



# Brexit Update: Actions to Take



**KPMG summary and analysis**

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June 2020

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# June 2020 Brexit Update: Actions to Take

**Since our last communication to you on Brexit in February the Covid-19 pandemic has posed unprecedented challenges and Brexit preparations have understandably fallen off, or at least down, the agenda for many businesses. Given some important Brexit developments in recent weeks we thought it was an appropriate time to take stock of where things are and what preparations businesses can be making in the coming months.**



**Brian Daly**  
Head of Brexit  
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KPMG in Ireland

As you will have seen from media coverage in recent weeks, there have been some significant developments on Brexit. The decision not to extend the Transition Period beyond 31 December 2020 is particularly important. Likewise the publication of papers on the implementation of the Protocol on Ireland / Northern Ireland, the UK's plans to phase in some customs changes over 6 months, and the UK's tariff schedule that will apply to GB imports from the EU if there is no FTA are also very important.

Hence, we thought it was an appropriate time to take stock of where things are and what preparations businesses can be making in the coming months, with a particular focus on VAT & Customs actions that will need to be taken irrespective of whether an FTA is reached or not.

## Future Relationship Negotiations

In summary, they are complex and there are significant issues yet to be resolved on topics such as fisheries, level playing field commitments, the governance framework that will be needed if the UK want to have the right to diverge from EU standards, and police and security. Whilst the parties have agreed to meet weekly in July and August, current indications are that it will be later in the summer or indeed into the Autumn before it is clear if the parties are making progress in sufficient time to allow for ratification of a deal

by both parties by the end of 2020. With political focus in the EU on the Commissions proposed €750bn Covid-19 Recovery Fund and the new EU budget, and challenges in building trust between the negotiating parties, there continues to be a risk that trade will default to WTO terms from 1 January 2021.

## Preparations

Whilst acknowledging the challenges many businesses currently face in responding to Covid-19, we recommend making sure that businesses be prepared for the risk of trade with the UK defaulting to WTO terms from 1 January 2021. In particular, we recommend making sure you are ready for customs procedures when dealing with GB - they will be required even if an FTA is agreed. You can also update your contingency plans for the new UK Tariff schedule which will apply to imports to GB from the EU if an FTA isn't in place. If your trade involves Northern Ireland, you will need to understand the main outstanding issues in respect of the Ireland / Northern Ireland Protocol.

These are the issues we are focusing on in this Update.

KPMG in Ireland  
June 2020



**Johnny Hanna**  
Partner in Charge  
in Northern Ireland

## The key areas where major developments have taken place recently and where preparations can be undertaken at this stage are:

### 1. Key VAT & Customs changes

**Here** we have included an up to date analysis of the key VAT & Customs changes for businesses operating on the Island of Ireland (both North and South).

### 2. Get ready for Customs & VAT

**Click here** to access our analysis of the key actions ROI based businesses can take now relating to VAT & Customs. Most of these will need to be taken irrespective of whether an FTA is agreed or not.

### 3. Quantify exposure to UK Tariffs

**Click here** to access our detailed comments on the UK Global Tariff Schedule which will apply to GB imports from the EU if an FTA is not in place for trade after 31 December 2020.

### 4. Keep a close eye on the Northern Ireland Protocol

**Click here** to access our detailed comments on the main outstanding issues in respect of the Protocol on Ireland / Northern Ireland.

For preparations on People, Data, Company Law and the provision of cross border Services, the comments in our **February 2020 Update** still apply.

# What are the key VAT & Customs changes?

We have set out below our analysis of the key VAT & Customs changes for businesses operating on the Island of Ireland (both North and South).

Goods trade	VAT headlines	Customs headlines
<b>Ireland/ Northern Ireland</b>	<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 NI 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>
<b>Ireland/ Great Britain</b>	<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. However, the UK announced in March that it intends to introduce postponed VAT accounting in respect of all imports into the UK from both EU and non-EU countries after the Transition Period ends for businesses that are VAT registered in the UK. 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 Transition Period expires.</p> <p>After the end of the Transition 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 Transition 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>That said, on 12 June 2020, the UK government announced they will apply import controls for EU goods on a phased basis from 1 Jan 2021 (this is a change from its previous position).</p> <ul style="list-style-type: none"> <li>■ From 1 January 2021, customs import declarations and payment of tariffs can be deferred on Standard goods "covering everything from clothes to electronics" until 1 July 2021.</li> <li>■ There will be checks on and declarations required for controlled goods such as alcohol and tobacco.</li> <li>■ High risk live animals and plants will not be physically checked at point of import but instead at the point of destination or other approved premises. From April 2021, all products of animal origin and regulated plants and plant products will require pre-notification and health documentation.</li> <li>■ Full import controls will be applied from July 2021 at which point normal customs declarations and payment of tariffs will be required at import.</li> <li>■ The UK Government also announced it would remove barriers for customs intermediaries to taking on extra clients by adapting the rules around financial liability. Further details are awaited in respect of this measure, but it is hoped this may mean that where EU traders importing goods into the UK are required to appoint a UK customs representative, this can be done without the requirement for the representative to have joint and several liability for import duties. This would be a welcome simplification for many Irish exporters who are selling into the UK on a DDP or consignment stock basis.</li> </ul> <p>It is important to note that unless the EU were to reciprocate in respect of imports and exports with the UK, the UK's announcement does not alter EU customs control procedures. As a result, export declarations will need be filed for goods exported from Ireland to GB and import declarations and payment of tariffs will arise for goods imported into Ireland from GB when the Transition Period ends.</p> <p>If a free trade agreement is not reached with the EU, the UK's new Global Tariff Schedule will apply to imports of EU goods into GB from the end of the Transition Period.</p>

