Food for animals
- Plants (fruits and vegetables) and seeds used as food)

To export live animals or animal products such as food and germplasm, traders must nominate a vet or local authority to sign an export health certificate (EHC). The Animal and Plant Health Agency (APHA) will provide details of how to find an official veterinarian (OV) or local authority to provide this service.

1. First traders should search for their product: Find an Export Health Certificate[241]

2. Check what the requirements are to access an Export Health Certificate, for example under current arrangements, triangular trade whereby fresh EU meat products processing or free circulation in the UK is not permitted to be re-exported to the UK.

3. Register online for a block of certificates (creds)[242] – traders can apply for a block of up to 100 certificates to one country or the same importer. Traders must enter details about the export destination, the certifier, the origin of the product, how the product will be loaded, details of transport and the estimated date of export. For block applications, the estimated date is the first date the export takes place.

[240] *TRACES NT*, available from: https://webgate.ec.europa.eu/tracesnt/login
[241] Plant and Animal Health Agency, *Find an Export Health Certificate*, available from: https://www.gov.uk/export-health-certificates
[242] Plant and Animal Health Agency, Department for Environment, Food, Health and Rural Affairs, *EHC Online, apply for an export health certificate from the EU*, available from: https://www.gov.uk/government/publications/how-to-register-for-export-health-certificate-ehc-online/ehc-online-submit-an-application-for-an-ehc-for-the-european-union#blocks

4. Products must be submitted for certification by an OV or local authority on behalf of Defra and translated into the foreign language of the Border Control Post of the member state authority of the intended importer (s). Access a list of EU member states Border Control Posts.[243] It is advisable to contact the local authorities for associated fees which may vary according to region and the services required.

As an example, the local authority in Hammersmith and Fulham will charge[244]:

- £173.20 for new requests
- £48.90 for repeat requests,
- Northern Ireland export certification costs will be covered by the UK government.

Each individual type of product will require an export health certification, therefore traders exporting multiple consignments may require multiple certificates and should consider groupage exporter status.

- An identity check will entail a visual inspection of the product to confirm labelling compliance, and that the content corresponds to the information provided in the corresponding document.
- A physical check will confirm compliance with the sanitary and phytosanitary requirements of the EU. Temperature checks and analysis, laboratory testing or diagnosis may be required as well as checks on animal welfare standards.
- A Border Control Point (BCP) must be specified by the importer to lodge the pre-notification and obtain the correct translation of the export health certificate. The commodities that BCP's are equipped to process vary according to the region so it is the responsibility of the importing/exporting parties to ensure their goods enter via an appropriate BCP.

Exporters must ensure the containers for exporting animal products are clean.

- POAO products will require an Export Health Certificate (EHC) and other official documentation
- Import pre-notifications must be submitted by the importer at least one working day in advance of arrival.
- POAO must enter the EU by a suitable Border Control Post (BCP).
- Exporters of certain animal products also containing POAO may also be subject to requirements. Exporters should check if their commodity code is listed Regulation 2019/2007[245] to find out if the POAO or ABP meet the above requirements.

[243] *Border Control Posts*, available from: https://ec.europa.eu/food/animals/vet-border-control/bip-contacts_en
[244] Hammersmith and Fulham Council *Food export health certificates and importing food,* [online], available from: https://www.lbhf.gov.uk/business/food-safety/food-export-health-certificates-and-importing-food
[245] Official Journal of the European Union, Implementing Regulation 2019/2007, available from: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R2007

- Exporters of foods products listed in CITES, EUTR and UKWTR annexes such as caviar from the sturgeon family will also need to meet CITES-related requirements as detailed for CITES goods.

16.1.2 Border Control Posts

Upon arrival, POAO will be subject to documentary and identity checks and a throughout examination of all certifications and labelling and inspection. Goods may also be subject to physical checks.

16.1.3 Fish, Shellfish and their products

In addition to the requirement for export health certificate, import control pre-notification and entry via a Border Control Post, there are additional requirements for exporters of Marine Caught Fish and CITES listed goods, that will need to meet line catch certificate requirements as detailed for fish, shellfish and their products.

Export of most UK marine caught fish, e.g. freshwater fish, and shellfish must be accompanied by catch certificate, and official document to proof that the fish has been caught in UK waters.

Fish and shellfish exporters must create a catch certificate[246] that has been landed by a UK flagged catching vessel.

This must contain:

- details about the catching vessel including the PLN, vessel and license number
- the species and commodity code
- amount of fish caught by species and net weight per vessel
- where and when the fish was caught.

Storage document – for fish stored on premises in GB

Fish that has been caught outside of the UK waters but are stored in the UK for longer than 24 hours but not processed will require a storage document to enable export to the EU, Iceland, Ivory Coast, Kuwait, Madagascar, Norway, Thailand, Tunisia and Ukraine. This must be generated using:

- a Government Gateway user ID and password
- the company name and address of the exporter
- outline of which products are being stored (and include the EU tariff commodity codes

[246] Department for Environment, Food and Rural Affairs, Marine Management Organisation, *Guidance on Exporting or Moving Fish from the UK,* [online], available from: https://www.gov.uk/guidance/exporting-or-moving-fish-from-the-uk

- catch certificate numbers and export weights for each product
- the dates and places that the products entered the UK (and transport details upon entry to the UK)
- the name, address and facility approval number of each storage facility used
- to say how each storage facility stores the product (frozen, chilled or both)
- transport details for how the export will leave the UK, where it will leave from and when
- the identification numbers of the containers used to export the product.

Create a UK Storage Document.[247] The original EHC must be presented to the Border Control Post when entering an EU country.

Exports of non-marine fish e.g., freshwater fish and shellfish and certain exempt marine species including mussels, cockles, oysters, cockles, scallops, fish fry or larvae are not subject to catch certificate requirements.

Where live animals are intended for consumption by the consumer, such as live oysters, mussels, lobsters and crabs from Class A waters, they are classified as animal products and not live animals and will be subject to controls applying to animal products rather than live animal controls.

16.1.4 High-risk feed and food not of Animal Origin

Exports of HRFNAO from the UK to the EU will be subject to import controls. This includes:

· Pre-notification via Traces NT
· Entrance through an appropriate BCP.

This includes the exports of some controlled plants and plant products such as apples, lettuce and all solanaceous fruits such as aubergines and tomatoes that will be subject to these controls as well as a Phytosanitary Certification.

16.1.5 Plants and Plant Products

When exporting plants and plant products, traders are advised to check whether a Phytosanitary Certificate is required by contacting the Plant Health Authority or Plant Health Inspector in the relevant country.[248] Visit Food and Agriculture of the United Nations to obtain a list of participating authorities. There is significant information

[247] Marine Management Organisation, *Create a UK Storage Document*, available from: https://www.gov.uk/guidance/create-a-uk-storage-document
[248] Food and Agricultural Organisation of the United Nations, *List of Countries,* available from*:* https://www.ippc.int/en/countries/all/list-countries/

online regarding the risks of plant disease such as Xylella when importing from abroad, watch the video: Xyella- How Can We Protect Our Plants[249]

To access a Phytosanitary Certificate when exporting:

- Plants, including fruit, vegetables and dried flowers
- Plant products
- Seeds
- Potatoes
- Bulbs
- Grain
- Machinery
- Wood and wood products

The goods must be inspected. Traders in England and Wales may apply through Defra's eDomero[250]
Traders in Scotland may apply through: SASA[251]
Traders in Northern Ireland may apply though DAERA[252]

16.1.6 How to register for Traces NT

EU Importers of animals, POAO or HRFNAO must register for Traces NT, the European Commission's digital certification and management platform for all sanitary and phytosanitary requirements, supporting the importation of animal, products of animal origin, food and feed of non-animal origin and plants into the European Union.

- Economic operators must create an EU Login[253] account
- Once an EU Login account has been set up, traders can create a Trade Control and Expert System TRACES NT[254] account.

The TRACES account will provide options for which certificate applies:

- COI[255]
- PHYTO[256]
- CHED-PP[257]

[249] John Innes Centre, *Xyella: How can we protect our plants,* 12th January 2020, retrieved from: https://www.youtube.com/watch?v=2xnsdASNvzQ
[250] Defra, *Edomero*, [online], available from: http://edomero.defra.gov.uk/
[251] Sasa, *Plant Health Licensing,* [online], available from: https://www.sasa.gov.uk/plant-health/plant-health-licensing
[252] Daera Northern Ireland, *Import and Export of Plants,* [online] available from: *https://www.daera-ni.gov.uk/articles/import-and-export-plants*
[253] EU Login, available from: https://webgate.ec.europa.eu/cas/login
[254] European Commission, TRACES NT, https://webgate.ec.europa.eu/tracesnt/login
[255] TRACES, *Consignments of Organic production*, [online] available from: https://webgate.ec.europa.eu/cfcas3/tracesnt-webhelp/Content/E_COI/Intro.htm
[256] TRACES, Phyto, [online] https://webgate.ec.europa.eu/cfcas3/tracesnt-webhelp/Content/J_PHYTO/Intro.htm
[257] TRACES, Common Health Entry Documents, [online}, available from: https://webgate.ec.europa.eu/cfcas3/tracesnt-webhelp/Content/L_CHED-PP/Intro.htm

- FLEGT[258]

Economic operators must choose the border control post (BCP) that they wish to be associated with for registration purposes. Once registered, any BCP may be used.
· BCP users must associate themselves with a competent authority. Requests will be validated by a BCP or competent authority.

The Traces NT system will require importers to submit details regarding the consignment including:

- the country of origin
- place of destination
- the specific species/product type
- commodity code
- general details for the importer, exporter and transporter.

This information must be submitted by the importer of the goods in advance to the relevant regulatory body.

16.1.7 Wooden Crates

Wooden Packaging Material (WPM) must be compliant with the ISPM15 international standards for treatment and compliant marking. WPM may be subject to compliance checks into the UK to verify compliance.
Solid wood packaging includes:

· packing cases
· boxes and crates
· drums and similar packing
· pallets, box pallets, pallet collars and other load boards
· dunnage (loose wood used to protect goods and their packaging)

These rules do not apply to processed, non-solid wood packaging for example:

· plywood
· raw wood that's 6mm thick or less
· barrels for wines and spirits
· gift boxes made from processed wood, sawdust, shavings or cardboard packing material

For further information on compliance requirements visit: Wood Packaging for Imports and Exports.[259]

[258] TRACES, Forest Law Governance and Trade, [online] available from: https://webgate.ec.europa.eu/cfcas3/tracesnt-webhelp/Content/I_FLEGT/Intro.htm

16.1.8 The Groupage Export Facilitation Scheme (GEFS)

Groupage may occur when a haulier has multiple consignments of products containing multiple export health certificates in one journey.

A groupage export is an export where:

a) multiple product lines of the same commodity type (e.g., composite products) are grouped under a single export health certificate to export as a single consignment.

b) Multiple quantities of the same commodity type (e.g., fish products) potentially from several sources are grouped into the same container. It may be possible to export these as a single consignment covered by a single health certificate or as a mixed load (containing several consignments).

c) Multiple different commodity types (e.g., dairy products and meat products) are grouped in a single container.

Visit Defra's Groupage Export Facilitation Scheme[260] to facilitate groupage exports from the UK to the EU. To use this service exporters must be part of the Groupage Exporter Facilitation Scheme and apply via Annex 3 in the link above. Specific products must be fully packaged to the final consumer or to be repackaged directly at the point of sale, and products must be sourced from by a stable network of suppliers.

- The GEFS is a scheme for using time limited Support Attestations (SAs) to facilitate certification of European Union (EU) export health certification for groupage exports to, or for transits through, the EU, including as required under the Northern Ireland Protocol for the movement of goods from Great Britain to Northern Ireland where Export Health Certificates (EHC) are required.

- Traders must apply to Defra to use the GEFS scheme, using relevant attestation from suppliers in the UK. All exporters using the scheme must source all of their animal products from a documented and stable supplier list. This list must be made available on request by the CO, CSO or a registered vet.

- All suppliers using SAs will be subject to regular veterinary inspections and at the initial inspection will be required to provide evidence of a documented and stable supply chain for the past 12 months.

[259] HM Government, *Wood Packaging goods for import and export,* [online] available from: https://www.gov.uk/wood-packaging-import-export

[260] Defra, *Groupage Export Facilitation Scheme*, available from: http://apha.defra.gov.uk/external-operations-admin/library/documents/exports/ET193.pdf

Day Support Attestations

The 30-day Support Attestations can only be used to facilitate provision of information for specific categories of products, which are fully packaged for the final consumer, or will be directly repackaged at the point of sale and are produced by a stable network of known suppliers.

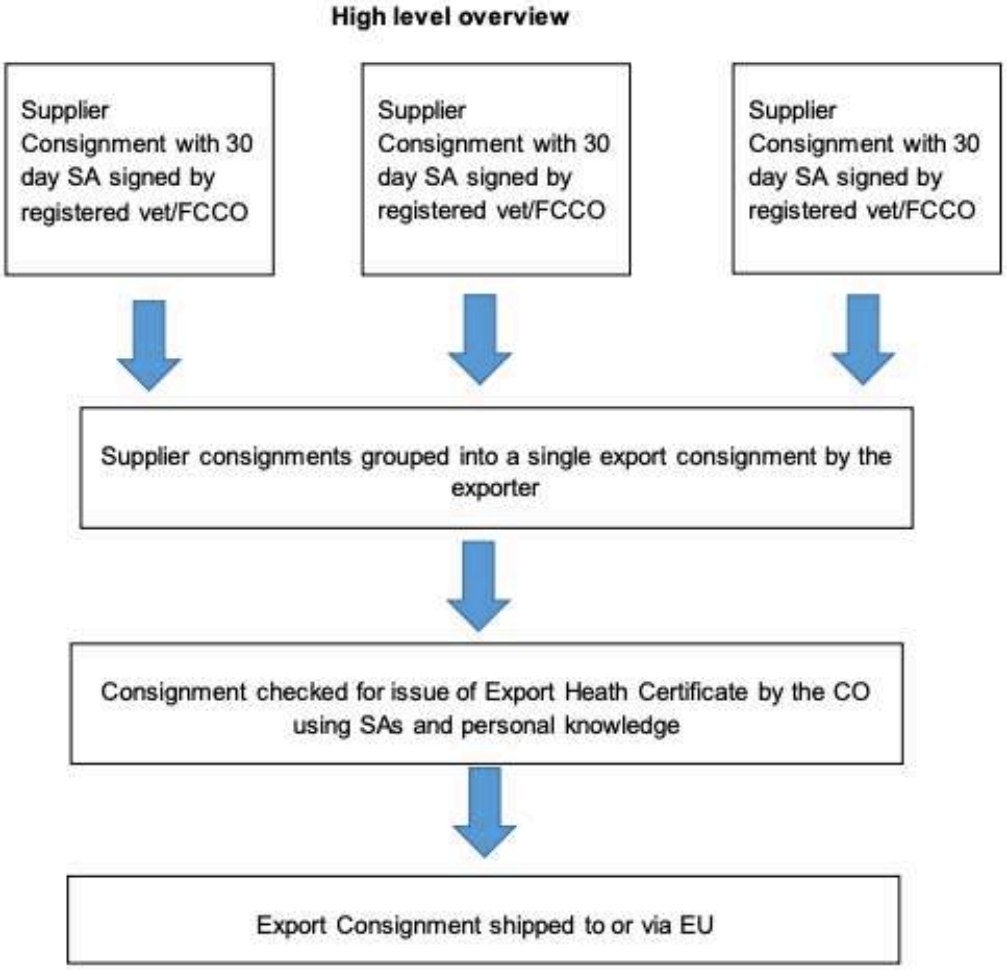
30-day Support Attestations may be used for composite products, meat products, meat preparations and dairy products for human consumption as well as processed pet food. They may also be used for other products of animal origin such as honey, frogs' legs, snails, live bivalve molluscs, fish/fishery products, eggs and egg products where they are for human consumption and fully packaged for the final consumer, or to be repackaged at the point of sale to the final consumer.

