



Brexit Transition Phase: Actions to take in 2020

KPMG summary and analysis

February 2020

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Our view



Brian Daly

Head of Brexit Response Team, KPMG in Ireland

With the UK's departure from the EU under the terms of the Withdrawal Agreement on 31 January 2020, Brexit has now moved to the Transition phase.... but it's not yet clear what we are transitioning to!

It is helpful for businesses that the departure has taken place on a managed basis under the terms of the Withdrawal Agreement.

That said, the key issue in 2020 is whether the parties can agree an overall new relationship including a new Free Trade Agreement (FTA) before transition ends.

Until this is clear and what the terms of any such FTA deal are, the threat of a cliff edge, with trade in goods defaulting to tariff laden WTO terms, will persist.

This will be significant for many Irish businesses trading heavily with GB. It will also affect the value of GB based businesses that trade heavily with the EU.

For Northern Ireland based businesses who trade heavily with GB, important details are yet to be worked out on the operational aspects of the protocol and also the UK government's commitment to NI that there would continue to be unfettered access to the GB market. That said it is helpful for all businesses operating on the island of Ireland to know that regardless of whether an FTA is agreed, goods can move freely across the NI / ROI border with no tariffs, duties or paperwork.

You can expect to hear lots of important discussions in 2020 on 'level playing field conditions', 'rules of origin', the workings of the Joint Committee on the Northern Ireland Protocol and what GATS means for services trade. These will be important ingredients in determining what outcomes emerge.

Also watch out for key discussions on fisheries, equivalence decisions on financial services regulations and adequacy decisions on data – the political declaration agreed between the parties calls for them to reach agreement on these matters during 2020.

Some knowns

While lots of crucially important Brexit related matters are yet to be decided, work can now commence where we know changes will occur such as clearing goods through Customs.

In this regard systems will need to be set up to capture information required for Customs clearances – these will be required irrespective of whether a new FTA is agreed or not.

In our latest Brexit update, we have set out our analysis of key issues business will need to focus on, including...

- Our view on the impact of the Withdrawal Agreement on business in Ireland and Northern Ireland
- Key VAT and Customs measures
- Brexit Knowns: Recommended actions for businesses to take by the end of 2020
- Impacts on employees and mobility
- Looking forward - Key dates in 2020
- Impacts on Services and data flows
- Key elements of the Withdrawal Agreement and Northern Ireland Protocol
- Some key Company Law implications
- Consequences of trading under an FTA
- What is GATT 24 and GATS

Brian Daly

Head of Brexit Response Team
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The Withdrawal Agreement and Northern Ireland Protocol

Implications for Business



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For Business in the Republic of Ireland

The main benefit of the Withdrawal Agreement is it provides a framework for a managed exit. Time will tell whether a sufficiently attractive FTA can be negotiated before the end of the Transition Period.

For many businesses operating in Ireland, the focus will be on the terms that emerge from the future FTA, not only in goods but also in services – the latter are not typically dealt with as comprehensively as goods in FTAs.

For businesses trading across the border with Northern Ireland, the Protocol is welcome in that it will allow for free movement of people (British and Irish nationals) and goods across the border with no tariffs, duties or paperwork, and this will apply irrespective of whether an FTA is agreed before the end of the transition period.

It will be interesting to see how the Withdrawal Agreement and the future FTA impact on the competitiveness of businesses based in Northern Ireland and the Republic of Ireland.

It will be important that the operation of these mechanisms do not have an impact on Ireland's reputation or secure place in the Single Market – particularly should the UK diverge significantly from EU rules.



Johnny Hanna

Partner in Charge KPMG in Northern Ireland

For Business in Northern Ireland

The Protocol relating to Northern Ireland is welcome in some respects. It brings certainty to Northern Ireland business that trading relationships with the EU (including ROI) and Great Britain will remain substantially unchanged until the end of the transition period. For those NI businesses which trade only across the island of Ireland, the Withdrawal Agreement will provide certainty of the status quo position (including unfettered access to the EU market for goods) even after the transition period expires and regardless of whether a free trade agreement (FTA) is reached between the UK and the EU.

The terms of the EU/UK FTA reached and the extent of any UK divergence from EU rules in the future will dictate the level of complexity for NI businesses as regards their ability to deal with and adhere to the application of the Protocol in practice, in particular those trading largely with GB. These arrangements could be costly for businesses and consideration will need to be given to possible derogations, relief measures and compensation.

The role of the joint committee discussed on page 7 will be of particular importance for Northern Ireland businesses and it is positive that the NI Assembly is back at work in order to input into the joint committee to ensure their concerns are addressed. It will also be important to obtain protections from the UK that exports from NI into the UK internal market will not be impacted by any future regulatory divergence between the UK and EU.

Brexit Knowns

Recommended actions for businesses to take by the end of 2020

With the UK effectively leaving the EU, the Customs Union and the Single Market at the end of the transition period (which the UK government has clearly stated will not be extended beyond 31 December 2020), there are certain Brexit implications that we know will arise regardless of whether or what kind of agreement is reached on a future relationship. On this basis, we have set out below key actions required by businesses before the end of 2020.

VAT & Customs

1

Understand the potential impact on your supply chain

Ensure you have reviewed your supply chain to understand the potential impact of a customs and VAT frontier on the movement of your goods including the impact of trading under a FTA (see page 19). Ensure hauliers and freight forwarders are prepared with the relevant permits and registrations.

Be aware that even if a FTA is agreed, it may not cover all goods traded between ROI and GB.

2

Contracts

Assess whether the terms of your contracts (especially incoterms) with your suppliers and customers meet your needs post Brexit, in particular who is responsible for import clearance and any duties arising. Incoterms are internationally recognised trade terms that define each party's obligations, costs and risks associated with the delivery of goods from seller to buyer.

