

EU-UK Trade and Cooperation Agreement (TCA): Trade in Goods

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Four years after the Brexit referendum, the EU and the United Kingdom have reached an agreement on the [EU-UK Trade and Cooperation Agreement](#) (TCA), which follows the [Brexit Withdrawal Agreement](#). BLOMSTEIN presents the key contents of the new trade agreement in a briefing series. In [Part 1](#), we have looked at the implementation and substantial changes in the EU-UK relationship. Part 2 focuses on the trade in goods.

After the United Kingdom left the European Union as a member state on January 31, 2020, it also left the European single market and the customs union at the end of the contractually agreed transition period. This had a particular impact on the cross-border movement of goods. The free movement of goods, which was previously guaranteed as one of the four fundamental freedoms of the EU, no longer applies to the transport of goods between the EU and the United Kingdom.

Instead, the contracting parties have in principle agreed to establish a **free trade zone** within the framework of the cooperation agreement. The agreement sets out a waiver of all customs duties, quotas and quantitative restrictions on the cross-border movement of goods and thus represents a novelty in the history of EU free trade agreements. Nevertheless, the effectiveness and ease of movement of goods falls short in various respects of the advantages of the existing EU membership or a membership in the customs union.

Despite the waiver of customs duties, the import of goods into the customs territory of the other contracting party is now subject to **bureaucratic customs formalities** as well as checks and audits by border authorities. As of this January, as in the case of trade with other non-EU countries, traders will have to submit entry and exit declarations. Imported goods may be checked for conformity with EU or UK regulatory requirements. Particularly noteworthy in this regard are the inspections of sanitary and phytosanitary requirements (SPS) that are now mandatory for the movement of foodstuffs, animals and plants.

However, in order to continue to make the cross-border movement of goods as efficient as possible, the contracting parties have agreed on specific **exceptions**. These include, for example, the recognition of the status of certain economic operators as Authorised Economic Operators (AEO), who are granted certain simplifications in the customs procedure (Art. CUSTMS.2 Nr. 2 (g) and (h), Art. CUSTMS.9 as well as Annex CUSTMS-1 EU-UK-FTA-E). With regard to compliance with regulatory requirements, in many cases the

TCA allows for a self-certification of conformity by the manufacturer (e.g. Art TBT.6 Nr. 2 (b) EU-UK-FTA-E). Furthermore, the agreement contains special simplifications for the movement of certain goods, including cars, chemicals, wine or medical devices (see Annex TBT-1, 3, 5, 2 EU-UK-FTA-E).

As a further complication to cross-border trade between the UK and EU member states, the **rules of origin** enshrined in the TCA have to be taken into account since January 1, 2021: In the context of free trade agreements, the rules on preferential origin decide on the applicability of tariff concessions to specific goods. The cooperation agreement contains a comprehensive catalog of regulations in this regard (Title 2, Heading 1 ("Goods"), Chapter 2, Art. ORIG.1 ff. EU-UK-FTA-E), as well as detailed supplements in the annex to the agreement (Annex ORIG-1, Annex ORIG-2, Annex ORIG-2a, Annex ORIG-2b, Annex ORIG-3, Annex ORIG-4, Annex ORIG-5, Annex ORIG-6 EU-UK-FTA-E), each of which is visibly based on existing sets of regulations such as the UCC and free trade agreements that have already been concluded by the EU.

As a basic rule, only those goods benefit from duty-free import into the EU or the United Kingdom that have either been wholly obtained or manufactured or **substantially processed** in the exporter's respective customs territory (Art. ORIG.3 EU-UK-FTA-E). Whether substantial processing results in the product acquiring originating status, depends on product-specific specifications, which can be found in the respective annex of the agreement. The agreement also contains a **tolerance clause** according to which the use of up to 10% or 15% (depending on the product, based on the weight or value of the goods) of non-originating materials does not negatively affect the acquisition of origin (Art. ORIG.6 EU-UK-FTA-E). In practice, this primarily affects goods that originate to a significant extent in third countries. For example, U.S. motorcycles that were once imported into the United Kingdom are not exempt from paying customs duty if they are subsequently resold into the European Union. Until December 31, 2020, these could circulate freely throughout the EU after being imported into the United Kingdom.

An advantage in this context is the agreement reached on rules on **cumulation**, which allows individual processing stages in the territory of the other contracting party to be considered as establishing origin (Art. ORIG.4 EU-UK-FTA-E). It should be noted, however, that the agreement does not allow for diagonal cumulation. This would have allowed individual processing stages in countries with which both parties have concluded comparable free trade agreements to be taken into account, such as in the [EU agreement with South Korea](#) regarding certain goods from the ASEAN region.

The provisions in the agreement that allow economic operators to **self-certify the origin** of exported goods also have a facilitating effect (Art. ORIG.19 EU-UK-FTA-E). However, economic operators will have to take into account that they are personally responsible for the accuracy of the certificate and the information contained therein. In addition,

special transitional rules apply to the proof of origin in the first year after the agreement entered into force (Art. ORIG.30 EU-UK-FTA-E).

For the cross-border movement of goods between the Republic of Ireland and **Northern Ireland** or between Northern Ireland and the rest of the United Kingdom, the rules of the “Protocol on Ireland and Northern Ireland” contained in the Annex to the “Withdrawal Agreement” will continue to apply (Art. 7 and 8 Protocol on Ireland/Northern Ireland, WA). In essence, goods transported to Northern Ireland will have to comply with EU regulatory requirements. The same applies to the collection of VAT. The checks and controls normally carried out in cross-border trade between the EU and the United Kingdom are thus effectively shifted to the border between Northern Ireland and the rest of the United Kingdom. On the one hand, this safeguards the integrity of the internal market and, on the other hand, prevents a “hard” border on the island of Ireland.

With regard to the **relationship with third countries**, it should be emphasized that free trade agreements concluded between the EU and these countries will no longer be effective for the United Kingdom after its withdrawal. By December 2020, however, the United Kingdom had already adopted or replicated the wording of 29 agreements with third countries, including those with key [trading partners](#) Canada, Norway, Iceland, Switzerland and Japan. Shortly before the turn of the year, the United Kingdom also signed a corresponding agreement with [Turkey](#).

BLOMSTEIN is monitoring the foreign trade law implications of the new free trade agreement with the United Kingdom and their impact on companies. [Dr. Roland M. Stein](#) and [Dr. Leonard von Rummel](#) are available for discussions on these topics at any time.