It is not permitted to use the 30-day Support Attestations for fresh meat, raw milk, products of animal origin not for human consumption except processed pet food, live animals, germinal products, or any other products not listed in the list of permitted products. These products may be included within a groupage export, but they must be accompanied by a separate certification from an SA.

All exporters using the groupage scheme must source all of their products from a reputable supplier list. Products that have been frozen or are undergoing processing lasting longer than six months (e.g., cheese undergoing maturing) may be covered by an SA provided that the relevant health and traceability details (as required by the Export Health Certificate) for any products supplied to the exporter in the six-month period that are suitably stable.

Exporters must ensure that their suppliers:

- Agree what information will be required with the relevant vet or FCCO and collect this information before inspections.
- Arrange for registered veterinarians, FCCO or CSO under the direction of the CO to the supplying establishment (s) and facilitate their access to relevant records and inspection locations.
- Ensure that the SAs are signed on behalf the company by an individual with sufficient knowledge of the plants and processes, and with the responsibility and authority (obtained in writing from company director level or equivalent) to sign on behalf of the supplying company.
- Ensure that suppliers inform both the exporting company and the registered vet, FCCO or CSO without any delays of any changes which affect the validity of the declarations provided in the SA.



Department for Environment, Food and Rural Affairs ©

Support Attestation (SA) Representation

SA's must be fully completed and signed by a suitable representative of the supplying company, and a registered vet, FCCO or CSO acting under the direction of the CO.

UNIQUE DOCUMENT REFERENCE NUMBER (12) …… I. Supplier declaration I …….. (full name), being…….(official position in the company) of …… (name and address of supplying company), have authority and responsibility to sign this declaration on behalf of this supplying company. I hereby declare that the details in sections A and B below includes a complete list of the products of animal origin contained within the products to which this Support Attestation relates supplied to …….. (company name of exporter).

I confirm that the information within this support attestation is correct and that no changes will be made to affect its validity prior to its date of expiry. I will ensure that the registered veterinarian* / CSO (Certification Support Officer)* / Food Competent Certifying Officer signing the attestation in section II and the exporter listed above are immediately informed if any changes are made that affect the validity of this document and/or if I leave the employment of the supplying company detailed above. I understand that in such cases this support attestation will immediately become null and void. I understand that supplying false or misleading declarations that will be relied upon by the exporter in respect of the verifications provided in the relevant export health certificate is an offence and may result in rejection of the exported product and immediate removal of the exporter from the Groupage Export Facilitation Scheme as well as risk of liability for costs incurred. I will ensure that each consignment of products sent to the export depot that is covered by this support attestation is accompanied by a declaration signed on behalf of the supplying company and stating that "The evidence required to facilitate export of 12 A unique reference number must be given to each original support health attestation used. Suggested format: unique supplier number/sequential number/ unique number for vet, FCCO or CSO signing part II /year (e.g.: 15435/0000001/m159607/2019) 16 the products in this consignment has been provided in Support Attestation …. [insert unique reference number as above]. No changes have been made that affect the validity of the information provided in this Support Attestation."

A. Details of product(s):

1. Origin and Destination

a) Address and, if available, Approval* / Registration Number* of the establishment(s) from which the consignment will be dispatched (e.g., supplier) :
.....
.....
b) Address and, if available, Approval* / Registration Number* of the establishment(s) to which the consignment will be dispatched (e.g., exporting depots):
.....
..... 2. Description of the product(s) Product specific details of all products to which this support attestation relates (this may be attached as a schedule):
.....
..... B. Traceability information: [INSERT REQUIRED INFORMATION RELATING TO ALL PRODUCTS LISTED ABOVE (IN A.2) AS AGREED WITH THE CERTIFYING OFFICER RESPONSIBLE FOR EXPORT CERTIFICATION] Authorised by Name:

Signature:

Position:

Date:

High level overview

Suitable forms of evidence which registered vets, FCCOs or CSOs may check before signing SAs could include:

- contractual agreements
- invoices
- HACCP plans/records
- Standard Operating Procedures (SOPs)
- Traceability records

Visit Defra's Groupage Export[261] or contact GEFS@defra.gov.uk for further information.

16.2 Importing into the UK

Since the UK left the EU, new Sanitary and Phytosanitary controls have been introduced. These controls will introduce a number of new processes and procedures which will apply to the import of animal products, fishery products and live bivalve molluscs, high-risk food and feed not of animal origin (HRFNAO), live animals, live aquatic animals for aquaculture and ornamental purposes, equines and plants and plant products.

These controls include the requirements for:

- Import pre-notifications
- Health certification (such as an Export Health Certificate or Phytosanitary Certificate), with documentary checks carried out remotely or at BCPs
- Entry via an established point of entry with an appropriate BCP
- Identity and physical checks at BCPs

The controls are being introduced via an extended grace period. Further insight can be found within The Border with the European Union.[262]

This outlines the following information:

[261] DEFRA, Groupage Export Facilitation Scheme, [online], available from: http://apha.defra.gov.uk/external-operations-admin/library/documents/exports/ET193.pdf

[262] HM Government *The Border with the European Union: Importing and Exporting Goods,* Border and Protocol Delivery Group, December 2020, pp.46
available:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/949579/December_BordersOPModel__2_.pdf

An import pre-notification refers to the means by which importers provide advance notice to relevant regulatory bodies of a consignment's arrival into GB. This is typically a standardised import notification form that requires the importer to provide details regarding the consignment, such as the consignment's country of origin, place of destination, the specific species/product and general details for the importer, exporter and transporter. This is submitted by the importer in advance of the consignment's arrival to the relevant regulatory body for that commodity.

A health certificate refers to an official document that confirms the product meets the health requirements of the destination country. This is required to accompany the consignment during its passage. It is the responsibility of the exporter to secure this from the country of origin's relevant competent authority. Different products will require different details from the exporter regarding the consignment, though this will generally include details of the country of origin, place of destination, and nature of transport, as well as a health attestation of the consignment. For products of animal origin and live animals, for instance, this will require the consignment to be inspected by an Official Veterinarian in order to verify that the consignment's contents meet the health requirements of the destination country. An individual health certificate is required for each species/type of product. Therefore, a single import may consist of multiple consignments that each require a health certificate.

A documentary check is an examination of official certifications, attestations and other commercial documents that are required to accompany a consignment.

An identity check entails the visual inspection of a consignment in order to verify its content and labelling corresponds to the information provided in accompanying documentation.

A physical check entails a check on the goods to verify that they are compliant with the **sanitary and phytosanitary import requirements for GB**. This includes, as appropriate, checks on the consignment's packaging, means of transport and labelling. Temperature sampling, laboratory testing or diagnosis may also be required.

Entry via an established point of entry with an appropriate Border Control Post (BCP) refers to the requirement for certain goods to enter GB via specific points of entry that are equipped to perform checks on specified goods. A BCP is an inspection post designated and approved in line with that country's relevant legislation for carrying out checks on animals, plants and their products arriving from the EU. These checks are carried out to protect animal, plant and public health. The commodities that BCPs are equipped and approved to process will differ between BCPs. Therefore, it is the responsibility of the importing / exporting parties to ensure that their goods are routed via an appropriate BCP.

Importers are typically required to notify the relevant BCP of the goods arrival as part of the pre-notification process as described above.

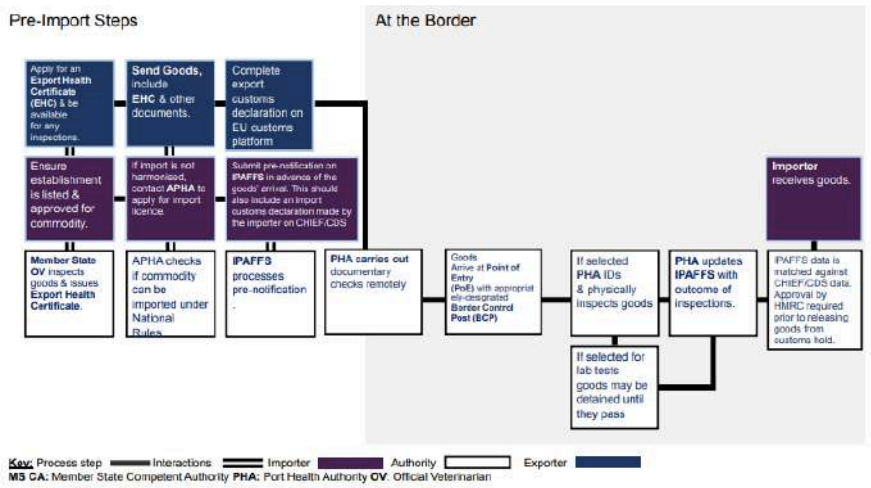
Requirements for imports from EEA/EFTA countries. Where EEA/ EFTA countries are fully harmonised with EU SPS standards, phasing of SPS control arrangements will be carried out in line with EU countries. Where EEA/ EFTA countries are not currently fully harmonised with EU SPS standards, they should expect continuity of their current SPS control arrangements from January 2021.

Marketing standards Depending on the exact goods being imported, changes will apply to the rules on marketing standards for imports of:

- fruits and vegetables
- hops
- wine
- beef and veal
- eggs
- hatching eggs and chicks
- poultry meat

From 1 January 2021, imports of these products from the EU may need to meet new requirements. These will vary by sector. Full details of the marketing standards that will apply to specific products are available from Food and drink businesses: working with the EU.[263] On 11th March 2021, Michael Gove, Chancellor for the Duchy of Lancaster and Minister for the Cabinet Office announced a revised timetable under which requirements for the majority of SPS checks are delayed until 1st October 2021.[264]

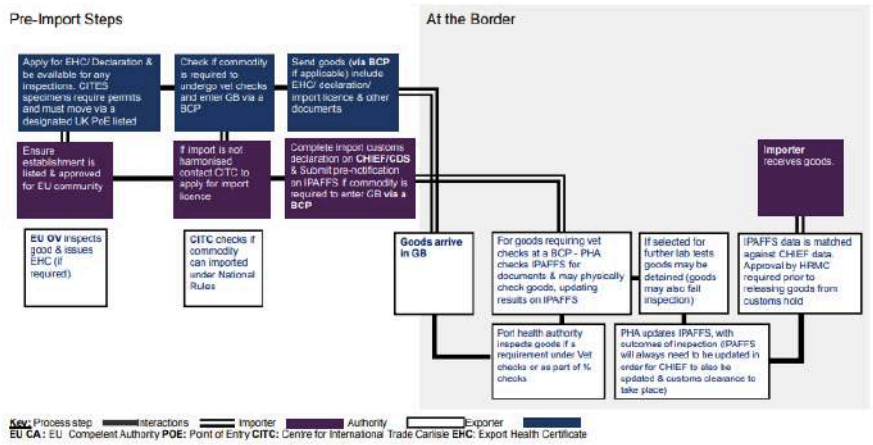
Process Map: Products of Animal Origin



[263] Defra, *Food and drink businesses: working with the EU,* [online], 26th February 2021, available from: https://www.gov.uk/guidance/food-and-drink-businesses-working-with-the-eu
[264] Gove, M. Rt Hn, *Border Controls,* [online] 11th March 2021, available from: https://questions-statements.parliament.uk/written-statements/detail/2021-03-11/hcws841

© Border and Protocol Delivery Group

Process Map: Animal By-Products



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16.2.1 From 1st January 2021

Alinea outline new border control procedures that have been introduced following the end of the transition period.

16.2.1.1 High-risk plants

The UK is no longer part of the EU Plant Passport scheme. A Phytosanitary Certificate (PC) is required for high-risk plants entering the UK from the EU. The importer is required to obtain the certificate from their EU supplier, and lodge a notification with the Plant Health Authority. For further information, visit: HMRC: Import plants and plant products from the EU to Great Britain and Northern Ireland.[265] In addition to this, all importers must submit a C88 (single administrative documents) to HMRC to declare commercial goods arriving the UK.

16.2.1.2 Importing fish and IUU catch certificates

Importing Illegal, Unreported and Unregulated (IUU) fishery products is prohibited. To establish the effectiveness of this, marine caught fishery products which fall under Regulation 1005/2008[266] require a pre-notification to be made by the importer or a representative of the importer, 3 days in advance of the consignment arriving at the border, or 4 hours in advance of the goods arriving at the border via Ro-Ro and air freight, and may be subject to import checks when they are imported into the UK.

[265] DEFRA, *Import Plants and Plant Products from the EU to Great Britain and Northern Ireland*, available from: https://www.gov.uk/guidance/import-plants-and-plant-products-from-the-eu-to-great-britain-and-northern-ireland
[266] Council Regulation (EC) No 1005/2008, amended by The Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2019, Section 9 available from: https://www.legislation.gov.uk/eur/2008/1005/contents,

The Port Health Authorities require pre-notification of the import of third country fish and composite fish products, including fish and fish products imported from the European Union. There is not an IUU customs hold on consignments of fish imported from the EU, but a pre-notification should be submitted to the relevant Port Health Authorities. Traders should contact their port of entrance, and register for an account.

The importer must obtain a catch certificate from the supplier, which should be validated by public authority of the flag State of the fishing vessel or fishing vessels which made the catches from which the fishery products have been obtained. This is used to certify that catches have been made in accordance with the applicable laws, regulations, and international conservation and management measures. Catches made by fishing vessels registered under the law of the Isle of Man or any of the Channel Islands which are imported into the United Kingdom are not required to be accompanied by a catch certificate.

The catch certificate will be validated by the relevant Port Health Authorities, who will validate the catch certificate template and authorisation by the Flag State, and check the vessel details against a list of vessels known to have been engaged in illegal fishing activities, catch areas, and Regional Management Organisation information where appropriate.

Where there appears to be a discrepancy, check will be undertaken on the consignment including identity and physical checks, and DNA analysis for fish species identification.

Upon completion of satisfactory checks, the paperwork will be signed and stamped by the Port Health Authorities.

If the products are in breach of the regulations, the importer may be able to re-export the product. If the product has been fished illegal it may be confiscated and destroyed.

The Regulation also applies to composite fishery products (i.e. products which contain wild caught fish and other ingredients). If the product falls under CN Code 03, 1604 and 1605 a catch certificate will be required.

Importers may be required to provide written confirmation from HMRC Tariff Classification Team of the commodity code of the consignment.[267]

Further information can be found at Marine Management Organisation, fishing and exporting seafood products from 1 January 2021.[268]

[267] IUU Catch Certificates, available from: https://www.dover.gov.uk/Environment/Environmental-Health/Port-Health/IUU-Catch-Certificates-EU-origin-fish.aspx

16.2.2 From 1st October 2021

Alinea outline new requirements for traders importing agri-food from the European Union.

16.2.2.1 Import of Products, Animals, Food and Feed System (IPAFFS)

IPAFFS is the Import of Products, Animals, Food and Feed System.[269] It is used for the application for, and issuing of, Common Health Entry Documents for imports into Great Britain (GB) of live animals, their products, germplasm (CHED-P); and also submitting notifications related to high-risk food and feed not of animal origin via issuance of Common Health Entry Documents (CHED-D). Since the UK has left the EU, it replaces the use of the European Union's Trade Control and Expert System (TRACES).