3

Obtain an EORI number

To operate within a customs regime, importers and exporters of goods need to be customs registered. If not already registered, an application should be filed with Revenue via Revenue's Online Service (ROS) for an EORI (Customs) number if you are trading goods between ROI and GB. An EORI number will not be required for supplies on the island of Ireland.

4

Customs Classification and Origin

The rate of Duty arising on goods depends on their Customs classification and origin. Ensure you have confirmed the commodity codes and origin for all goods moving into and out of GB and vice versa and you understand the potential tariff implications associated with the movement of your goods between ROI and GB including under a FTA.

5

Filing Customs declarations

Irrespective of the outcome of FTA negotiations, reporting for customs will now be required when trading between ROI and GB.

Consider how you will file Customs declarations for your export or import of goods. Most declarations are filed by Customs agents/freight companies on behalf of traders. Depending on your profile, you may prefer to bring the declaration process "in-house". Make sure you understand the information needed to file Customs declarations and where you will get it. For many businesses the required information is not readily available from existing ERP / management information systems.

VAT & Customs (continued)

6

Export/Import Controls

Understand whether any additional controls will apply to your goods such as licensing requirements, Sanitary and Phytosanitary (SPS) controls or advance notification requirement (e.g. for agri products).

7

Use of Customs relief/simplifications

Make sure you are aware of the reliefs and simplifications available such as customs warehousing, inward processing relief, transit which could mitigate the impact of Brexit on your business in ROI or GB. A guarantee is often required to avail of some reliefs so apply early.

8

Impact on ERP/finance system

As customs declarations will now be required when trading between ROI and GB, this will have consequences for ERP / finance systems.

Assess what changes may be required to your ERP (Enterprise Resource Planning) or finance systems in anticipation of a changed VAT and Customs Duty accounting regime post Brexit.

9

GB will become a third country for VAT purposes

The VAT rules for trading goods and services on the Island of Ireland will remain the same but the rules for trade in goods between ROI and Great Britain will change and the rules for the supply of certain services cross border to and from GB will change also. Familiarise yourself with how these new rules will operate and apply to your business. For example, those particularly impacted include sellers of goods B2B into GB from ROI and vice versa and also those supplying goods and certain services B2C from ROI to GB and vice versa.

Determine if any additional VAT considerations will arise from your movement of goods post Brexit or your supply of services, e.g. additional VAT registration requirements.

Other areas

1

People

The UK will introduce a new immigration regime from 1 January 2021 – non-Irish EEA nationals are unlikely to be subject to a more beneficial regime than non-EEA nationals. Non-Irish EEA nationals who currently reside in the UK need to apply for their right to remain in the UK under the EU Settlement Scheme.

2

Tax impact of intra-group payments

The most significant in terms of direct tax costs to companies are likely to be provisions that apply in relation to group structures where there is a UK tax resident company in a group. Consider the tax treatment of dividends, interest and other payments to / from EU / EEA Member States after the end of the transition period and whether making such payments prior to the end of the transition period / restructuring group operations may be beneficial from a tax perspective.

Other areas (continued)

3

Data issues

Review data flows and consider if restrictions will apply to the movement of personal data from the EU to the UK and whether any derogations can be obtained or arrangements put in place to facilitate the ongoing transmission of such data if mutual adequacy decisions are not made by the EU and the UK before the end of the transition period.

4

Company law issues

Irish registered companies that are relying on UK resident directors to satisfy the requirement under Companies Act 2014 to have at least one EEA resident Director will need to take steps to ensure compliance with company law.

Irish subsidiaries of UK resident companies will no longer be able to claim the exemption from filing accounts that applies where its parent is established in the EEA – affected groups will have to file Irish accounts or restructure.

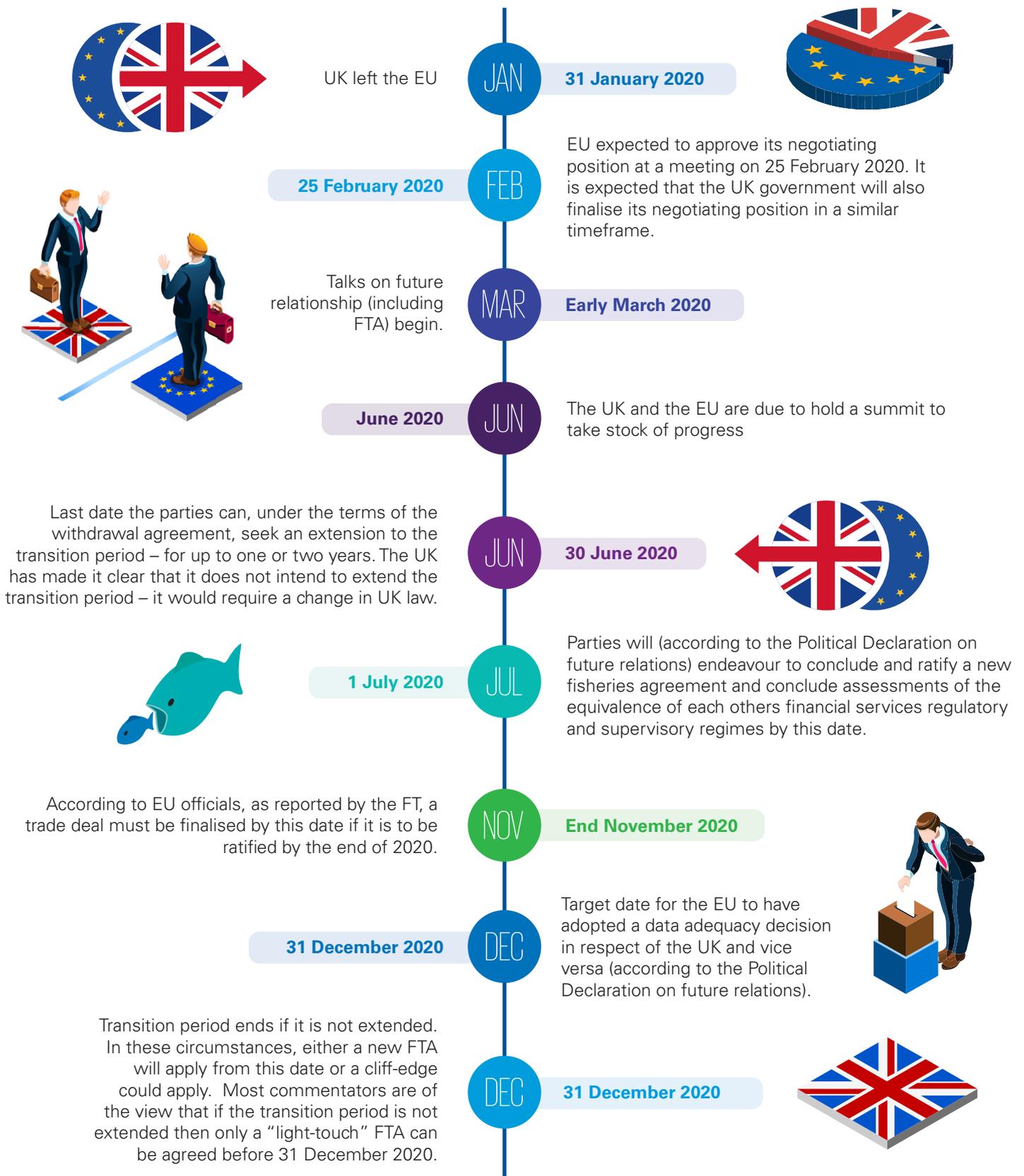
5

Monitor developments in 2020

Have a process in place to monitor the impact of relevant developments in 2020.



Looking forward - key dates in 2020



Political developments in 2020 and decisions on whether to agree on certain matters before agreement is reached on all issues will influence what will happen in 2020.

Key elements of the Withdrawal Agreement

Key aspects of the Withdrawal Agreement include:

- The maintenance of the Common Travel Area between Ireland and the UK.
- Regulatory alignment on agricultural products and industrial goods (note that this does not extend to services).
- NI should benefit from both membership of the EU's Customs Union and membership of the UK's Customs territory.
- NI should remain part of the UK VAT area but EU VAT rules concerning goods will continue to apply in NI.
- An all island Single Electricity Market will be maintained.

The above elements of the Withdrawal Agreement are designed to achieve frictionless trade on the island of Ireland and maintain North-South cooperation.

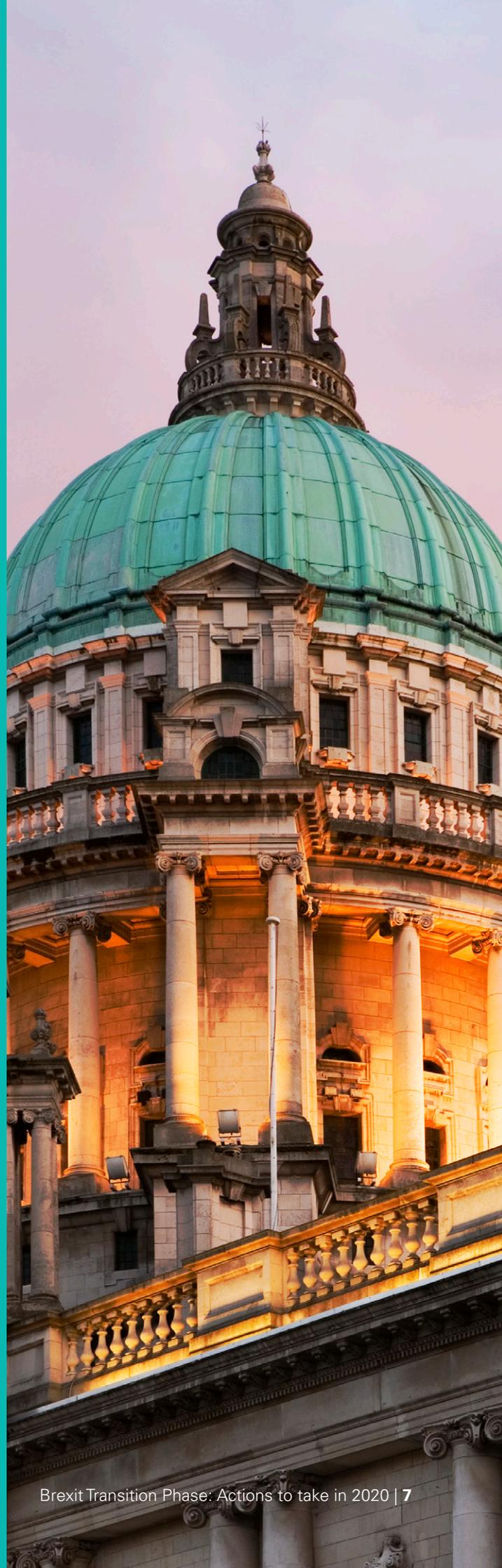
Transition

The transition period will run from the 31 January 2020 until 31 December 2020. During the transition period, the status quo will essentially be maintained, however the UK will have no role in EU decision making and will have to make a contribution to the EU's budget.

The UK and EU may agree to a single extension to this transition period of up to one or two years and, if so, would need to do so before 1 July 2020. The decision will be made by a "joint committee" comprising representatives of the EU and the UK.

The "Joint Committee"

A "joint committee" will be established comprising representatives of the EU and the UK. The joint committee will play a key role in finalising issues included in the Protocol and indeed the Withdrawal Agreement more generally. For example, key issues like determining NI compliance with EU regulatory alignment, ensuring that the Protocol operates as intended, determining criteria for whether goods entering the UK will be at risk of entering the EU Customs Union and ensuring that checks on goods moving between GB and NI can be kept to a minimum. As such, the decisions of the joint committee will have a direct impact on issues relating to moving goods between GB and NI both in terms of logistics and paperwork.