From 1st October 2021, pre-notification requirements will come into effect for traders importing from the EU. These use the Import of Products, Animals, Food and Feed System (IPAFFS), and apply to:

- Products of Animal Origin (POAO), which will also need to be accompanied by a health certificate so they can have remote documentary checks,
- certain Animal By-Products (ABP), and
- High Risk Foods Not of Animal Origin (HRFAO).

The GB importer will need to submit a notification via the Import of Products, Animals, Food and Feed System (IPAFFS) at least **one working day** before the expected time of arrival at the point of entry.

Please register for IPAFFS using the following link:

- Find out how to register a business or organisation for the IPAFFS service (ODT, 11.9KB).

IPAFFS differs from C88 administration, and does not require specialist software or the complex technical knowledge and training required by customs agents. It can be performed by the trader or an office clerk, and is free to use.

Alinea is able to provide administration of this service, but will require authorisation from the trader in order to do so. The trader must:

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[268] Marine Management Organisation, *One Stop Shop support from commercial fishers, merchants and exporters*, updated 20th May 2021, available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/988397/One_Stop_Shop_Exporters_V37.pdf

[269] APHA, DEFRA, *Import of Products, Animals, Food and Feed*, available from: https://www.gov.uk/guidance/import-of-products-animals-food-and-feed-system

- register with IPAFFS
- sign an IPAFFS administration agreement with Alinea
- Set Alinea up as a team member and administrator through their Government Gateway account.

16.2.2.2 Export health certificate requirements for European Union traders

From 1st October 2021, EU suppliers must provide Export Health Certificates to UK importers for certain products. These include:

- Products of Animal Origin, enabling remote documentary checks,
- certain Animal By-Products where a health certificate is available. If there is no health certificate for your commodity the goods may be able to travel under licence and a commercial document.
- Composite goods
- High risk food and feed not of animal origin

Export Health Certificates must be supplied for the following food groups:

- meat, including fresh meat, meat products, minced meat, meat preparations, poultry meat, rabbit, farmed game meat and wild game meat - products must be accompanied by an Animal Health Certificate issued by an official veterinarian or local authority
- eggs and egg products
- milk and milk products
- honey
- gelatine and gelatine product

The Health Certificate should include details of:

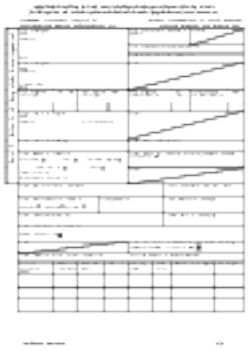
- consignor
- certificate reference number
- unique notification number
- centre of competent authority in issuing country
- consignor/importer
- operator responsible for the consignment
- country of origin
- region of origin (for products affected by regionalisation measures)
- country of destination
- place of dispatch
- place of destination
- place of departure
- date and time of departure
- means of transport
- entry border control post (BCP)

- description of goods
- CN code

Model export health certificates for EU suppliers

Template export health certificates required from 1st October 2021 can be accessed from: Health Certificates for animal and animal products to Great Britain

The EU Supplier must ensure that these are validated by an authorised official veterinarian and/or Competent Authority in their EU Member State. They will then be uploaded by the importer into IPAFFS.



Bovine fresh meat/minced meat BOV from EU 206/2010 GBHC070E

Model health certificate for fresh meat, including minced meat, of domestic bovine animals (including Bison and Bubalus species and their cross-breeds) (Regulation 206/2010). **Certificate 206/2010 GBHC070E**

Use this certificate from 1 October 2021.

Model health certificate for fresh meat, including minced meat, of domestic bovine animals (including Bison and Bubalus species and their cross-breeds) (Regulation 206/2010)

Form
Bovine meat: health certificates

Form
Composites: health certificates

Form
Dairy and milk: health certificates

Form
Eggs: health certificates

Form
Fish products: health certificates

Form
Gelatine and collagen intended for human consumption: health certificates

Form
Meat products: health certificates

Form
Ovine meat: health certificates

Form
Other animal products: health certificates

Form
Other meat: health certificates

Form
Porcine meat: health certificates

Form
Poultry meat: health certificates

Form
Ratite meat: health certificates

Form
High Risk Food and Feed Not of Animal Origin

For live animals and germinal products, the GB importer will need to supply the EU exporter/Official Veterinarian (OV) with the unique notification number (UNN) that is produced when the importer notifies APHA about the import.[270]

No health certificate is required for products of animal origin that are not subject to safeguard measures, but they must be accompanied by commercial documentation.

For POAO subject to safeguard measures, for example due to animal disease, the UK importer should supply the EU exporter / Official Veterinarian (OV) with the unique notification number (UNN) that is produced on IPAFFS when the importer

[270] Importing or moving live animals and germinal products, and high risk food and feed not of animal origin, available from: https://www.gov.uk/guidance/importing-or-moving-live-animals-animal-products-and-high-risk-food-and-feed-not-of-animal-origin

notifies APHA about the import. The exporter must add the UNN to the commercial documentation or health certificate (if one is required). [271]

Further resources:

- HMRC Guidance: https://www.gov.uk/guidance/import-of-products-animals-food-and-feed-system
- Department of Animal and Plant Health: http://apha.defra.gov.uk/documents/bip/iin/eu-1.pdf

16.2.3 From 1st January 2022

From 1st January 2022 the following procedures will apply

- Entry Safety and Security (ENS) declarations will apply to imports; these are likely to be handle by the shipper, logistics provider or the importer. Register with HMRC to make a declaration: Entry Summary Declaration[272].
- Importers of fruit and vegetable products must register with PEACH,[273] and obtain a Phytosanitary Certificate from their EU supplier.
- If the goods are covered by the Specific Marketing Standard (SMS) this should be submitted to PEACH who will issue a Certificate of Conformity to send to the trader's customs agent to clear the consignment.
- There are 10 fruits and vegetables covered by SMS on quality and labelling require a certificate of conformity when they are imported to demonstrate that they comply with the standards.

These are:

- apples
- citrus fruit
- kiwi fruit
- peaches and nectarines
- pears
- strawberries
- table grapes
- lettuces, curled-leaved and broad-leaved endives
- sweet peppers
- tomatoes

[271] Animal and Plant Health Agency, Import of Meat and Meat Products for Consumption from the EU, May 2021, available from: http://apha.defra.gov.uk/documents/bip/iin/eu-1.pdf
[272] HM Revenue and Customs, *Check if you need to make an entry summary declaration,* [online] available from: https://www.gov.uk/guidance/check-if-you-need-to-make-an-entry-summary-declaration
[273] Defra, *Register for PEACH,* [online], available from: http://ehmipeach.defra.gov.uk/Default.aspx?Module=Register

3. A Certificate of Inspection for Organic Products (C644) must be obtained by importers from products imported from the EU, Norway, Iceland, Liechtenstein and Switzerland to GB will require a COI. You'll use the interim manual GB organic import system.

4. The deferred import declaration scheme, which enables traders to lodge a simplified declaration, followed by a supplementary declaration ceases to apply.

5. Border Control Post (BCP)[274] importers must pre-lodge notification of arrivals of high risk plant products with their destination port prior to undergoing physical for high risk products. Failure to provide notifications may result in delays.

16.2.4 From March 2022

From March 2022, checks at Border Control Posts will take place on live animals and low risk plants and plant products.

Border Control Post (BCP) Notifications.

POAO and High-Risk Food Not of Animal Origin (HRFNOAO) importers must pre-lodge notification of arrivals with their destination port prior to undergoing physical product checks. Failure to provide notifications may result in delays.

Please visit: The Border with the EU 2021 for further information.[275]

17. Trading with Northern Ireland

Under the terms of the Northern Ireland Protocol, there is unfettered access and no tariffs on goods entering Northern Ireland from Great Britain. This is established in the Customs (Northern Ireland) (EU Exit) Regulations 2020. [276]
However, EU tariffs may apply to goods 'at risk' of entering the EU from Great Britain via Northern Ireland. Goods entering Northern Ireland will be subject to the provisions of the Union Customs Code. The Trader Support Service is an optional, free of charge service for traders that move goods from Great Britain to Northern Ireland, including declarations, and safety and security declarations. An import declaration is required to move goods into Northern Ireland, but an export declaration is not required to move goods from Great Britain.

[274] Apha, Defra, Uk Border Control Posts: Animal and animal health products, [online], available from: https://www.gov.uk/government/publications/uk-border-control-posts-animal-and-animal-product-imports
[275] HM Government *The Border with the European Union: Importing and Exporting Goods,* Border and Protocol Delivery Group, December 2020, available: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/949579/December_BordersOPModel__2_.pdf
[276] The Customs (Northern Ireland) (EU Exit) Regulations 2020, available from: https://www.legislation.gov.uk/uksi/2020/1605/pdfs/uksi_20201605_en.pdf

17.1 Great Britain to Northern Ireland Trade Movements

When moving goods from the UK to Northern Ireland, an import declaration is required, and a preferential claim must be made, and trade tariffs must be paid[277]. Depending on the Incoterms, this is usually the liability of the importer. The UK Government has an online tool 'Check if you can declare goods you bring into Northern Ireland are not at risk of moving to the EU' [278] which enables traders to ascertain whether their goods are at risk of moving into the EU.

It is possible to avoid duty payments if the goods are not at risk of moving into the EU. To declare goods as 'not at risk' traders must be authorized under the UK Trader scheme to qualify for zero duty.[279]

- Traders that move goods between the UK and Northern Ireland must register for an XI EORI number.[280]
- Traders should register for the free Trader Support Service[281], to benefit from free access to customs agent services and other GB-NI trade movements support.
- Northern Ireland importers are required to make an Entry Summary (Security and Safety) declaration when the goods arrive.[282]

From 1st January 2021, all agri-food goods, plants and animals entering Northern Ireland from Great Britain are required to enter via a European Union (EU) approved Northern Ireland Port of Entry.

The Northern Ireland Department of Agriculture, Environment and Rural Affairs (DAERA[283]), the Department for Environment, Food and Rural Affairs (DEFRA[284]), the Foods Standards Agency (FSA[285]) and the EU have collaborated to designate the following as POEs for the purpose of SPS checks, in accordance with checks prescribed for Third Countries as currently established in the EU Official Controls

[277] HM Revenue and Customs, *Trading and moving goods in and out of Northern Ireland,* available from: https://www.gov.uk/guidance/trading-and-moving-goods-in-and-out-of-northern-ireland#:~:text=You%20will%20need%20to%20make,you%20bring%20into%20Northern%20Ireland

[278] HM Revenue and Customs, Check if you can declare goods you bring into Northern Ireland not at risk of Onward Movement to the EU, available from: https://www.gov.uk/guidance/check-if-you-can-declare-goods-you-bring-into-northern-ireland-not-at-risk-of-moving-to-the-eu#when-goods-are-not-at-risk-of-onward-movement-to-the-eu

[279] HM Revenue and Customs, *Apply for authorization for the UK trade scheme if you bring goods into Northern Ireland*, available from: https://www.gov.uk/guidance/apply-for-authorisation-for-the-uk-trader-scheme-if-you-bring-goods-into-northern-ireland

[280] HM Revenue and Customs, Get an EORI number, available from: https://www.gov.uk/eori/eori-northern-ireland

[281] HM Revenue and Customs, *Trader Support Service*, available from: https://www.gov.uk/guidance/trader-support-service

[282] HM Revenue and Customs, *Entry Summary Declaration*, available from: https://www.gov.uk/guidance/making-an-entry-summary-declaration

[283] Department of Agriculture, Environment and Rural Affairs, available from: http://www.daera-ni.gov.uk/

[284] Department for Food, Environment and Rural Affairs, available from: https://www.gov.uk/government/organisations/department-for-environment-food-rural-affairs

[285] The Food Standards Agency, available from: https://www.food.gov.uk/

Regulation (EU) 2017/625[286]. These are not to be confused with processes operated by HMRC and border force.

Commercial traders must enter Northern Ireland via:

- Belfast Port;
- Belfast International Port;
- Foyle Port;
- Larne Harbour;
- Warrenpoint Port

The designations for each of these ports are set out in Annex 1 of the Compliance Protocol[287] which sets out Sanitary and Phytosanitary Controls and Point of Entry Marketing Standard checks for GB to NI movements which will be required from 1st October 2021.

Lord David Frost has outlined an intention to introduce border examinations in adherence with the Northern Ireland Protocol within a four-phase plan reported to:

- Introduce checks on fresh meat products from 1st October 2021
- Introduce checks on dairy products, plants and wine from 1st January 2022
- Introduce checks on fruit and vegetable marketing standards, pet foods and composite products in two further stages later in the year.[288]

17.2 The Movement Assistance Scheme

The Movement Assistance Scheme (MAS) provides assistance with moving agri-food goods into Northern Ireland.[289]

In order to minimise the economic impact of the new legislation, the UK government has offered to cover the costs of the following regulatory requirements for traders who export to Northern Ireland:

- Export health certifications – veterinarians conducting the inspections must bill the UK government
- Organic certificates – a COI will be paid for by the government. Movements of organic products require Traces NT notification
- Phytosanitary certificates (PCs)

[286] EU Official Controls Regulation (EU) 2017/625, available from: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32017R0625
[287] DAERA, *Sanitary and Phytosanitary Controls,* available from: https://www.daera-ni.gov.uk/sites/default/files/publications/daera/20.21.184 Compliance Protocols V3-SANITARY %26 PHYTOSANITARY CONTROLS.PDF
[288] Barns-Graham, W. Lord Frost says EU relations remain 'a bit bumpy' as UK offers four phase plan on NI food-checks, [online] The Institute of Export, 17th May 2021, available from: https://www.export.org.uk/news/news.asp?id=565739
[289] DEFRA, *the Movement Assistance Scheme, with moving agri-food goods into Northern Ireland*, available from: https://www.gov.uk/government/publications/movement-assistance-scheme-get-help-with-moving-agrifood-goods-to-northern-ireland

DAERA is also responsible for conducting plant and plant health checks to ensure that fruit and vegetables are compliant with EU Marketing Standards[290], which are enforced by the UK Statutory framework The Horticultural Produce Regulations 2009[291]. Currently:

- High risk food not of animal origin must be compliant with the EU's SPS requirements by 1st October 2021 (this date was originally 1st April 2021, but has been extended by the UK government.) More details can be found at Detailed Guidance for Authorised Traders
- Plants and Plant Products must submit verification via TRACES NT CHEDS Products of animal origin (POAO) must be fully compliant with EU law by 1st July 2021, unless they are declared via STAMNI
- Wood packaging materials require ISPM 15 compliance

Products that will be subject to EU marketing standards regulations from 1st October 2021 include fruit and vegetables, hops, wine, beef and veal, eggs in shell, hatching eggs and chicks, olive oil and poultry meat.

17.2.1 STAMNI

The Scheme for Authorised Movements to Northern Ireland (STAMNI) has been established to assist traders who are moving goods directly into Northern Ireland, and do not intend to move their goods into the EU. GB exporters who sell into Republic of Ireland must follow transit procedures, and be compliant with the EU's regulations on SPS checks, export health certification, phytosanitary certification and marketing standards certification.

Authorised Traders can complete a STAMNI declaration form in order to move Products of Animal Origin (POAO), composite products, food and feed of non-animal origin and plants and plant products from Great Britain (GB) to Northern Ireland (NI) without the need for official certification such as export health certificates, phytosanitary certificates or marketing standards certification.