Northern Ireland Protocol

Consent	Regulatory Alignment and the Single Market
<p>Within 2 months of the “initial period” (the period ending 4 years after the end of the transition period), and any subsequent period (each 4 year period thereafter where the Northern Ireland Protocol continues to apply), the UK will provide the opportunity for democratic consent in Northern Ireland – in line with the 1998 Agreement and respecting the roles of the Northern Ireland Executive and Assembly.</p> <p>Remain Where the Assembly votes by a majority to continue to apply the terms of the Protocol, it will continue to apply for a further 4 years. Where the decision has cross-community support, it will continue to apply for a further 8 years. Cross-community support means a majority, including a majority of unionist and nationalist members or a weighted majority of 60% of members, including at least 40% of each of the nationalist and unionist members.</p> <p>Leave If the Assembly votes to exit the Protocol, it will cease to apply 2 years after the end of the relevant 4 year period. In such a case the “joint committee” which includes representatives from the UK and the EU will address recommendations to the EU and the UK on necessary measures taking into account the obligations of the parties to the 1998 Agreement. Before doing so, they may seek an opinion from the institutions created by the 1998 Agreement.</p>	<p>The Northern Ireland Protocol effectively places Northern Ireland in the regulatory sphere of both the UK’s internal market (e.g. in relation to financial services) and the EU’s Single Market (e.g. in relation to Agricultural products and manufactured goods).</p> <p>Article 12 of the Protocol on Northern Ireland provides that the UK will be responsible for ensuring the implementation of relevant EU law in Northern Ireland. EU representatives will have the right to be present during any activities of the UK authorities in relation to policing implementation and can request the UK authorities to carry out control measures on a case by case basis.</p> <p>Ultimate oversight will rest with the Court of Justice of the European Union, though the UK may participate in the proceedings in the same way as a Member State.</p>

VAT & Customs

Clarification will be required on how certain aspects of the Protocol will operate from a VAT and Customs perspective and the finer details of how certain of the arrangements will work in practice remains to be finalised. Broadly, however, the arrangements should allow for frictionless trade on the Island of Ireland. Northern Ireland should benefit from tariff free access to EU markets and also Great Britain but there will be some controls and possible tariffs on the movement of goods from Great Britain to Northern Ireland. It remains to be clarified what level of customs control measures may apply in respect of the movement of goods from Northern Ireland to Great Britain.

Goods trade	VAT headlines	Customs headlines
<p>Ireland/ Northern Ireland</p>	<p>Northern Ireland will remain part of the UK VAT area but the EU VAT rules concerning goods will continue to apply in Northern Ireland.</p> <p>The operational aspects of the arrangements will need to be worked out but we expect the current VAT treatment of sales of goods between Ireland and Northern Ireland should continue to apply.</p> <p>The UK can, however, opt to apply reduced rates of VAT and exemptions that apply in Ireland to goods sold in Northern Ireland. How these optional measures could apply in practice in Northern Ireland remains to be clarified.</p>	<p>Northern Ireland will remain part of the customs territory of the United Kingdom but EU Customs rules concerning goods shall apply in Northern Ireland.</p> <p>Northern Ireland will also remain aligned to a limited set of rules related to the EU's Single Market in order to avoid a hard border on the island of Ireland.</p> <p>The terms of the revised Protocol mean an all-Ireland economy is preserved with no Tariffs, customs controls or border checks applied to the trade in goods between Ireland and Northern Ireland allowing for frictionless trade North/South.</p> <p>There will be no requirement to file customs declarations to record the movement of goods between Ireland and Northern Ireland.</p>
<p>Ireland/ Great Britain</p>	<p>Sales of goods from Ireland to Great Britain should be treated as exports with no Irish VAT chargeable.</p> <p>The same rules should apply to the sale of goods from Great Britain to Ireland with no VAT chargeable.</p> <p>Import VAT will arise on the importation of goods into Ireland from Great Britain. It remains to be confirmed if Ireland would still implement postponed VAT accounting on imports which was to be introduced in the event of a no deal Brexit. Postponed VAT accounting for imports would eliminate the VAT cash flow cost of imports resulting in a significant VAT cash flow benefit for traders.</p> <p>A similar position will apply in respect of imports of goods into Great Britain from Ireland which will attract import VAT. As in Ireland it remains to be confirmed if postponed VAT accounting would be introduced in Great Britain which was planned to be introduced in a no deal scenario. These VAT recording requirements will continue to apply to trade between Ireland and Great Britain even if a free trade agreement is reached.</p>	<p>Customs controls will apply to the movement of goods between Ireland and Great Britain when the transitional period expires.</p> <p>After the end of the transitional period Customs Tariffs will apply to trade between Ireland and Great Britain unless relieved under a free trade agreement. A free trade agreement will only apply to goods of EU or UK origin. For example it would not remove potential tariffs on goods imported into Ireland from outside the EU which are subsequently sold on to customers in the UK.</p> <p>Import and export declarations will need to be filed in respect of trade between Ireland and Great Britain after the transitional period including in a case where a free trade agreement is reached. A free trade agreement will not remove many of the obstacles to frictionless trade associated with Brexit such as customs paperwork and potential regulatory checks</p> <p>If a free trade agreement is not reached at the end of the transitional period, it remains to be seen if the United Kingdom would replicate its no deal plans and as a temporary measure eliminate Tariffs on a wide range of products imported into the UK.</p>

VAT & Customs (continued)