The UK government has extended STAMNI from 1st April until 1st October 2021, and has officially requested an extension of 2 years from the EU.[292]

Great Britain (GB) – Northern Ireland (NI) Traders must:

- Follow the How to Move Goods from GB to NI for Authorised Traders process map[293]

[290] Commission Implementing Regulation (EU) No 543/2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007, available from: https://www.legislation.gov.uk/european/regulation/2007/1234
[291] The Horticultural Produce Regulations 2009, available from: https://www.legislation.gov.uk/uksi/2009/1361/contents
[292] HM Government, UK Transition, *Updated arrangements for authorized traders from 1st April 2021*, available from: https://mcusercontent.com/2c473388c8405c1035acf7d70/files/9151962c-451a-4b3c-a2ae-718876a7a802/210303_Grace_period_extension_to_Authorised_Traders.pdf

- Ensure they follow the STAMNI scheme guidance[294]
- Submit a pre-notification via TRACES NT- CHED-P[295]
- Ensure that a completed STAMNI Compliance Declaration accompanies each consignment[296]

Under the STAMNI scheme, traders must submit a notification of the consignment on TRACES NT by completion of the Common Health Entry Document for Products of Animal Origin (CHED P) and also label each cage or pallet with: 'These products from the United Kingdom are not to be sold outside of Northern Ireland'.

17.3 How to register for Traces NT

Importers of animals, POAO or HRFNAO should register for Traces NT[297], the European Commission's digital certification and management platform for all sanitary and phytosanitary requirements, supporting the importation of animal, products of animal origin, food and feed of non-animal origin and plants into the European Union.

- Economic operators must create an EU Login[298] account
- Once an EU Login account has been set up, traders can create a Trade Control and Expert System TRACES NT[299] account.

The TRACES account will provide options for which certificate applies:

- COI[300]
- PHYTO[301]
- CHED-PP[302]
- FLEGT[303]

Economic operators must choose a designated border control post (BCP) that they wish to be associated with for registration purposes. Once registered, any BCP may be used.[304]

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[293] HM Government, UK Transition, *How to move goods from Great Britain into Northern Ireland (NI) for Authorised Traders, from 1st January 2021*, available from: https://www.dropbox.com/s/0o28kctdfujeaxc/GB-NI Authorised Trader Journey Moving Standard Products V2.2.pdf?dl=0

[294] DEFRA, Scheme for Temporary Agri-food Movements to Northern Ireland (STAMNI), available from: https://www.dropbox.com/s/0tbq7gei2369h7e/STAMNI Guidance %28001%29.pdf?dl=0

[295] European Commission, TRACES, Part I Dispatched consignment as RCA/CA, available from: https://webgate.ec.europa.eu/cfcas3/tracesnt-webhelp/Content/N_CHED-P/PART I Dispatched Consignment as RFC_CA.htm

[296] DEFRA, *Template STAMNI Compliance Declaration*, available from: https://www.dropbox.com/scl/fi/6qtxhahm732zz9dw3czy8/STAMNI-Compliance-Declaration_Authorised-Trader_V9.1.docx?dl=0&rlkey=3pd2a1abxzruho3c3lo6wzvml

[297] European Commission, TRACES NT, available from: https://webgate.ec.europa.eu/tracesnt/login

[298] EU Login, available from: https://webgate.ec.europa.eu/cas/login

[299] European Commission, TRACES NT, https://webgate.ec.europa.eu/tracesnt/login

[300] TRACES, *Consignments of Organic production*, [online] available from: https://webgate.ec.europa.eu/cfcas3/tracesnt-webhelp/Content/E_COI/Intro.htm

[301] TRACES, Phyto, [online] https://webgate.ec.europa.eu/cfcas3/tracesnt-webhelp/Content/J_PHYTO/Intro.htm

[302] TRACES, Common Health Entry Documents, [online}, available from: https://webgate.ec.europa.eu/cfcas3/tracesnt-webhelp/Content/L_CHED-PP/Intro.htm

[303] TRACES, Forest Law Governance and Trade, [online] available from: https://webgate.ec.europa.eu/cfcas3/tracesnt-webhelp/Content/I_FLEGT/Intro.htm

- BCP users must associate themselves with a competent authority. Requests will be validated by a BCP or competent authority.

The Traces NT system will require importers to submit details regarding the consignment of:

- the country of origin
- place of destination
- the specific species/product type
- commodity code
- general details for the importer, exporter and transporter.

This information must be submitted by the importer of the goods in advance to the relevant regulatory body.

17.4 SPS Checks Great Britain to Republic of Ireland via Northern Ireland

Traders must:

1. Pre-notify the Point of Entry (PoE) through which the animals or products will enter Northern Ireland
2. Obtain the appropriate Export Health, Marketing Standards, Organic or Phytosanitary Certificates if required
3. Move the goods through an appropriately designated NI PoE, subject to SPS checks.

SPS checks are in place under the provisions of The Official Feed and Food Control Regulations (NI) 2009[305] and The Trade in Animals and Regulated Products Regulations (NI) 2011[306] and The Sea Fishing (Illegal, Unreported and Unregulated Fishing) Order (NI) 2018[307], local authorities in Northern Ireland have been designated to conduct official controls at NI POEs for checks relating to high risk food not of animal origin (HRFNOAO), fishery products, organics, and plastic kitchenware originating in or consigned from China and Hong Kong.

There are three SPS checks which include:

1. Document check (GB) an electronic check to confirm that the consignment of goods has the correct commercial documentation and certification.

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[304] European Commission, *Designated border control posts*, available from: https://ec.europa.eu/food/animals/vet-border-control/bip_en

[305] The Official Feed and Food Control Regulations (NI) 2009, available from: https://www.legislation.gov.uk/nisr/2009/427/contents/made

[306] The Trade in Animals and Regulated Products Regulations (NI) 2011, available from: https://www.legislation.gov.uk/nisr/2011/438/contents/made

[307] The Sea Fishing (Illegal, Unreported and Unregulated Fishing) Order (NI) 2018, available from: https://www.legislation.gov.uk/nisr/2018/106/contents/made

2. Identity check (GB) prior to departure from a GB port DAERA authorised staff will carry out an identification check on the commercial seal applied to the consignment.

3. Physical check (NI) some consignments will be selected for a physical check when they arrive at a NI POE. This is necessary to ensure that the goods are compliant and meet with legal requirements. If a consignment has been selected for inspection the trader will be directed to one of a number of DAERA inspection facilities at the port. In addition to this, consignments selected for a physical check will also be subject to a marketing standards requirements verification.

17.5 Northern Ireland to EU

Northern Ireland exporters do not require an Export Health Certificate to export to the EU, the Northern Ireland Protocol[308] establishes unfettered access between Northern Ireland and Republic of Ireland in accordance with the Good Friday Agreement.[309]

17.6 Northern Ireland to United Kingdom

From 1st January 2021 there are no changes in how qualifying goods may move from NI to GB, however there are new rules on how goods from the Republic of Ireland may enter the UK. Regarding placing goods on the market, Northern Ireland occupies a unique legal position established in Article 7 of the Revised Protocol to the Withdrawal Agreement[310], obliged to both the law of the United Kingdom, and the Treaty of the Functioning of the European Union Article 34[311] – which does not place any quantitative restrictions on imports into Northern Ireland, and Article 36[312] – other than those justified on the grounds of public morality, public policy or public security, the protection of health and life of humans, animals or plants, and the protection of national treasures possessing artistic, archaeological and historic value.

Goods originating in Northern Ireland should be labelled as UK (NI) or United Kingdom (Northern Ireland). The unfettered access model outlined in Article 16 of The Northern Ireland Protocol outlines that goods in free circulation in Northern Ireland will have full access to the UK, but that goods originating in the EU must adhere to international law in respect of third countries.

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[308] HM Government, *The Northern Ireland Protocol*, available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840230/Revised_Protocol_to_the_Withdrawal_Agreement.pdf

[309] Northern Ireland Office, The Belfast Agreement, 10th April 1998, available from: https://www.gov.uk/government/publications/the-belfast-agreement

[310] HM Government, *The Revised Protocol to the Withdrawal Agreement*, available from: HM Government, *The Northern Ireland Protocol*, available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840230/Revised_Protocol_to_the_Withdrawal_Agreement.pdf

[311] HM Government, Consolidated version of the Treaty of the Functioning of the European Union, Article 34, available from: https://www.legislation.gov.uk/eut/teec/article/34#:~:text=Article%2034(ex%20Article%2028,be%20prohibited%20between%20Member%20States

[312] HM Government, Consolidated version of the Treaty of the Functioning of the European Union, Article 36, https://www.legislation.gov.uk/eut/teec/article/36

HMRC has outlined that the UK will introduce a phased approach in 2021 to enable only goods from Northern Ireland to enter without restrictions. Goods that move from the EU through Northern Ireland for the purpose of entering the UK will not qualify for unfettered access if it is for an avoidance purpose, and are advised to comply with export requirements in the member state.[313]

It is worth noting that Invest Northern Ireland advertise the unique opportunities to investors of market access to both Great Britain and the European Union, emphasising that traders can move goods without the restrictions of customs declarations and rules of origin certification.[314]

Under the "consent mechanism" the parts of the Protocol relating to the movement and labelling of goods, as well as VAT, State Aid, and the electricity market will cease to operate if the Northern Ireland assembly does not give its regular assent, the first opportunity to do so will be 2024.

18. Transit

Britain has secured access to the Common Transit Convention (CTC). The common transit procedure is used to suspend the payment of import duty and VAT on the cross-border movement of goods between:

- the EU Member States,
- the EFTA countries (Iceland, Norway, Liechtenstein and Switzerland) Turkey
- the Republic of North Macedonia,
- Serbia.

Alinea outline the advice provided by HM Revenue and Customs, contained within The Border Operating Model.[315]

Traders who move goods via road across borders prior to reaching their final destination should raise a transit declaration. This is usually the responsibility of the haulier to arrange.

The movement of goods under a transit procedure enables traders to:

[313] HM Revenue and Customs, Moving qualifying goods from Northern Ireland to the rest of the UK, available from: https://www.gov.uk/guidance/moving-qualifying-goods-from-northern-ireland-to-the-rest-of-the-uk
[314] Invest Northern Ireland, *Do Business in Northern Ireland*, available from: https://www.investni.com/media-centre/features/northern-ireland-market-access-great-britain-and-european-union
[315] HM Revenue & Customs, The Border Operating Model, December 2020, p.42 - 44 available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/949579/December_BordersOPModel__2_.pdf

- Move goods quicker because customs declarations are not required at each border crossing
- Only pay VAT and duty if applicable when the goods reach their final destination
- Complete some customs procedures away from the border

18.1 Open an New Computerised Trader Scheme account

To open an NCTS account a trader should use the following procedure:

1. Use the business's Government Gateway code and password used to communicate with HMRC to sign in to online services
2. Log into the trader's business account, select 'add a tax to your account' to get online access to a tax, duty or scheme
3. Choose the fourth option 'other taxes or schemes';
4. Choose the eighth option – imports and exports;
5. Choose the fifth option 'add NCTS.'
6. If the account is linked to an EORI number, the trader should receive access to use NCTS within 7 days.
7. Use NCTS to submit the destination and open a guarantee for duty deferment
8. The NCTS will issue an MRN and T1 or T2 documents
9. Check your status using the MRN to follow international movements once in transit / send to your clients
10. Remember to confirm an agent to close the Transit once you have made the journey to the destination country to avoid paying the suspended duty and tariffs.

To register for the New Computerised Transit System to make transit declarations. If you are exporting goods, you will also be required to:

- A guarantee to cover your goods while they are being moved
- To make an export declaration.

When moving goods, you can:

- Complete the declaration internally, this will require a C88 form
- Appoint a customs agent to complete the declaration form through authorisation.

18.2 Arrivals to the UK

When transit movements arrive in the UK, the goods and the Transit Accompanying Document (TAD) must be presented at an office of transit. The UK government intends to allow the Office of Transit process to be completed digitally from 1st July 2021 using the new Goods Vehicle Movement Service (GVMS).[316]

[316] HM Revenue & Customs, Register for the Goods Vehicle Movement Service, 24 February 2021, available from: https://www.gov.uk/guidance/register-for-the-goods-vehicle-movement-service

Hauliers will be required to submit their Transit Movement Reference Numbers (MRNs) and their vehicle/trailer registrations via the GVMS before checking in at the point of departure. This information will be assessed during the crossing to the UK and the person in charge of the goods will be notified if they are clear to proceed on their journey, or require a check. Some ports may still choose to operate a paper-based Office of Transit system.

In this circumstance, hauliers should present their goods and Transit Accompanying Documents to customs officials at the port of arrival in the GB.

18.3 Transit and the Goods Movement Vehicle Service (GVMS)

The process for moving goods under Transit at locations operating GVMS will be the same as for moving goods under the pre-lodgement model, except that the MRN which forms the Goods Movement Reference (GMR) will be generated from the Transit Accompanying Document (TAD) rather than CHIEF. The paper TAD must also still travel with the goods.

The GVMS is a new IT system which is being introduced to minimise paperwork and administration. It will introduce a 'pre-lodgement' model for hauliers. The GVMS will allow:

- Declaration references to be linked together so that the person moving the goods (e.g. the haulier) only has to present on single reference (Goods Movement Reference or GMR) at the frontier to provide that their goods have pre-lodged declarations.
- The linking of the movement of the goods to declarations enabling the automatic arrival in HMRC systems as soon as goods board so that declarations can be processed en route.
- Notification of the risking outcome of declarations (either cleared or uncleared) in HMRC systems to be sent to the person in control of the goods by the time they physically arrive sot they know where they need to proceed to.

18.4 Discharging a Transit procedure

The most efficient way to end transit movements is to become registered as an authorised consignee, which enables movements to end at traders' premises. Authorisation requires a Customs Comprehensive Guarantee, and an approved temporary storage facility. Alternatively, goods should be taken to a Government office of destination.

The goods and TAD must be presented at the office of destination or an authorised consignee. In order for the movement to be ended, the goods must be discharged or enter into another customs procedure.

When ending CTC movements in GB, there are two options for submitting customs declarations for importing non-controlled goods. Traders will either need to complete a full customs declaration if they are moving controlled goods, or alternatively, if the goods are eligible for delayed declarations, keep a record of the goods and delay the declaration to HMRC for up to six months from the point of import.

For traders delaying their customs declaration, providing their EORI number at the office of destination will be sufficient for the Transit movement to be discharged. Traders moving controlled goods will need to complete a full customs declaration or may use Simplified Customs Declaration processes they are authorised to do so an provide the MRN at the office of destination. If this does not happen by the time the goods arrive, the goods must be placed into temporary storage.

18.5 Guarantees

When exporting goods, a trader or haulier will need a guarantee in place to cover customs or import VAT duties while the goods are being moved.

The guarantee can be:

- A customs comprehensive guarantee if the goods are moved under transit more than 3 times a year
- An individual guarantee for single movements, 3 times a year or less

It is advisable for the trader to contact their bank or other financial institution in advance to make sure that the guarantee will be set up before the goods are moved.

18.5.1 Customs Comprehensive Guarantee

A customs comprehensive guarantee form can be used to cover multiple customs debts. To use a CCG the trader's business will need to be authorised by HMRC. In order
to do so, the trader will require a guarantor to cover the customs guarantee amount.

The trader will need a CCG to:

- use a duty deferment account
- cover debts because you put goods into customs procedures (inward processing, temporary admission, or end use more that 3 times in one year).
- Move goods more than 3 times a year under the Common Transit Convention: or the Union Transit.
- Open a temporary storage facility or customs warehouse.