Goods trade	VAT headlines	Customs headlines
<p>Northern Ireland/Great Britain</p>	<p>Again the operational aspects of the arrangements will need to be worked out but we expect that broadly the current VAT treatment of sales of goods between Northern Ireland and Great Britain should continue to apply.</p>	<p>As part of the UK Customs area there generally should be no tariffs on goods moving from NI to Great Britain, however, further clarification will be needed on whether the UK may implement any special rules for certain categories of goods movements to the UK. For example, goods originating from outside of Northern Ireland which are shipped to the UK via Northern Ireland.</p> <p>Certain Customs filing formalities may apply in respect of the movement of goods from Northern Ireland to Great Britain.</p> <p>EU Tariffs may apply to goods brought into Northern Ireland from Great Britain. The Tariffs will apply if there is a risk that the goods will subsequently be moved to the EU. If the goods are not at risk of movement to the EU then no tariffs should apply.</p> <p>Goods will be at risk of subsequently being moved to the EU unless it can be established that:</p> <ul style="list-style-type: none"> They will not be subject to commercial processing in Northern Ireland; and The goods fulfil criteria to be established by a Joint Committee, made up of representatives of the United Kingdom and the EU. <p>If goods can be proven to stay in Northern Ireland, then there are measures to allow for a potential reimbursement of duties paid. The position will also depend on whether a free trade agreement is ratified between the UK and EU.</p> <p>If the United Kingdom agrees a free trade agreement with another country it may be open for Northern Ireland to be part of that agreement.</p>
<p>Northern Ireland/ other EU 26 Member States</p>	<p>Again the operational aspects of the arrangements will need to be worked out but we expect that broadly the current VAT treatment of sales of goods between Northern Ireland and the other EU 26 Member States should continue to apply.</p>	<p>As with trade between Ireland and Northern Ireland it is understood the current trading rules between Northern Ireland and the EU should continue with no tariffs and declarations required on trade between Northern Ireland and the rest of the EU.</p>

VAT & Customs (continued)

Goods trade	VAT headlines	Customs headlines
Northern Ireland/rest of the world (ex Ireland and Great Britain)	Again the operational aspects of the arrangements will need to be worked out but broadly the same VAT treatment applying to imports of goods into Northern Ireland from third countries should continue to apply. There remains a question over whether postponed VAT accounting would be introduced into Northern Ireland for imports.	UK Tariffs will apply to the import of goods directly into Northern Ireland unless the goods are at risk of being subsequently moved to the EU in which case it is understood EU tariffs will apply. Again the position will also be influenced by whether a free trade agreement is ratified between the EU and UK. NI-produced goods may have the same access under UK FTAs to other markets as GB-produced goods.

Notes

The protocol provides that no customs duties shall apply to personal property (e.g., household effects, private motor vehicles) of UK residents brought into Northern Ireland from Great Britain.

The protocol also confirms that no duties shall be payable on:

Consignments of negligible value i.e., goods the intrinsic value of which does not exceed €150 per consignment
Consignments sent by one individual to another individual where not of a commercial nature
Goods contained in travellers personal baggage (subject to certain thresholds).



People, mobility and citizens' rights

Summary	Business Implications
<p>(From the Withdrawal Agreement) EU nationals already in the UK will have the opportunity to retain their right to live and work in the UK by making an application under the EU Settlement Scheme.</p>	<p>Agreement has been reached over the status of EU and UK nationals up to the end of the transition period. For EU nationals* coming to the UK and British nationals going to the EU, nothing changes between now and 31 December 2020 meaning businesses will be able to continue to recruit on the basis of free movement rules.</p> <p>The Common Travel Area and associated rights between the UK and Ireland will continue to operate and apply to Irish and UK nationals. Therefore, Irish nationals can continue to enter and work in the UK, and British nationals can continue to enter and work in the Republic of Ireland, without restriction.</p>
<p>(From the Withdrawal Agreement) Professional qualifications gained before the end of the transition period will continue to be recognised by respective Member States. Cooperation is encouraged for pending applications. (No details on a future recognition system).</p>	<p>The UK has already introduced a mandatory registration scheme for EU nationals (who do not also hold a British or Irish passport) living in the UK, called the EU Settlement Scheme ("the Scheme"). Employers need to ensure that their employees are informed of, and make an application under the Scheme before the closing date (currently set to be 30 June 2021). If an application is not made, an employee may have difficulty proving their right to live and work in the UK.</p> <p>A Republic of Ireland born Irish national who resides in the UK, does not have to make an application under the Scheme, however in certain circumstances it may be advantageous to do so. These individuals should seek further advice in relation to their rights and their families'.</p>
<p>(From the political declaration on future relations) Freedom of movement of people will end on 31 December 2020. Thereafter, it is proposed that the UK and the EU will have visa-free travel for short trips.</p>	<p>Some existing business travellers or commuters will be frontier workers and can continue their current arrangements. For example, an EU national (who does not also hold a British or Irish passport) living in the Republic of Ireland will still be able to continue working in Northern Ireland as a frontier worker. However, they will need to make an immigration application in order to retain this right.</p> <p>From 1 January 2021, free movement of people will end. Employers in both Northern Ireland and the rest of the UK should take measures to reduce the risk of labour shortages, such as ensuring that employees from other EU member states are aware of, and encouraged to apply for the Scheme as referred to above. Employers should take steps to prepare for the post Brexit immigration system including: obtaining a UK Sponsor Licence; considering minimum salary requirements; and, taking advice on temporary transitional immigration schemes which may assist.</p>
<p>(From the Withdrawal Agreement) During the transition period, EU Regulations on Social Security will continue to apply to all EU cross border working arrangements until the end of the transition period and persons taking advantage of EU social security coordination before the end of the transition period can continue to do so post-transition.</p> <p>(From the political declaration on future relations) The Parties agree to consider addressing social security coordination in the light of future movement of persons.</p>	<p>With regard to social security and pensions, the status quo is maintained until the end of the transition period and person benefiting from existing EU social security coordination prior to the end of the transition period can continue to do so afterwards. The position for people moving between the UK and the EU after the end of the transition period remains unclear though. It is welcome however that the Political Declaration (should its aspirations come into force) states that the UK and the EU will consider social security coordination in the context of the future relationship.</p> <p>* Reference to EU nationals also includes EEA and Swiss nationals</p>

Services

Trade in services between the UK and the EU will continue on the same basis as today until the end of the transition period (currently envisaged to end on 31 December 2020).