HMRC requires a Customs Comprehensive Guarantee from an approved guarantor to HMRC, detailed on form CCG2 from an approved bank or financial institution. Apply for a: Customs Comprehensive Guarantee

18.5.2 Apply for a Customs Clearance Guarantee

To receive this type of guarantee the trader must:

- Be established in the UK or have a financial institution act as guarantor if they are an overseas enterprise;
- Have no serious or repeated infringements of customs or tax rules in the past 3 years;
- Have no record of serious criminal offences related to your business activities in the past 3 years.

Other administrative procedures and documents that may be required include:

- Records of any times when the trader's business has not followed customs or tax rules in the last 3 years;
- Details of checks and measures in place to make sure the trader's business is compliant with customs and tax rules;
- Financial records if the trader wishes to apply for a reduction in level of guarantee you need to provide.

18.5.3 Estimate the debt

For union or common transit, traders should calculate the maximum Customs Duty and import VAT that the CCG will need to cover and provide a monthly estimate, known as 'actual debt'. This will be the guarantee limit. If the trader goes over this, they will be required to increase the guarantee. If they do not do this, the goods could be stopped at the border. For goods under temporary storage or special procedures (for example inward processing, temporary admission, or customs warehousing) work out the maximum amount of Customs Duty that it is required to cover. These debts are not chargeable straight away and are known as 'potential debt'.

18.5.4 Reduce the guarantor amount

A trader may ask to reduce the level of guarantee the guarantor needs to provide for potential debts covered by the CCG. They may do this by uploading a completed CCG1F (PDF, 551KB, 8 pages) and supporting documents with the CCG application using the online service. For at least the previous 3 years (where possible), the trader will need to provide:

- Financial statements
- Forecasts
- Management accounts
- Loan agreements
  Auditors' report

18.6 Authorised consignor or consignee status

It is possible to for a trader to use their own premises to send or receive goods. If the trader intends to regularly move goods using the Common Transit Convention, they can apply for authorised consignor or consignee status.

This will allow the trader or haulier to start or end transit at their own premises rather than at a customs office. It is possible to apply for both authorised consignor and consignee status.

18.7 Entry Summary Declaration

In adherence to the SAFE Framework of Standards, a Entry Summary (ENS) declaration must be submitted by the haulier. The grace period of submitting an ENS declaration has been extended from 1st July 2022 until 1st January 2022.

Hauliers do not need to make an entry summary declaration from 1 January 2021 to 31 December 2021 for goods that are imported into Great Britain from the EU or:

- Andorra
- Monaco
- Norway
- Liechtenstein
- Switzerland
- Ceuta and Melilla
- Heligoland
- San Marino
- the Vatican City State
- the municipalities of Livigno Campione d'Italia
- the Italian national waters of Lake Lugano, which are between the bank and the political frontier of the area between Ponte Tresa and Porto Ceresio[317]

Combined transit and Safety and Security declarations (TSADs) cannot be used to meet Safety and Security requirements in GB from 1st January 2021, so traders moving goods under transit will need to make sure that Safety and Security declarations are made via other means.

[317] HM Revenue & Customs *Making an Entry Summary Declaration,* 16 March 2021 available from: https://www.gov.uk/guidance/making-an-entry-summary-declaration

The ENS is required for movements of commercial goods, and can be submitted by the haulier using the S&S GB service for bringing goods into the UK.[318]

The Border Operating Model provides guidance for hauliers on Safety and Security declaratons, as detailed below.

The UK's approach to Safety and Security (S&S) is in line with the World Customs Organisation's (WCO) SAFE framework, which requires the pre-arrival or departure collection and risking of information for all consignments entering or exiting a territory. It protects the UK against potential threats such as terrorism and the trade from illicit goods such as guns and drugs while facilitating the movement of legitimate trade into or out of the UK. Safety and security declarations will not be required for goods moving into Great Britain from the EU up to 1st January 2022, as part of the staging-in of controls.

From 1 January 2022, safety and security requirements on these movements will apply. Safety and security requirements apply to exports from Great Britain to the EU from 1 January 2021, including for reusable packaging. Carriers have the legal responsibility to ensure that the UK customs authority is provided with S&S pre-arrival information, by way of Entry Summary declarations, for consignments being imported to GB. For S&S the carrier is defined as the "operator of the active means of transport".

The carrier can agree to pass the requirement onto the trader, however, the carrier will still have the legal responsibility. The legal requirement is that the S&S import declaration is complete and accurate, however a declaration can be amended up to the point of arrival in the UK. The data required for an Entry Summary declaration includes; consignor, consignee, a description of the goods, routing (country by country), conveyance (e.g. flight reference) and time of arrival. When not moved under a contract of carriage, empty pallets, containers and vehicles moved into Great Britain will continue to be exempt from the requirement to lodge an entry summary declaration.

A transport contract, or contract of carriage, is an agreement between a carrier and shipper or passenger, setting out each party's duties and rights.

Transport Options

The way the goods are transported impacts on how far in advance of UK customs control an S&S import declaration must be made. Consignments must have their S&S import declaration submitted a minimum of a specific number of hours in advance of arriving in a UK port. This is to ensure there is sufficient time for Border Force to assess the declarations. The amount of time for transport options differs, as set out in the diagram below. If a trader is using Goods Vehicle Movement Service,

[318] HM Revenue & Customs, Register to make an entry summary declaration in Great Britain, available from: https://www.gov.uk/guidance/register-to-make-an-entry-summary-declaration-in-great-britain

the entry summary declaration will need to be submitted at the earliest of either: the minimum timing requirement, or, before check-in closes. This is to allow for the Movement Reference Number from the entry summary declaration to be recorded in the Goods Movement Reference, which will be validated by the carrier at check in.

Requirements In order to make S&S declarations a GB EORI number is required.

Systems For trade between GB and the EU, the submission of the Entry Summary declaration must be made in the UKS&S system, 'S&S GB'.

This is a separate system to the customs declaration systems (CHIEF/CDS). There will also be the option to submit declarations through CSP systems/ third party software providers.

Those who have Anti-Smuggling Nets (ASNs) to meet Safety & Security requirements can continue to use them after the end of the transition period.

For further clarification please refer to:

HMRC Guidance for UK Road Hauliers
HMRC - The Transit Manual Supplement[319]

19. VAT

Since 1st January 2021, Import VAT is chargeable on all commercial goods entering the UK from the EU, and on all commercial goods entering the EU from the UK.

19.1 How to calculate VAT payable on imports

Import VAT may applicable on the transaction value of the goods - price paid or payable for goods. Check the UK Trade Tariff[320] to identify whether VAT will be liable. Certain essential household items such as groceries and children's clothes are exempt.

If no sale is made, for example in the circumstances of receiving free products, the transaction value must still be provided calculated using the equivalent fee for identical or similar goods, or another method used to calculate the transaction value

[319] HM Revenue & Customs, *Transit Manual Supplement,* available from: https://www.gov.uk/government/publications/transit-manual-supplement
[320] HM Revenue & Customs, *UK Trade Tariff*, available from: https://www.gov.uk/trade-tariff

of the goods in accordance with the World Trade Organisation's Technical information on Customs Valuation.[321]

19.2 How to pay Import VAT

There are three methods to transfer payment to cover import VAT:

- Postponed Accounting (PVA) - declare and recover on your annual VAT return. Since 1st January 2021, VAT registered businesses have benefited from PVA.
- Open a Duty Deferment account - pay via direct debit to HMRC, on or around 15th of each month.
- Flexible Accounting System (FAS) - pay VAT once the goods reach the UK border via your customs (DTI) agent, who will be able to access the CHIEF system to open a FAS account on your behalf. It is likely that the customs agent will charge an additional fee for this service, which is a complex procedure and incurs shared liability.

Non-VAT registered business are required to pay for Import VAT when the goods reach the UK border via their agent's account or register to set up a Duty Deferment account which will enable the business to defer VAT payment for up to 30 days. VAT registered businesses are permitted to reclaim Import VAT.

19.3 Postponed Accounting

PVA is a new scheme which has been extended to all VAT registered businesses, for both EU and non-EU imports. The purpose of PVA is to improve cashflow and liquidity for traders, and it may be used by any VAT registered business. Traders do not have to register to use Postponed Accounting, but they should indicate to their customs agent that this is the method that they wish to use.

Postponed Accounting is not to be confused with Simplified Import Accounting, which is a similar procedure that requires approval, and a business to be VAT registered for 3 years prior to adoption.

19.3.1 Postponed Accounting Annual VAT Return guidance

- **Box 1 – VAT due on sales and other outputs**: Include the VAT due in this period on imports accounted for through postponed VAT accounting.

[321] World Trade Organisation Technical Information on Customs Valuation, available from https://www.wto.org/english/tratop_e/cusval_e/cusval_info_e.htm

- **Box 4 – VAT reclaimed on purchases and other inputs**: Include the VAT reclaimed in this period on imports accounted for through postponed VAT accounting.
- **Box 7 – Total value of purchases and all other inputs excluding any VAT**: Include the total value of all imports of goods included on your online monthly statement, excluding any VAT.

In Beyond Brexit: Trading in Goods, the House of Lords have made a recommendation that PVA is extended to non-VAT registered businesses.[322]

19.4 Duty Deferment

HMRC have established a duty deferment accounts, to enable companies to pay their customs duties, import VAT and excise duties on a monthly basis. HMRC collect duties and taxes on the 15th of each month (or the first day of the week if this falls on a weekend).
It is possible to defer:

- Customs duties
- Import VAT
- Excise duty VAT
- Excise duties (including Tobacco Products Duty)
- Levies imposed under the Common Agricultural Policy of the EU
- Positive Monetary Compensatory Amounts under the Common Agricultural Policy
- Anti-dumping or countervailing duties imposed by the EU
- Interest charges on customs debts

If a business regularly imports third country, excise or other goods whether duty is liable, it is advisable to set up a duty deferment account.

A duty deferment account can defer the payment of import duty until on or around the 15th of the following month. There is no fee to pay to register for a deferment account, but a customs guarantee may be required. A trader may decide to reduce their financial guarantees by using a duty deferment account guarantee waiver approval or Authorised Economic Operator customs simplification (AEOC).

A trader can apply for a duty deferment account and optional guarantee waiver; and include Direct Debit instruction with the application.

If the trader has not applied for or has not received a guarantee waiver approval, they will be required to access a bank, building society or insurance company

[322] House of Lords *Trading in Goods,* 25th March 2021, available from: https://publications.parliament.uk/pa/ld201719/ldselect/ldeucom/322/322.pdf

to guarantee the duty payments. The following entities may register for a duty deferment account:

- An importer
- An overseas business that has secured a guarantee from a UK based financial institution
- An owner of goods in a warehouse or free zone
- An agent (including warehouse keepers) who enters goods for importers or owners

Once a trader is approved and they will hold a DAN which identifies the duty deferment account. To open a deferment account for international trade, the trade will also need to fulfil the following criteria:

- be established in the UK or have a bank guarantor established in the UK
- be competent (not have a history of submitting late tax returns)
- Be compliant
- Have a guarantee from a financial institution or a guarantees waiver.

19.5 Flexible Accounting System

Traders are able to make use of their customs agent's DTI account to pay duty, excise and VAT to HMRC. The procedure is fairly complex for the agent and will involve the submission of the EPU, TURN key, and Declaration Unique Consignment Reference (DUCR) to CHIEF via their Community Service Provider (CSP), who will issue a FAS payment reference number.

The FAS payment reference will then be used against the payment made to HMRC Salford Accounting Centre. The agent must also complete a C514[323] form, which is sent to Salford Accounting Centre as a payment notification.

Further information can be found at HMRC Notice 100.[324]

19.6 Low Value Consignments

In the Customs Bill White Paper[325], the government set out in that Low Value Consignment Relief (LVCR) will not be extended to goods entering the UK from 1st January 2021. The government has introduced two significant changes to low value import VAT:

[323] HM Revenue & Customs, C514, available from: https://www.gov.uk/government/publications/import-and-export-flexible-accounting-system-payment-advice-ce514
[324] HM Revenue & Customs, Notice 100: Customs Flexible Accounting System https://www.gov.uk/government/publications/notice-100-customs-flexible-accounting-system
[325] HM Treasury *Customs Bill: Legislating for the UK's future customs, VAT and excise regimes,* October 2017, pp. 21, available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/650459/customs_bill_white_paper_web.pdf

- For imports entering the UK from overseas with a value of up to £135.00, the import VAT will be chargeable as supply VAT. This is a significant change, as under previous circumstances, VAT is zero-rated for overseas businesses. It enables retailers to alleviate import VAT implications for low value consumer sales and is therefore a benefit to consumers.
- Import VAT should be collected by online enterprises and intermediaries in business-to-business transactions
- Import VAT should be collected by online enterprises and intermediaries in business-to-consumer transactions
- Sellers will offer the option to print the Commercial Invoice to confirm that Import VAT has been paid.
- The government has abolished low value consignment relief, which relieves import VAT on goods under £15.00. Online marketplaces that are involved in facilitating the sale will be responsible for collecting and accounting for VAT, chargeable as supply VAT at the point of sale. The implications of this mean that foreign-national businesses would be required to register to pay VAT in the UK in order to benefit from being able to reclaim import VAT, whereas previously it was possible to sell low value bulk goods into the UK below the £15.00 threshold and is a move specifically design to protect the UK retail industry.

This entails that all goods entering the UK as parcels sent by overseas businesses will be liable for VAT (unless they are already relieved from VAT under domestic rules, for example zero-rates children's clothing. Online marketplaces (OMPs) where they are involved in facilitating the sale will be responsible for collecting and accounting for the VAT for sale of goods valued up to and including £135.00. Overseas businesses will charge VAT at point of purchase, and will be expected to register with HMRC digital service to account for VAT due.

19.7 Register in the UK as an Overseas businesses

There are various options available to overseas businesses that sell into the UK.

19.7.1 Commercial sales

An overseas business is not required to register for VAT in the UK if the goods are sent to the UK from overseas, and their UK based client takes responsibility for payment of import VAT through provision of their EORI number. This is standardised practice for commercial, business-to-business sales.

19.7.2 Supply of goods

VAT will be due where the goods are supplied in the UK, for example from a warehouse or distribution centre. The overseas business will have an obligation to

register to pay VAT if their client does not act as importer. It is also possible to consider options such as having a customs agent act as Importer of Record.

The requirement for VAT registration does not necessarily mean that the overseas business must register in the UK as a corporate entity and pay corporation tax. It is possible for an overseas business to register in the UK to open a Duty Deferment account to pay import VAT. In this circumstance, a financial guarantee from a UK-based bank or financial institution is required.

Overseas businesses can choose to open a Duty Deferment Account
Confirm representation from a UK based financial institution and submit a Guarantee deferment of payment to HRMC (C201).

19.7.3 Overseas business - Register as a place of business in the UK.

Commercial, tax and procurement implications will determine whether a corporate structure in the UK is required or desirable. Overseas businesses must Register with Companies House if they wish to set up a place of business in the UK.

- Apply through the ONS1 Form Registration of an overseas company opening a UK establishment.
- Pay a £20.00 registration fee

The digital service is an online registration, accounting, and payments service for overseas businesses. On registration, overseas businesses will be provided with a Unique Identifier which will accompany the parcels that they send into the UK. They will declare VAT due and pay via their online account.

Consignments with a value of below £135 that are sold outside of the UK-to-UK customers (not via an online marketplace) must have UK supply VAT charged at the point of sale, and will not be liable to import VAT,

19.8 UK businesses exporting goods to EU businesses

From 1st January 2021, EU member states would treat goods entering from the UK as any other non –EU countries, with their associated import VAT and customs duties due to the member nation's authority payable by the importer. If a business does not wish to pass import VAT to customers on goods when they enter the UK, they must organize DDP terms with their logistics provider, arrange for their customs agent to act as Importer of Record, or register to pay Import VAT in the destination country.