If the UK and the EU do not agree and ratify a Free Trade Agreement before the end of the transition period, trade between the UK and the EU would move to World Trade Organisation (WTO) terms. There is only a limited level of relief for trade in services under WTO rules. These are covered under the General Agreement on Trade in Services (GATS)

The UK has deposited a schedule with the WTO that sets out the services that can be provided to the UK under GATS and whether any restrictions apply to those services. The schedule is quite lengthy and broadly liberal in terms of the services that can be provided to the UK. Time will tell whether the same level of access or indeed more will be granted by the EU to the UK in any future FTA. Given that the delivery of cross border services rely in many cases on people being able to easily move to and work in the other country, the final arrangements may be influenced by treatment of EU Nationals under the UK's future immigration policy.

It is worth noting that the political declaration on the future relationship between the UK and the EU states that:

"The Parties should conclude ambitious, comprehensive and balanced arrangements on trade in services and investment in services, respecting each Party's right to regulate and deliver a level of liberalisation in trade in services well beyond the Parties' World Trade Organization (WTO) commitments and build on recent Union FTAs." and...

"the Parties should aim at substantial sectoral coverage, covering all modes of supply and providing for the absence of substantially all discrimination in the covered sectors, with exceptions and limitations as appropriate. The arrangements should therefore cover sectors including professional and business services, telecommunications services, courier and postal services, distribution services, environmental services, financial services, transport services and other services of mutual interest."

Turning these aspirations into reality is likely to be complicated if the UK wants, as the Government has stated, to be able to diverge from existing EU regulations. For this reason, many commentators have said that the chances of getting a comprehensive FTA in place before the end of 2020 covering both goods and services is remote. Hence, we recommend that businesses take the following actions:

Brexit Issue(s)	Action required
<p>Services supply chain Understand what services your business imports and exports to / from the UK.</p>	<p>Review supply chain It is essential for businesses to review their supply chains to understand the movement of services into and out of the UK and the potential for disruption as a result of the UK no longer being a member of the single market.</p>
<p>Understand whether the services are regulated or unregulated and whether they are included in the UK / EU WTO services schedules.</p>	<p>It is essential to understand that even though certain services may be provided between the UK and the EU freely on WTO terms, other rules associated with EU membership may prohibit their import / export in the absence of a comprehensive FTA dealing with Services. For example, consider:</p> <ul style="list-style-type: none"> ■ Does the movement of a service require the transfer of data between the UK and the EU? ■ Does the movement of a service require the movement of people between the UK and the EU? What immigration and short term visa rules will apply between the UK and individual EU Member States in a No Deal scenario? ■ Are professional qualifications in the EU recognised by the UK and vice versa? ■ Do other regulatory requirements apply?

Brexit Issue(s)	Action required
<p>Can steps can be taken to mitigate some of the impacts of other rules on the movement of services?</p>	<p>Once it is understood what issues may give rise to difficulties in the import / export of services to / from the UK, consider whether there are specific actions that may be taken to mitigate these. For example, where a service involves the flow of data subject to EU GDPR, consider whether there are options / exclusions available within GDPR that would facilitate the transfer of data from the EU to the UK.</p>



The World Trade Organisation (WTO) General Agreement on Trade in Services (GATS) divides the provision of services into 4 modes – set out below:

Mode 1: Cross-border supply - Service delivered within the territory of the Member, from the territory of another Member, e.g. an Irish consultant provides a report to a UK consumer via post or email.

Mode 2: Consumption abroad - Service delivered outside the territory of the Member, in the territory of another Member, to a service consumer of the Member, e.g. an Irish individual travels to the UK for legal advice.

Mode 3: Commercial presence - Service delivered within the territory of the Member, through the commercial presence of the supplier, e.g. an Irish architect establishes an office in the UK.

Mode 4: Presence of a natural person - Service delivered within the territory of the Member, with supplier present as a natural person, e.g. an Irish consultant or health worker travels to the UK to provide their service to a UK recipient.

Mode 5: Over the last few years the concept of a new mode of supply of services (mode 5) has emerged, though this mode has not (yet) been formally adopted by the WTO. Mode 5 refers to services which are incorporated into goods which are then traded across international borders, e.g. a UK car manufacturer sells a car with inbuilt software, etc. into Ireland that will require the provision of future services as part of the contract.

Data

Brexit Issue(s)	Action required
<p>Now that the UK has formally left the EU, the EU will commence as soon as possible thereafter the assessments required for a “data adequacy decision” to be adopted by the end of 2020 in respect of the transfer of personal data to the UK.</p> <p>If granted either as part of the trade negotiations or independently, it would allow data to be transferred from the EU to the UK broadly on the same terms as today.</p> <p>The UK has also indicated that it will reciprocate such procedures in respect of the transfer of data to the UK and in a similar timeframe.</p> <p>Until it is clear that such decisions will be forthcoming (and in place by the end of the transition period), it is prudent to be aware of what will need to be done absent those decisions. In that context, we have set out the relevant information that businesses should take into account.</p> <p>No Adequacy Decision: In the event of no Adequacy Decision being adopted, the UK (including Northern Ireland) will become a “third country” for the purposes of GDPR after the end of the transition period, currently 31 December 2020 (the “Current Date”).</p> <p>This means that the legal framework governing transfers of personal data from organisations established in the EU to organisations established in the UK will change as transfers of personal data to the UK will be subject to the rules on international transfers to third countries provided for in the GDPR and other EU directives and regulations.</p>	<p>Review Data Flows from EU to UK: Organisations established in the EU that are transmitting personal data will need to review their personal data flows and seek to isolate personal data that is being transmitted to and processed in the UK (“UK Transfers”).</p> <p>Adequacy Decision:</p> <p>Actions: Subject to the final wording contained in the agreement in relation to an orderly Brexit and an adequacy decision actually being adopted, no further actions would need to be taken in relation to these UK Transfers.</p> <p>To the extent that there is any doubt on the adoption of an adequacy decision, it would be recommended and most prudent for organisations, to insert model Standard Contractual Clauses (approved by the European Commission) in the contracts relating to the UK Transfers which would provide the appropriate safeguards to permit the transfer of personal data to the UK in any event and would provide as robust a protection as possible.</p> <p>No Adequacy Decision:</p> <p>Actions: Once UK Transfers have been isolated, there are a number of options available to organisations to lawfully transfer personal data to the UK:</p> <ol style="list-style-type: none"> a. the parties to a contract involving UK Transfers may insert model Standard Contractual Clauses (approved by the European Commission) in the contract which will provide the appropriate safeguards to permit the transfer of personal data to the UK (the Data Protection Commission has, in a guidance note released in June 2019, stated that this option is likely to be the most relevant one for impacted Irish organisations); b. where UK Transfers are being made between entities within a multinational group of companies, or groups of enterprises engaged in a joint economic activity, an application may be made to the competent data protection authority (ies) for binding corporate rules (“BCRs”) to be adopted by the group, that will provide the appropriate safeguards. BCRs are legally binding internal rules, similar to codes of conduct, which set out the group’s common data processing standards;