VAT registered UK businesses will continue to be able to zero-rate sale-of-goods to EU businesses and will not be required to complete EC and intrastate sales lists. UK

businesses exporting goods to EU businesses will need to provide evidence that the goods have left the UK to zero-rate the supply.

19.8.1 Selling into the EU - the Import One Stop Shop (IOSS)

Supply VAT is usually zero-rated when selling overseas. However, when the goods reach the destination, Import VAT is likely to be chargeable, excluding certain categories such as food and essential groceries, and children's clothing. Enterprises that conduct business-to-consumer sales using online platforms may benefit from the EU's forthcoming Import One Stop Shop (IOSS) VAT scheme for e-Commerce traders. The VAT e-Commerce Package enables traders to account for import VAT in just one EU country, rather than multiple member states.[326]

IOSS will be introduced from 1st July 2021. The digital platform enables cross-border online sales platforms to account for import VAT, charged as supply VAT, at the point of sale for goods worth up to the value of €150. According to the EU's current VAT rules, no VAT has been chargeable on imported goods up to the value of €22. From 1st January, Import VAT will be chargeable on all relevant goods entering the EU.

The VAT payment is paid to one Member State of identification, which will arrange for the payment to be disbursed to the relevant local authorities across the 27 nations of the EU, according to the destination of the sale. This will have multiple benefits including a reduction unexpected costs for consumers, enabling traders to reduce time in administration, and a reduction in VAT fraud.

There are two schemes:

- **The union scheme** one for businesses established in the EU, or that have at least one branch in the EU
- **The non-union scheme** for businesses that are not established in the EU.

For further details, visit IOSS.

19.9 UK businesses supplying services into the EU

The main VAT 'place of supply' rules will remain the same for UK businesses, which determine the country in which the trader is required to to register and account for VAT. These rules are developed in line with the international standards set out by the Organisation for Economic Co-operation and Development (OECD) and can be

[326] European Commission, *The Import One Stop Shop*, available from: https://ec.europa.eu/taxation_customs/business/vat/ioss_en

found on the OECD website, which addresses the Collection of VAT on cross-border digital sales.[327]

UK businesses supplying digital services to non-business customers in the EU, the 'place of supply' will continue to be where the customer resides. VAT on services will be due in the member state where the customer is resident.

20. Vertical Block Exemption Regulations (VBER)

The objective of competition law within the UK has been the protection of the single market, using undistorted competition to create a level playing field, and the removal of any artificial barriers which threaten the foundation of that system. In The Evolution of Competition Law and Policy in the United Kingdom, Professor Andrew Scott outlines:

"*Since the advent of the government of Prime Minister Margaret Thatcher in 1979, the United Kingdom has been a primary exponent of the neoliberal philosophy that places faith in markets as the most efficient means of allocating societal resources*".[328]

A legacy of the UK's participation within the European Union has been a strong influence on encouraging a free market, the UK has promoted a liberal, pro-competition stance to national and EU policy, which has now translated to a Global Britain international trade policy, which seeks to establish free trade agreements with Britain's closest trading partners in order to improve access to markets. The UK is likely to stay aligned to the EU within competition law, unless the EU adopts protectionist measures. In this scenario, it could be anticipated that the UK would be forced to adopt a comparable stance.

20.1 Legislation

The European Union Withdrawal Act 2018 "the Withdrawal Agreement"[329] has repealed The European Communities Act 1972 "ECA 1972"[330], which took effect from the end of the transition period. It included provisions to convert the existing body of currently direct applicable EU law into domestic competition law by means of statutory instruments.[331]

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[327] OECD, *OECD delivers implementation guidance for the collection of value-added tax (VAT/GST) on cross-border sales*, 24th October 2017, https://www.oecd.org/tax/consumption/oecd-delivers-implementation-guidance-for-collection-of-value-added-taxes-on-cross-border-sales.htm

[328] Scott, A. *The Evolution of Competition Law and Policy in the United Kingdom* (February 16, 2009). LSE Legal Studies Working Paper No. 9/2009, Available at SSRN: https://ssrn.com/abstract=1344807 or http://dx.doi.org/10.2139/ssrn.1344807

[329] The European Union Withdrawal Act 2018, available from https://www.legislation.gov.uk/ukpga/2018/16/contents/enacted

[330] The European Communities Act 1972, available from: https://www.legislation.gov.uk/ukpga/1972/68/contents

[331] Eccles, R., Le Strat, A. Brexit: Competition Law implications, available from: https://www.twobirds.com/en/news/articles/2016/uk/competition-law-implications-of-a-brexit

Within the UK, domestic competition law falls under the Competition Act 1998.[332] The UK has integrated Article 101(1) of the Treaty on the Functioning of the European Union ("the Treaty") which prohibits agreements between undertakings that restrict competition, unless they contribute to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefits, in accordance with Article 101(3) of the Treaty. [333]

Agreements which are entered into by two or more undertakings, each operating, for the purposes of the agreement, at a different level of the production or distribution chain, and which relate to the conditions under which the parties may purchase, sell or resell certain goods or services ("vertical agreements") are, among others, susceptible to fall within the scope of the prohibition of Article 101(1) of the Treaty. Vertical agreements are ubiquitous across the UK and EU economies.[334]

Vertical restraints are agreements that may prevent, distort or prohibit competition.

Vertical agreements can be concluded by intermediate and final goods and services, vertical restraints are mostly used within the distribution of goods. The EU authorities have notably been prepared to instigate enforcement action against companies that fall outside of the EU Competition rules. Distribution agreements are brought into compliance with competition law by drafting in terms of a 'block exemption' within the EU. The European Commission has published detailed guidelines into the application of Vertical Restraints.[335]

The vertical block exemption regulation creates a 'safe harbour' for large numbers of vertical agreements under Article 81 (3),[336] so that agreements falling within the terms of the Block Exemption are automatically exempt from the application of Article 81 (1).[337] Agreements of minor importance and SMEs are exempt from Article 101 (1) by reason of *de minimus* – they are not trading at significant enough levels to be capable of appreciably affecting trade, or of appreciably restricting competition.[338] For agreements between competing undertakings the "de minimis" market share threshold is 10% for their collective market share on each affected relevant market.

[332] The Competition Act, available from: https://www.legislation.gov.uk/ukpga/1998/41/contents
[333] COMMISSION REGULATION (EU) No 330/2010 of 20 April 2010, available from: http://data.europa.eu/eli/reg/2010/330/oj
[334] European Commission, Antitrust: Commission publishes findings of the evaluation of the Vertical Block Exemption Regulation, 8th September 2020, Brussels, https://ec.europa.eu/competition/consultations/2018_vber/staff_working_document.pdf
[335] European Commission, Guidelines on Vertical Restraints, available from: https://ec.europa.eu/competition/antitrust/legislation/guidelines_vertical_en.pdf
[336] Official Journal C 101 , 27/04/2004 P. 0097 – 0118, available from: https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52004XC0427%2807%29:EN:HTML
[337] 12002E081, available from: https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12002E081:EN:HTML
[338] European Commission, *Guidance on restrictions of competition "by object" for the purpose of defining which agreements may benefit from the De Minimis Notice*, https://ec.europa.eu/competition/antitrust/legislation/de_minimis_notice_annex.pdf

For vertical restraints, competition concerns can only rise if there is insufficient competition at one or more levels of trade, i.e. if there is some degree of market power at the level of the supplier or the buyer, or at both levels.[339]

Subject to the conditions established in the *de minimus* notice concerning hardcore restrictions and cumulative effect, vertical agreements entered into by non-competing undertakings whose market share does not exceed 15% are generally considered to fall outside of the scope of Article 101 (1). There is no presumption that vertical agreements concluded by undertakings having more than 15% market share automatically infringe Article 101 (1). Agreements between undertakings whose market share exceeds the 15% threshold may still not have an appreciable effect on trade or may not be constitute an appreciable restriction of competition. Such agreements need to be assessed in their legal and economic context.[340]

It is considered that subject to cumulative effect and hardcore restrictions, vertical agreements between small and medium sized companies as defined in the Annex to Commission Recommendation 2003/361/EC9, are rarely capable of appreciably affecting trade between Member States or appreciably restricting competition within the meaning of Article 101 (1) and therefore generally fall outside of the scope of Article 101 (1).[341]

Article 101 (1) on the Treaty on the Functioning of the European Union (TFEU)[342] prohibits agreements, decisions by associations of undertakings, and concerted practices which have as their object or effect the prevention, restriction or distortion of competition. Under Article 101 (2) TFEU all such anti-competitive restrictions are void. Under Article 101 (3) prima facie anti-competitive restrictions may be exempted from the prohibition, where it can be shown that on balance, the consumer benefits and efficiencies outweigh the anti-competitive benefits. In particular Article 101 (3) will apply where the agreement:

"contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and does not;
a.) impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives;
b.) Afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question".

[339] European Commission, Guidelines on Vertical Restraints, p.6 available from: https://ec.europa.eu/competition/antitrust/legislation/guidelines_vertical_en.pdf
[340] European Commission, Guidelines on Vertical Restraints, available from: https://ec.europa.eu/competition/antitrust/legislation/guidelines_vertical_en.pdf
[341] L 124/36, 6 May 2003 available from: https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:124:0036:0041:en:PDF
[342] Eur-Lex, Consolidated version of the Treaty on the Functioning of the European Union - PART THREE: UNION POLICIES AND INTERNAL ACTIONS - TITLE VII: COMMON RULES ON COMPETITION, TAXATION AND APPROXIMATION OF LAWS - Chapter 1: Rules on competition - Section 1: Rules applying to undertakings - Article 101 (ex Article 81 TEC), available from: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A12008E101

The assessment of a vertical restraint involves assessing the relevant market for calculating the 30% market share threshold under the Block Exemption Regulation:

- The undertakings have to establish the market share of the supplier and the buyer on the market where they respectively sell the products.
- The market share should be based upon defining the relevant product market, identified by any goods and services which are considered by the buyer as interchange, and the relevant geographic market which comprises of the area in which the conditions of competition are sufficiently homogenous, and which can be distinguished from different geographic areas because, in particular, conditions of competition are appreciably different in those areas. [343]
- If the relevant market share of the supplier and the buyer each do not exceed the 30% threshold, the vertical agreement is covered by the Block Exemption Regulation, subject to the hardcore restrictions and conditions set out in the regulation.
- For small and medium sized businesses, it is not relevant to calculate market shares.
- If the relevant market share is above the 30% threshold for supplier and/or buyer, it is necessary to establish whether the vertical agreement falls within Article 101 (1).

In assessing cases above the market share threshold of 30% the Commission will make a full competition analysis. The following factors are particularly relevant to establish whether a vertical agreement brings about an appreciable restriction of competition under Article 101 (1);

a.) nature of the agreement;
b.) market position of the parties;
c.) market position of the competitors;
d.) market position of buyers of the contract products;
e.) entry barriers;
f.) maturity of the market;
g.) level of trade;
h.) nature of the product;
i.) other factors.

If the vertical agreement falls within Article 101 (1) it is necessary to examine whether it fulfils the conditions for exemption under Article 101. The exemption is

[343] European Commission, Guidelines on Vertical Restraints, pp.28, available from: https://ec.europa.eu/competition/antitrust/legislation/guidelines_vertical_en.pdf

outlined in on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices, Article 2, and identities that 'Pursuant to Article 101(3) of the Treaty and subject to the provisions of this Regulation, it is hereby declared that Article 101(1) of the Treaty shall not apply to vertical agreements.[344]

Vertical restraints may be used to recoup investments, through introducing "non-compete" obligations or "quantity forcing" for the duration which it takes for the investor to recoup the investment, they may be helpful in improving profitability and encouraging non-price competition, improved quality of service and the negation of "free riding".

Exemptions listed at European level state that certain types of agreements do not breach competition law unless they contain certain "blacklisted" terms, known as hardcore restrictions.

For most vertical restraints, competition concerns can only arise if there is insufficient competition at one or more levels of trade, i.e. if there is some degree of market power at the level of the supplier or the buyer or at both levels. Provided that they do not contain hardcore restrictions of competition by object, the Block Exemption Regulation creates a presumption of legality for vertical agreements depending on the market share of the supplier and the buyer. Pursuant to Article 3 of the Block Exemption Regulation, it is the supplier's market share on the market where it sells the contract goods or services, and the buyer's market share on the market where it sells the goods or services which determine the applicability of the block exemption. In order for block exemption to apply, the supplier's and the seller's market share must each be 30% or less.

The agreements or concerted practices relate to the conditions under which the parties to the agreement, and supplier and the buyer, "may purchase, sell or resell certain goods or services. This reflects the purpose of the Block Exemption Regulation to cover purchase and distribution agreements. For the purpose of the regulation the goods are considered to be contract goods and services. The only exemption to this is the automobile sector, as long as this sector remains covered by a specific block exemption regulation such as that granted by Commission Regulation (EC) No 1400/2002.[345]

Under the domestic competition law, if an agreement falls within the scope of an EU exemption, it will also be exempt within the UK. The EU Withdrawal Bill has taken into account exemptions that exist as of 1st January 2021. These will continue to provide protection under the Competition Act 1998.

[344] EUR-Lex, OJ L 102/1 23.4.2010. COMMISSION REGULATION (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices, available from: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32010R0330

[345] EUR-Lex, OJ L 203, 31.7.2002, p.30, available from: https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:203:0030:0041:en:PDF

The Intellectual Property (Exhaustion of Rights) (EU Exit) Regulations 2019 addresses asymmetrical exhaustion, as UK based trademarks will not be exhausted when selling into the EU, meaning that the buyer does not have a commercial right of resale, unless expressly agreed. As a result of this, the relevance of VBER is likely to increase for UK based design lead companies that trade with the EU. This will particularly impact the luxury, premium, and pharmaceutical sector, as a result of the new authorised distributor, authorised retailer, and intellectual property licensing channels available to exploit. For example, they may wish to authorise UK based distributors, retailers, and online marketplaces to sell into the EU on their behalf, or they may appoint EU-based traders to do so.

The UK Competition Market Authority are currently in consultation with commercial stakeholders to identify amendments to be made to the Vertical Block Exemption Rule which expires in May 2022.[346]

20.1.1 Vertical Block Exemption Rules (VBER)

A Vertical Agreement is entered into between two or more parties, each of which operates at a different level of the supply chain, where the primary purpose is to sell, purchase or resell goods and services. For instance, a vertical agreement could be made between a manufacturer and a retail outlet. Vertical Agreements which satisfy the criteria of the Vertical Block Exemption Rule (VBER), are exempted from the prohibition on anti-competitive agreements contained in article 101 of the Treaty on the Functioning of the European Union (the Prohibition), and may make use of vertical restraints provided that they do not include hardcore restrictions. However, rules which apply to dominant companies who own more than 30% of the market share continue to apply.

In order for VABE to apply:

- The companies must enter into a Vertical Agreement - (exclusive or selective distribution), franchise, supply and agency agreements with non-competitors, i.e., those who do not compete in the product market.
- The market share of each of the parties to the agreement must not exceed 30%
- There must be no hardcore restrictions to the agreement. If the agreement contains one or more of the following restrictions or contains an obligation that has the same effect as one of these restrictions, the automatic exemption provided by the VBER will not apply to the whole agreement.