Data (continued)

Brexit Issue(s)	Action required
	<ul style="list-style-type: none"> c. consider whether the UK Transfers would fall within one of the derogations provided in the GDPR namely, where explicit consent to the restricted transfer is provided by the owner of the personal data, where the restricted transfer is necessary for the performance of a contract or where the restricted transfer is required for reasons of public interest, public security or the exercise of legal claims; c. update the company/group Privacy Notice and other relevant documentation (including any clauses relating to consent) to include the granting of permission to transfer personal data to a third country, as defined under the GDPR.
	<p>Review Data Flows from UK to EU</p> <p>Adequacy Decision:</p> <p>Actions: Similar to the above, subject to the final wording contained in the agreement in relation to an orderly Brexit and an adequacy decision actually being adopted, no further actions would need to be taken in relation to these data Transfers.</p> <p>No Adequacy Decision:</p> <p>It is not yet clear what the UK would do if it did not adopt an adequacy decision in respect of the EU as it has yet to establish its own independent data protection regime.</p>

Company law

For corporate groups which may have an Irish registered company, either forming part of, or heading up the group, there are several Irish company law considerations to be borne in mind and which may require action as part of an overall Brexit strategy.

While significant uncertainty remains with regard to what the future relationship between the UK and the EU will look like, we can now be sure the UK will be outside the EU and the EEA. Companies should therefore plan ahead as much as possible, particularly with regard to issues that we can be sure of in the context of the future UK-EU relationship.

1. EEA Resident Director Requirement

The Irish Companies Act requires an Irish registered company to have at least one director who is resident in an EEA country:-

- Any company that is relying on a UK resident director to fulfil this requirement will need to consider whether that director should be replaced with another director who is resident in an EEA country
- Alternatively, a bond can be obtained from an insurance company which would pay fines or penalties incurred under Irish tax or company law up to the value of €25,000 over a two year period
- A company could also obtain a certificate from the Irish Registrar of Companies to state that the company has a real and continuous link with an economic activity being carried out in Ireland on the basis of the Irish Revenue Commissioners being satisfied that this is the case.

2. Irish subsidiaries exempt from filing individual entity financial statements with the Irish Companies Office

Where an Irish company is a subsidiary undertaking of a holding undertaking which is established under the laws of an EEA country, the Irish subsidiary may not be required to file its individual entity financial statements with its annual return at the Irish Companies Office.

Certain conditions must be fulfilled in order to avail of this filing exemption, including the requirement that the holding undertaking gives an irrevocable guarantee of the subsidiary's liabilities included in its financial statements for the whole of that financial year. The scope of this guarantee was recently expanded in the Companies (Accounting) Act 2017 to include "commitments" in the financial year as well as liabilities. However, this filing exemption is only available where the holding undertaking is incorporated in an EEA country.

Groups who do not want commercially sensitive information on their Irish subsidiaries to be publicly available may want to look at options such as having another EEA parent in the group guaranteeing the subsidiary's liabilities or preparing and filing abridged financial statements on the basis of qualification as a small company.

There are further considerations to be borne in mind where the Irish subsidiary is also a holding company and had been relying on the size exemption from preparing and filing consolidated financial statements. The Companies (Accounting) Act 2017 has decreased the size thresholds which must be met in order for a holding company to qualify as a small group. As a result, it is now only a small group which can avail of the size exemption from consolidation. A group that previously qualified may not be able to avail of this consolidation exemption. In other words, unless the group qualifies as a small group (see table below for criteria to be met), consolidated financial statements may be required to be prepared and filed at the Companies Office which could increase the extent of potentially commercially sensitive information on public record.

Qualifying Criteria for a Small Group. Two out of the three criteria must be met for at least two consecutive financial years

Turnover	</= €12 million
Balance sheet total	</= €6 million
Average number of employees	</= 50



3. Irish Stamp Duty Relief

A relief from liability to Irish stamp duty can be claimed under Section 80 of the Stamp Duties Consolidation Act, 1999 (as amended) in the case of a reconstruction or amalgamation involving the transfer of an undertaking or a transfer of shares. There are several conditions to be satisfied in order to qualify for the relief, key amongst which is that the acquiring company must be an EU registered company.

The Irish government passed legislation in 2019 to mitigate this in the event of a No Deal Brexit. It is not clear that it will extend this policy to a “Deal” situation.

4. Some Other Considerations

- The Irish Companies Act permits an Irish registered company to change its financial year end date once in every five years. However, this restriction does not apply in the event that a change in financial year end by a subsidiary or holding undertaking of another EEA undertaking is to align its financial year end with that other EEA undertaking. Post the UK’s exit from the EU, this could have practical consequences, for example, for an Irish company that has been recently acquired by a new UK parent.
- A UK company that has a sufficient presence in Ireland will have registered as a branch of an EEA company. However, once the UK ceases to be part of the EEA, the branch registration will have to be changed to that of a non EEA company.