[346] Competition Markets Authority, *Retained Vertical Block Exemption Regulation*, 10 February 2021, CMA, available from: https://www.gov.uk/government/consultations/retained-vertical-block-exemption-regulation

20.2 Hardcore restrictions

The block exemption regulation contains in Article 4 a list of hardcore restrictions which lead to the exclusion of the whole vertical agreement from the scope of the application of the Block Exemption regulation. Amongst blacklisted clauses are vertical clauses which aim at resale price fixing and minimum resale price, and vertical clauses which aim at restricting active sales from one territory to another. [347]

The exemption provided for in Article 2 shall not apply to vertical agreements which, directly or indirectly, in isolation or in combination with other factors under the control of the parties, have as their object:

(a) the restriction of the buyer's ability to determine its sale price, without prejudice to the possibility of the supplier to impose a maximum sale price or recommend a sale price, provided that they do not amount to a fixed or minimum sale price as a result of pressure from, or incentives offered by, any of the parties;

(b) the restriction of the territory into which, or of the customers to whom, a buyer party to the agreement, without prejudice to a restriction on its place of establishment, may sell the contract goods or services, except:

(i) the restriction of active sales into the exclusive territory or to an exclusive customer group reserved to the supplier or allocated by the supplier to another buyer, where such a restriction does not limit sales by the customers of the buyer,

(ii) the restriction of sales to end users by a buyer operating at the wholesale level of trade,

(iii) the restriction of sales by the members of a selective distribution system to unauthorised distributors within the territory reserved by the supplier to operate that system, and

(iv) the restriction of the buyer's ability to sell components, supplied for the purposes of incorporation, to customers who would use them to manufacture the same type of goods as those produced by the supplier;

(c) the restriction of active or passive sales to end users by members of a selective distribution system operating at the retail level of trade, without prejudice to the possibility of prohibiting a member of the system from operating out of an unauthorised place of establishment;

[347] COMMISSION REGULATION (EU) No 330/2010 of 20 April 2010, available from: http://data.europa.eu/eli/reg/2010/33

(d) the restriction of cross-supplies between distributors within a selective distribution system, including between distributors operating at different level of trade;

(e) the restriction, agreed between a supplier of components and a buyer who incorporates those components, of the supplier's ability to sell the components as spare parts to end-users or to repairers or other service providers not entrusted by the buyer with the repair or servicing of its goods.

20.3 Vertical Block Exemption regulations (VBER)

Insight into how to introduce VBER may enable the principal with the additional tools across the supply chain to optimise entrance into a new contract or market. In certain circumstances such as single branding the agreement is subject to a limitation of 5 years.

20.3.1 Single Branding

Single branding is a non-compete clause - based on an obligation or initiative scheme which makes the buyer purchase more than 80% of requirements from only one supplier. It does not mean that the buyer can only buy directly from the supplier, but that the buyer will not buy or resell or incorporate competing goods and services. Quantity forcing is a weaker form or non compete, where incentives or obligations agreed between the supplier and buyer make the buyer concentrate his purchases to a larger extent with just one supplier. An 'English clause' the buyer must report a better offer, and be allowed only to accept such an offer when the supplier does not match it. In order to accept single branding restraints, suppliers may have to make a competitive offer to the buyer, or compensate them in whole or part, for the loss in competition resulting from the exclusivity, this may include offers such as financing and equipment provided at favourable rates.

20.3.2 Exclusive Distribution Agreements

An exclusive distribution arrangement is one where a supplier agrees to sell the contract products only to the distributor within a certain defined territory and agrees not to appoint other distributors or sell the products directly to other customers within the territory. Such an arrangement is frequently used to exploit a product within a new territory. The supplier appoints a distributor with local knowledge and usually an established business within the territory. The distributor in turn agrees to take on the high risk and costs associated with promoting a new product in return for the knowledge that, as exclusive distributor, it alone will benefit from its sales and promotion efforts. The supplier has the advantage of knowing that the distributor will be motivated to sell its products, particularly if a restriction is placed on the distributor prohibiting it from selling competing products. The supplier can

use the threat of withdrawing the exclusivity if target sales are not met by the distributor within a specified period.

20.3.3. Exclusive customer allocation

In an exclusive customer allocation agreement the supplier agrees to sell his products to one distributor for resale to a particular group of customers, this will generally occur in business-to-business contracts within a supply chain. Exclusive customer allocation may lead to efficiencies, especially when distributors are required to make investment in specific equipment, skills or know-how to adapt to the requirements of their group of customers. The depreciation of these investments indicates the justified duration of an exclusive customer allocation system. In general the case is strongest for new or complex products, and for products requiring adaptation to the needs of the individual customer. Identifiable differentiated needs are more likely for intermediate products, such as products sold to professional buyers. Allocation of final buyers is unlikely to lead to efficiencies.

20.3.4 Selective distribution

"Selective distribution is central to maintaining control over the value chain by ensuring superior customer experience and advice throughout the entire distribution chain, which, together with the focus on product quality, authenticity and traceability both online and offline, differentiates high-end and luxury from mass market."[348]

A supplier, in appointing a distributor as part of a selective distribution system, agrees to appoint additional distributors only if they meet certain criteria. This effectively limits the number of additional distributors who will be appointed within the territory. Selective Distribution Agreements restrict the number of authorised distributors and the possibilities of resale. The restriction of the number of dealers depends on selection criteria linked to the nature of the product. A difference to exclusive distribution is that the restriction on resale is not a restriction on active selling to a territory, but a restriction on sales to non-authorised distributors. Selective distribution arrangements are perceived as particularly suitable where the nature of the product requires an enhanced level of service or advice at the point of sale to the customer and where the supplier or manufacturer will be required to provide after-sales support. The practice of selective distribution is widely used by luxury brands to ensure that outlets which retail their goods meet a certain criteria and code of conduct, to best represent the image and values of the brand, safeguard creativity and innovation, and maintain a consistent standard and quality of service. Usually, as part of the arrangement, distributors must also agree only to

[348] Bain & Co., *Report on the Contribution of the High End Creative and Cultural Industries to the UK Economy*, European Creative and Cultural Industries Alliance, January 2020, available from: https://www.eccia.eu/assets/activities/files/BAIN%20report%20on%20the%20contribution%20of%20high-end%20CCIs%20to%20the%20EU%20economy.pdf

sell on the products to end users or to other approved distributors. In this manner, the supplier retains tight control over the manner in which its products are marketed, and it will generally have greater influence over the marketing of the product.

20.3.5 Franchising

Franchising occurs within a contractual arrangement where the owner of a product, service, or method of production licenses the distribution of its offerings to an affiliate, a 'franchisee' to conduct business using their name and goodwill. Franchiser and franchisee together form some single level of production, the decisions of this production determine the nature and quality of product or service, costs of production, market pricing, and determine the offerings economic efficiency.

Franchising agreements usually contain licenses of intellectual property in relation to trademarks or signs, or know how for the manufacturing, use and distribution of goods or services. In addition to the IPRs, the franchiser usually provides the franchisee during the life of the agreement with commercial and technical assistance. The franchiser is generally paid a franchise fee for the use of a particular business network. Franchising may enable the franchisor, with limited investment, with access to a uniform network for distribution and increased market penetration. Vertical restraints used within franchising contracts include resale-price maintenance, quantity fixing and tie-ins controlling certain aspects of the trade, or softening competition (exclusive dealing, exclusive territories). The rationale behind applying the vertical restraints includes protection of brand image and reputation, increasing market presence and enhancing customer service. Exclusive dealing will occur where the franchisee is required not to stock any of a competitor's products. Exclusive dealing enables the Franchisor with greater autonomy over the distribution chain, thereby softening competition and granting the business a more dominant position in the market. The OECD [1] has published a report addressing competition policy and vertical restraints in franchising agreements. Larger operators will often have a depth of knowledge and resources to keep up with rapidly moving technology.

20.3.6 Exclusive supply

Within an exclusive supply agreement, the supplier is obliged to sell the contracted products only to one buyer, in general or for a particular use.

This may also take the form of quantity forcing, where incentives are agreed between the supplier and buyer, which make the former concentrate sales mainly with one buyer. For intermediate goods and services, exclusive supply is known as industrial supply.

The countervailing power of suppliers is relevant, as important suppliers will not usually allow themselves to be cut off from alternative buyers. The purchasers'

market share will usually be important, as will be the duration of the supply obligation, any entry barriers and the level of trade affected.

20.3.7 Upfront access payments

Upfront access payments are fixed fees that suppliers pay to distributors in the framework of a vertical relationship at the beginning of a relevant period, in order to receive access to their distribution network and remunerate services provided by suppliers to retailers.[349]

This category includes various practices such as slotting allowances, pay-to-stay fees and payments to have access to a distributor's promotional campaign. Certain retailers employ tariffs that combine slotting allowances; negative upfront payments made by the manufacturer even if the retailer does not purchase anything; with two part tariff where the supplier pays wholesale fees and the retailer pays conditional fixed fees dependent on actual trade; in order to achieve a monopolistic outcome and reduce retail competition.

Slotting allowances allow firms to maintain monopoly prices in situations where competing manufacturers offer contracts to alternative retailers. Retailers profits are raised through the elimination of incentives for aggressive downstream pricing.[350]

Dominant suppliers may wish to optimise their shelf space to impose the barriers to entry to potential upstream consumers. Payments provide a tacit method of enhancing market dominance as an instrument to leverage power over competitors. Dominant firms may prefer to use slotting allowances for confirmed visibility over wholesale price concessions as the former is directed straight to the retailer's bottom line, whereas concessions are mitigated by retail price competition. Slotting allowances may minimise the risk of new product launches through an efficiency rationale. They also provide a means for manufacturers to introduce promotional or incremental sales to customers that would not occur otherwise.

20.3.8 Category management agreements

Category management agreements are agreements by which, within a distribution agreement, the distributor entrusts the supplier with the marketing of a category of products including in general not only the supplier's products, but also the products of its competitors. The supplier "category captain" may have an influence on the

[349] European Commission, 2010 '*COMMISSION NOTICE Guidelines on Vertical Restraints {C(2010) 2365} {SEC(2010) 413} {SEC(2010) 414}*', European Commission, Brussels SEC, Available at: https://ec.europa.eu/competition/antitrust/legislation/guidelines_vertical_en.pdf

[350] Liannos, Ioannis, 'Upfront Access Payments Category Management', Research Gate, p. 178, Available at: https://www.academia.edu/1334107/UPFRONT_ACCESS_PAYMENTS_CATEGORY_MANAGEMENT_AND_THE_NEW_REGULATION_OF_VERTICAL_RESTRAINTS_IN_EU_COMPETITION_LAW_IMPORTING_THE_RETAIL_SIDE_OF_THE_STORY

product placement and product promotion in store. In these agreements, confidential information is shared between manufacturers and retailers to reduce costs in distribution and increase the profit margin for both parties. Within 'The use of category management practices to obtain a sustainable competitive advantage in the fast moving consumer goods industry,' Kyle Dupre and Thomas W. Gruen outline that the Fast Moving Consumer Goods industry has undertaken partnering as a critical strategy within its supply chain to establish an efficient consumer response (ECR) designed to address massive inefficiencies.[351]

The category captain will present a Plannogram (POG) - a visual representation of the store's products to the retailer, proposing a layout and promotional plan for the entire category. In certain agreements, the category captain will have responsibility will the retailer for the category development and is trusted with all retail divisions, to situations where the role of the category captain is in advisory alongside other consultants.

Category management enhances efficiency, it may reduce the retailer's risk of being out of stock or having excess inventories, it may optimise the delivery and fulfilment timing, and enable retailers to fulfil their promotional schedule. Suppliers and retailers receive complimentary information on consumers buying habits and needs, which may also be of benefit to consumers as they receive targeted rather than generic promotions. It is an efficient method for the distributor to confirm sufficient visibility and level of promotion to the supplier. Category management is a substitute contractual device to a limited exclusivity provision in a distribution contract; however there is a limitation on the degree of exclusivity as the category captain is required to place rival brands on the POG, the final decision is up to the retailer who will also take the decision of which promotional campaigns to run. The suppliers may incentive their position with the retailers, either by reducing their wholesale prices, or paying upfront access fees or through a premium earned by the retailers through the inclusion of a Resale Price Maintenance clause. Category Management has been identified by the European Commission to have a positive effect on optimising economies of scale by allowing retailers to anticipate demand and tailor their promotions accordingly.

20.3.9 Tying

Tying refers to situations where customers that purchase one product (the tying product) are required also to purchase another distinct product (the tied product) from the same supplier or someone designed by the latter. Tying may be used with or in the place of copyrights and patents to protect market entrance and discourage

[351] Dupre, K. and Gruen, T. The use of category management practices to obtain a sustainable competitive advantage in the fast moving consumer goods industry, available from: https://www.researchgate.net/publication/235321089_The_use_of_category_management_practices_to_obtain_a_sustainable_competitive_advantage_in_the_fast-moving-consumer-goods_industry

innovation. Tying is often used when suppliers seek to encourage sales of less established products, by placing them tied to more popular products, and is increasingly used within digital technology and the purchasing of software platforms. It may also be used within service-based industries as a sales requirement to optimise brand loyalty.

20.3.10 Resale price maintenance

Resale price maintenance (RPM) – agreements or concerted practices having as their direct or indirect object the establishment of a fixed or minimum resale price or a fixed or minimum resale price level to be observed by the buyer are considered a hardcore restriction, and are not permitted. However, the practice of recommending a resale price (RRP) to a reseller or requiring the reseller to respect a maximum resale price is covered by the Block Exemption Regulation, provided that it does not amount to a minimum or fixed sale price as a result of pressure or incentives offered by any of the parties. Permitted RPM practices include:

- Quantity forcing
- Indirect resale price management (RPM) practices:
- Fixing the distribution margin
- Fixing the maximum level of discount, the distributor can grant from a prescribed price level;
- Making the grant of rebates or reimbursement of promotional costs by the supplier subject to the observance of a given price level within the EU
- Linking the prescribed resale price to the resale prices of competitors;
- Warnings, delay or suspension of deliveries or contract terminations in relation to observance of given price level.[352]

In consideration of pricing management there are various aspects to consider. A lower price may increase the quantity of products purchased by a consumer and market demand, but it requires that the product offering, activity system, and resource base match the price positioning.[353] If a company is positioning its brand on quality when competing with others, a higher price point may optimise brand reputation, as customers generally appreciate products and services that exhibit superior performance, whereas a lower price might disrupt the product valuation and brand reputation. The retail price is likely to depend on the market positioning of the trader.

[352] European Commission, Guidelines on Vertical Restraints, p.18 available from: https://ec.europa.eu/competition/antitrust/legislation/guidelines_vertical_en.pdf
[353] De Wit, B. and Meyer, R. 2010 *Strategy, Process, Content, Context, An International Perspective,* South-Western Cengage Learning, p.245

20.4 Vertical restraints - case law study Javico v Yves Saint Laurent [1998]

In so far as vertical agreements concern exports outside the Community or imports/re-imports from outside the [European] Community see the judgment in Case C-306/96 Javico v Yves Saint Laurent [1998] ECR I. [355] [356]

In that judgment the ECJ held in paragraph 20 that "an agreement in which the reseller gives to the producer an undertaking that he will sell the contractual products on a market outside the Community cannot be regarded as having the object of appreciably restricting competition within the common market or as being capable of affecting, as such, trade between Member States."

In this case, Yves St Laurent Parfums SA (YSLP) initially brought a case against Javico AG and Javico International regarding breach of a selective distribution contract. Javico International and Javico AG, whose head office is in Germany, had been permitted to distribute final products in the territories of Russia and the Ukraine, and Slovenia. The ECLI:EU:C:1998:173, Judgement of the Court JUDGMENT OF THE COURT 28 April 1998 found indicated as follows.

The distribution contract for Russia and Ukraine provides:

1. Our products are intended for sale solely in the territory of the Republics of Russia and Ukraine.
In no circumstances may they leave the territory of the Republics of Russia and Ukraine.

2. Your company promises and guarantees that the final destination of the products will be in the territory of the Republics of Russia and Ukraine, and that it will sell the products only to traders situated in the territory of the Republics of Russia and Ukraine. Consequently, your company will provide the addresses of the distribution points of the products in the territory of the Republics of Russia and Ukraine and details of the products by distribution point.

The distribution contract for Slovenia provides:

'In order to protect the high quality of the distribution of the products in other countries of the world, the distributor agrees not to sell the products outside the territory or to unauthorised dealers in the territory.

Shortly after the conclusion of those contracts, YSLP discovered products sold to Javico in the United Kingdom, Belgium and the Netherlands which should have

[355] InfoCuria, ECLI:EU:C:1998:173, available from: https://curia.europa.eu/juris/document/document.jsf;jsessionid=BB83457267AB9EA2FE5B395541E99EFE?text=&docid=43795&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1990838
[356] European Commission, *Hardcore Restrictions under BER*, available from: https://ec.europa.eu/dgs/competition/economist/hardcore_restrictions_under_BER.pdf

been distributed in Russia, Ukraine and Slovenia. YSLP therefore terminated the contracts and instituted proceedings before the Tribunal de Commerce, Nanterre, which, by judgment of 21 October 1994, upheld the termination of the two contracts and YSLP's claim for contractual compensation and damages.

Javico appealed against that decision to the Court d'Appel, Versailles, as a breach of EU competition law, which considered that the validity of the provisions in the distribution contracts at issue had to be appraised in the light of Article 85(1) of the Treaty, with Javico having contended that those contractual provisions were void by virtue of Article85(2) of the Treaty.

Article 85(1) of the Treaty precludes a supplier established in a Member State of the Community from imposing on a distributor established in another Member State to which the supplier entrusts the distribution of his products in a territory outside the Community a prohibition of making any sales in any territory other than the contractual territory, including the territory of the Community, either by direct marketing or by re-exportation from the contractual territory, if that prohibition has the effect of preventing, restricting or distorting competition within the Community and is liable to affect the pattern of trade between Member States.

By its second question, the national court asks whether provisions intended to prevent a distributor from selling directly in, and exporting back to, the Community contractual products which he has undertaken to sell in non-member countries can escape the prohibition laid down in Article 85(1) of the Treaty on the ground that the Community supplier of the products concerned distributes them within the Community through a selective distribution network covered by an exemption decision under Article 85(3) of the Treaty.

It must be explained here that the individual exemption decision issued by the Commission to YSLP relates only to standard selective distribution contracts drawn up by YSLP for the retail sale of its products in the Community. The provisions at issue concern the distribution of such products outside Community territory and cannot therefore be affected by the exemption granted in respect of the selective distribution system within the Community.

The court found that the aim of the restriction was to be construed as being able to enable the producer to penetrate markers outside of the EU rather than being intended to restrict competition. A contract imposing absolute protection for a territory outside the community could escape European competition law if it affected the market insignificantly. Article 85 (1) of the Treaty precludes a supplier established in the Member State of the Community from imposing on a distributor established in another Member State to which the supplier entrusts the distribution of his products in a territory outside the Community, either by direct marketing or by re-exportation from the contractual territory a prohibition of making any sales in any territory other than the contractual territory, including the territory of the Community, either by direct marketing or by re-exportation from the contractual

territory if that prohibition has the effect of preventing, restricting or distorting competition in the Community and is liable to affect the pattern of trade between Member States.

The ECJ decided that that the type of restrictions contained in the agreements in question did not escape the prohibitions contained in EU competition rules, Article 85 (1) of the Treaty on the ground that the Community supplier of the products concerned distributes those products within the Community through a selective distribution network covered by an exemption decision from EU competition rules under Article 85 (3) of the Treaty.[357]

The case of Judgment of the Court of 28 April 1998, Javico International and Javico AG v Yves Saint Laurent Parfums SA (YSLP), where Yves St Laurent had allocated distribution of luxury products in Russia, Ukraine and Slovenia, and restricted of the re-export of products back into the EU, has been identified as a point of reference within Guidelines on Vertical Restraints within the section in reference to hardcore restrictions under the Block Exemption Regulation: "in that judgment the ECJ held in paragraph 20 that 'an agreement in which the reseller gives to the producer an undertaking that it will sell the contractual products on a market outside the Community cannot be regarded as having the object of appreciably restricting competition within the common market or as being capable of affecting, as such, trade between Member States".[358]

In commenting on the case, solicitor Geoff Caesar, Director of Alinea has outlined, that the ECJ was not making a ruling for or against Javico or YSLP per sé but, rather, making findings on the interpretation of Article 85(1) of the EC Treaty. After the European Court of Justice handed down its judgment the national court (the Cour d'Appel de Versailles (France) would have recommenced its proceedings in order to conclude its own judgment. But, for the purposes of understanding the application of Article 85(1) of the EC Treaty, which is what the national court asked the European Court of Justice (ECJ) to advise on, it is the ECJ judgment which is relevant.

In their conclusion, the ECJ says: "Article 85(1) of the EC Treaty precludes a supplier established in a Member State of the Community from imposing on a distributor established in another Member State to which the supplier entrusts the distribution of his products in a territory outside the Community a prohibition of making any sales in any territory other than the contractual territory, including the territory of the Community, either by direct marketing or by re-exportation from the contractual territory, "if that prohibition has the effect of preventing, restricting or distorting competition within the Community and is liable to affect the pattern of trade between Member States."

[357] CMS Law-now, *Competition and trade law: Territorial protection outside EU - ECJ decision in Yves St. Laurent Parfums SA and Javico*, available from: https://www.cms-lawnow.com/ealerts/1998/05/competition-and-trade-law-territorial-protection-outside-eu-ecj-decision-in-yves-st-laurent-parfum?cc_lang=en

[358] Guidelines on Vertical Restraints, para. 47, p.11 https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52010XC0519(04)&from=DA

They go on to introduce that there is a particular concern where: "… the prohibition entails a risk that it might have an appreciable effect on the pattern of trade between Member States such as to undermine attainment of the objectives of the common market."

These appear to be a restatement of a comment in para. 32 of the judgment, which says: "… by adopting an exemption decision under Article 85(3), the Commission allows an exception to the prohibition laid down by Article 85(1). Consequently, exemption decisions must be interpreted restrictively so as to ensure that their effects are not extended to situations which they are not intended to cover."

Effectively, the ECJ found in Javico's favour, though the national court may have found for YSLP on other matters.

Solicitor Geoff Caesar has outlined that the take-away point from the ECJ ruling is that the exemption decisions must be interpreted restrictively. The ECJ is going to take a critical look at any prohibition has the effect of preventing, restricting or distorting competition within the Community and is liable to affect the pattern of trade between Member State. Despite the Yves St Laurent's EU sales being covered by a selective distribution agreement under TFEU Article 85 (3) in the EU, as Javico is an EU (German) company, the re-export of the luxury products, whilst being prohibited under the terms of the contract with YSL, were permitted in accordance with TFEU 85 (1).

Conclusion

As the UK explores practicalities of the Trade and Cooperation Agreement, there is open debate on whether certain aspects of the agreement will be open to negotiation prior to review in 5 years,[359] with the consensus being that this would require extensive cooperation from both parties. Luke Hindlaugh, Senior EU and International Trade Food Executive of the Food and Drink Association has mentioned that the absence of equivalence on food and drink is "really disappointing" for the sector. He also outlined in relation to the absence of diagonal cumulation that: "a particular issue is the use of inputs from developing countries, and it is disappointing that it did not get addressed in the deal. We were very disappointed that it did not get over the line, because it will impact manufacturers using inputs from developing countries that then go into exports to the EU, or exports that come from the EU." [360]

[359] EU Goods Sub-Committee, House of Lords *Beyond Brexit: Trade in Goods*, 25 March 2021, p.12 available from https://committees.parliament.uk/publications/5247/documents/52587/default/
[360] EU Goods Sub-Committee, House of Lords *Beyond Brexit: Trade in Goods*, 25 March 2021, p.31 available from https://committees.parliament.uk/publications/5247/documents/52587/default/

On 14 February 2021, EU Commission Vice-President Maroš Šefčovič said a UK-EU agreement on common animal health and food safety standards, removing the need for some SPS checks, was "on the table."[361] The UK has rejected an initial offer of harmonised Sanitary and Phytosanitary Regulations, with repercussions that may also limit border post friction in Northern Ireland, with The Guardian reporting that "diplomatic sources say that the UK has ruled out the most helpful option of aligning food standards with those of the EU."[362]

The EU and New Zealand have a veterinary equivalence deal whereby physical checks are reduced to 1%, whereas for fresh meat it is currently 30%, and for others it will be 15%. Any deal may be likely to require the adoption of EU legislation in the area of food production and supply, by way of eliminating the need for certification or checks, in a similar agreement to the one that the EU has with Switzerland.[363]

Recognising that legislation in areas such as competition law has been adopted as retained EU law, many traders within this sector have indicated that in the balance of sovereignty and pragmatism a concession could prove valuable. Lord Frost has outlined that the Northern Ireland Protocol is "not sustainable," as Northern Ireland whilst remaining part of the EU single market, is also part of the new customs territory.

Following the UK's exit from the EU, Alinea's clients have outlined concerns regarding access to movement guarantees for the excise goods industry, with certain bonded warehouses advising their clients they that have decided to no longer extend their authorised consignor guarantees to clients' movements following the EU withdrawal. Whereas the EMCS system used to be available to authorised consignors for cross border movements between the UK and the EU, movements now have to be treated as imports and exports, with traders required to either pay full duty at the border, or enter special procedures and the EMCS, and establish a guarantee for a delivery to a bonded warehouse.

A significant shift in supply chain and logistics practices has been established, with the financial and administrative impact varying according to the regulatory requirements imposed by the sector. The use of technology is a priority to improve efficiency, and reduce intermediary fees through software integration. In turn, optimising administrative storage and data base management will assist businesses preparing for the new Single Trade Window, and businesses may wish to seek advice from their customs intermediary on how to generate commercial documentation and meet forthcoming regulations demands.

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[361] EU Goods Sub-Committee, House of Lords *Beyond Brexit: Trade in Goods*, 25 March 2021, p.37 available from https://committees.parliament.uk/publications/5247/documents/52587/default/

[362] O'Carroll, L. Britain warns EU that Northern Ireland Protocol unsustainable, 11th May 2021, available from: https://www.theguardian.com/politics/2021/may/11/britain-warns-eu-that-northern-ireland-protocol-unsustainable

[363] Robinson, Anthony *British Exceptionalism being put to the test in Northern Ireland,* Yorkshire Bylines, 21st April 2021, available from; https://yorkshirebylines.co.uk/british-exceptionalism-is-being-put-to-the-test-in-northern-ireland/

On 10th February 2021, the UK government introduced a new £20 million SME Brexit Support Fund[364], to assist qualifying enterprises with training and information, for example the EU Goods Subcommittee House of Lords have outlined that around 50, 000 manufacturers have no experience with trading outside of the EU.[365]

There are a number of fairly simple administrative process which could assist traders in efficiency, for example, traders may wish to:

- request country of origin information from their suppliers on a pro forma invoice prior to purchasing the goods, so that they are aware of any third country tariffs on products originating in third countries exported from the EU prior to import into the UK.
- Translate products sold into the EU into the domestic language of the nation they export to.
- Request for their suppliers to provide an English translation of the products on the packing list.
- Supply a TARIC code and a CN code against each product on a packing list.
- Prepare a supplier's declaration for each product sold, and request for their suppliers to do the same, as this will be a legal requirement to support Statement on Origin claims from 1st January 2022.

There are a number of questions that have been raised concerning legislation and UK freeports. For example, regarding the application of Article 154 Regulation (EU) No 952/2013 of the European Parliament and of the Council,[366] with EU traders considering establishing operations in UK freeports considering whether under the EU's current regime they will be able to use UK freeports as distribution centres or for minor processing, and re-export to the EU, in additions to considering the scope of suggested reduced corporation tax, considering the 15% corporation tax, OECD pillar two minimum commitment agreed by the United Kingdom with the G7 Finance Ministers meeting hosted on 5th June 2021, prior to entering further negotiations with the G20 and OCED on global digital tax reform.[367]

Since the UK has exited the EU, credit card giants such as Mastercard have raised the fees that they charge EU based merchants buy goods and services from them, which affects the 'interchange' fee set by banks, so that its customers can use their payment networks. Whilst the EU introduced a fees cap of 0.2% on debit card transactions, and 0.3% on credit card transactions in 2015, since the 1st January 2021, Mastercard has increased fees to 1.15% and 1.5% on every transaction

[364] SME Brexit Support Fund, available from: https://www.customsintermediarygrant.co.uk/sme-brexit-support-fund
[365] EU Goods Sub-Committee, House of Lords *Beyond Brexit: Trade in Goods*, 25 March 2021, available from https://committees.parliament.uk/publications/5247/documents/52587/default/
[366] Article 154, Regulation EU 952/2013, available from: https://www.legislation.gov.uk/eur/2013/952/article/154
[367] HM Treasury, G7 Finance Ministers Agree Historic Global Tax Agreement, 5th June 2021, available from: https://www.gov.uk/government/news/g7-finance-ministers-agree-historic-global-tax-agreement accessed 6th June 2021

burdening EU businesses that sell into the UK. The new non-EEA fees are capped by the EU's antitrust rules on multilateral interchange fees for payments in the EEA with consumer cards issued elsewhere.[368]

The Cabinet Office has established the Border Innovation Hub, a group which is currently reviewing new digital technology for international trade with customs stakeholders, to prepare traders to use the Single Trade Window to reconcile multiple administrative obligations within one filing, developed through funding via the UK's Innovation Strategy, InnovateUK, and develop sandbox testing programmes in partnership with government and industry agencies.[369] Within a hearing at the European Committee at the House of Lords, Rt. Hon. Penny Mordant MP outlined:

"We recognise that things evolve, and certainly when we have been thinking about what the future border might look like we have been very keen to ensure that the interface between our legacy systems, whether they are in HMRC or Defra, can really be seamless and that we create those APIs to enable business to dock with those systems with the least amount of administrative burden."[370]

The new technology will operate Open Standards Principles co-designed and built with Application Programming Interfaces (APIs) to engage the private sector, and enable businesses to develop solutions which encourage experimentation citing the USA's Border Interagency Executive Council as a successful model for border cooperation. For UK based companies developing their international trade and export strategy, the government has additional support through programmes such as UK Export Finance.[371]

[368] European Commission, Antitrust: Commission accepts commitments by Mastercard and Visa to cut interregional interchange fees, 29th April 2019, available from: https://ec.europa.eu/commission/presscorner/detail/en/IP_19_2311
[369] HM Government, The 2025 Border Strategy, December 2020, available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/945380/2025_UK_Border_Strategy.pdf
[370] Rt Hon Penny Mordant, *House of Lords Select Committee on the European Union, Goods Sub-Committee, Corrected oral evidence : Future UK-EU-Relations: trade in goods,* available from: https://committees.parliament.uk/oralevidence/1722/html/
[371] UK Export Finance, available from: https://www.gov.uk/government/organisations/uk-export-finance

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