Summary

With Brexit firmly on course, businesses have for the first time in three years some level of certainty over some of the implications of Brexit. In the context of the implications for Irish registered companies with links with the UK, failure to act will likely result in a breach of Irish company law or having a corporate structure that is not ideal. Directors of Irish companies should examine all associations with the UK now to determine what action is needed.

Free Trade Agreements

What is a free trade agreement?

In short a free trade agreement is a bilateral trade agreement between two parties. It governs the terms of trade in goods between two parties and usually focuses on elimination of tariffs and barriers to trade. More recent trade agreements concluded by the EU also extend to other areas, including competition, protecting intellectual property rights, customs cooperation, regulation. Services are not typically dealt with as comprehensively in FTA's as goods.

Will a free trade agreement eliminate tariffs on all goods moving from Ireland to Great Britain (and vice versa)?

It depends on the terms of the free trade agreement and what is agreed between the parties.

A free trade agreement will usually remove or significantly reduce the imposition of tariffs on most goods traded between signatory countries but may have a quota for sensitive goods. The recent free trade agreement the EU has concluded with Canada has been mooted as a model the UK may wish to follow. As an example it eliminated tariffs on up to 99% of goods traded between Canada and the EU including on up to 92% of agricultural products.

Note the tariff elimination applies only to goods which originate in a signatory state i.e. which are of origin to the parties to the agreement.

What does origin mean?

It is important to note that the origin of goods is not determined by where goods are shipped from. Rather there are complex rules for determining the origin of goods which will be agreed and documented in a free trade agreement.

For example, in free trade agreements entered into by the EU, as a general rule goods are regarded as of origin to a particular country where;

- They have been wholly obtained in that country (e.g., plants grown and harvested there, animals born and raised there, raw materials, etc.).
- They have been produced exclusively from originating materials (e.g. yoghurt produced from EU milk and fruits). There can be different levels of tolerance for non-originating goods.
- The goods have been produced from materials which do not originate in the country but which were sufficiently processed in that country to attribute origin.

Will a free trade agreement allow for frictionless trade between Ireland and Great Britain?

A free trade agreement does not offer the same potential for frictionless trade as the single market or indeed a customs union.

While a free trade agreement may allow for the reduction or elimination of many tariffs it would not eliminate the other potential barriers to frictionless trade such as import and export customs declarations, VAT reporting, regulatory divergence and hence non customs checks. Many of the issues faced in preparing for trading under a hard Brexit will also apply in terms of trading under a free trade agreement.

Are import and export declarations needed under a free trade agreement?

As a general rule yes.

How does VAT work under a free trade agreement?

A free trade agreement does not apply to VAT so the normal VAT rules will continue to apply.

Likely issues to come up in negotiating a free trade agreement

One of the key issues affecting the ability of the UK and the EU to agree a comprehensive FTA in a short timeframe will be the level of divergence that the UK will want from EU regulations – referred to as level playing field conditions.

The allocation of tariff-rate quotas, especially for some Agri products, between the EU and the UK will require negotiations with third countries.





GATT, GATS and GATT 24 explained

What is GATT & GATS?

The General Agreement on Tariffs and Trade (GATT) came into force in 1947 and now forms part of the World Trade Organisation (WTO) Agreement. WTO tariffs are the default import/export duty rates which apply to international trade in goods, unless two territories are part of a Customs Union, or have a Free Trade Agreement (FTA) in place which reduces or removes tariffs.

If the UK and the EU do not manage to agree an FTA, the WTO's GATT will apply to trade in goods. Similarly, if the UK and the EU do not agree an FTA, the WTO's General Agreement on Trade in Services (GATS) will apply to trade in services.

Under WTO rules, a territory MUST apply the same rules to all territories with whom it does not have an FTA. This is referred to as the Most Favoured Nation (MFN) clause. Hence if the UK unilaterally decided not to impose tariffs on some or all imports from the EU (as some politicians in the UK have previously indicated they might do), they would have to similarly remove tariffs on imports from all WTO Members. There would be no requirement for the EU to reciprocate. Concerns have been expressed by some UK sectors that this could make them uncompetitive in their own market. It would seem from comments by the new UK government that there are no longer any plans to take such unilateral actions.

What is GATT 24?

Article 24 of GATT provides the basis for two or more territories to form a customs union or establish an FTA. It also makes provision for an interim agreement

necessary for the formation of a customs union or a free trade area.

Some UK politicians have said (when a No Deal Brexit was on the table) that GATT 24 could allow for the UK to continue to trade with the EU with zero tariffs on both sides whilst a FTA is negotiated under an interim agreement.

Many trade law experts were sceptical in 2019 that GATT 24 would allow for such an outcome. Some of the reasons for this scepticism were:

- a. All agreements under Article 24, including interim agreements, must be agreed by both parties.
- b. Interim agreements must include a plan and schedule for the formation of a free trade area within a reasonable time.
- c. All interim agreements must be referred for review to all other WTO parties who have the possibility to recommend changes to the agreement.

While not specifically mentioned in Article 24, its provisions do not appear to prevent the possibility of a temporary agreement being reached between the EU and UK to allow some or all tariffs to be set at zero as a short-term measure. It should be borne in mind that such an agreement would only cover tariffs on goods and would not deal with regulatory issues or mitigate other non-tariff issues such as the need for customs declarations.

It is conceivable that the EU and the UK could consider the application of GATT 24 as being mutually beneficial if an FTA cannot be finalised by the end of 2020.

Our Brexit Response Team

Don't delay. Planning for Brexit means understanding the implications and opportunities for your business today. Our team of Brexit experts are already working with businesses North and South to make sure they are Brexit ready.

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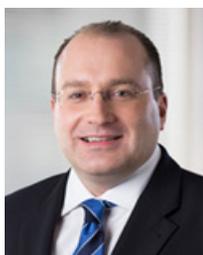
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