Goods trade	VAT headlines	Customs headlines
<p><b>Northern Ireland/ Great Britain</b></p>	<p>The EU have stated in its technical papers that supplies of goods between Northern Ireland and Great Britain will be treated as exports and imports for EU VAT purposes after the Transition Period ends. The operational aspects of the arrangements will need to be worked out and clarification is awaited from the UK Government on how the application of a dual VAT system in NI will work in practice. It is hoped that this will be clarified as soon as possible so that businesses can prepare for any changes.</p>	<p>As part of the UK Customs area there generally should be no tariffs on goods moving from NI to GB and unfettered access has been promised by the UK Government, 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 which are not NI qualifying goods that originate from outside of Northern Ireland which are shipped to the UK via Northern Ireland.</p> <p>It remains to be seen whether exit summary declarations will apply in respect of the movement of goods from Northern Ireland to Great Britain.</p> <p>However, we understand that there may be a requirement in limited circumstances for pre-lodgments declarations, for example, where goods are transiting from NI through GB and onto the EU.</p> <p>In respect of goods moving from GB to NI, it has been confirmed that there will need to be new customs formalities and checks.</p> <p>HMRC have been developing a new IT platform to track the movement of goods across the Irish Sea and deal with certain customs procedures. We understand the system will be known as the "Goods Vehicle Movement Service" (GVMS) and will be trialed in the next few months. It is unclear if this will operate alongside HMRC's existing CHIEF and CDS customs declaration systems, or whether GVMS will also facilitate customs declarations on imports into NI.</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>The NI Protocol says that 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"> <li>■ They will not be subject to commercial processing in Northern Ireland; and</li> <li>■ The goods fulfil criteria to be established by a Joint Committee, made up of representatives of the United Kingdom and the EU.</li> </ul> <p>If goods can be proven to stay in Northern Ireland, then there are measures to allow for exemptions, or a potential reimbursement of duties paid. The position will also depend on whether a tariff free trade agreement is ratified between the UK and EU.</p> <p>If the UK agrees free trade agreements with non-EU countries it may be open for Northern Ireland to be part of that agreement.</p>
<p><b>Northern Ireland/ other EU 26 Member States</b></p>	<p>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 no declarations required on trade between Northern Ireland and the rest of the EU.</p>
<p><b>Northern Ireland/ rest of the world (ex Ireland and Great Britain)</b></p>	<p>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 for import would be introduced in Northern Ireland.</p>	<p>UK Tariffs under the UK's new Global Tariff Schedule 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.</p> <p>NI-produced goods may have the same access under UK FTAs to other markets as GB-produced goods</p>

# Customs & VAT - Actions for ROI business to take

**For ROI based businesses trading with GB, you will need to have processes in place to deal with Customs procedures and formalities. This is the case irrespective of whether a tariff free FTA is reached or not.**

**We have set out below key actions relating to Customs & VAT required by businesses before the end of 2020.**

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 an FTA. Ensure hauliers and freight forwarders are prepared with the relevant permits and registrations. Be aware that even if an FTA is agreed, it may not cover all goods traded between ROI and GB.

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## **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.

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## **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.

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## **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 an FTA.

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## **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.



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### **Importing into the UK**

Ensure you are familiar with the phased plan the UK Government has announced for the introduction of border controls on imports of goods into GB from 1 January 2021 up to July 2021. The measures mean that, for a temporary period from the end of the Transition Period, the filing of UK import declarations and payment of tariffs on EU goods can be delayed. However, as the measures vary between sectors (such as agricultural, alcohol etc.,) it is important to understand which measures relate to your goods and how they impact on your supply chain.

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### **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).

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### **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.

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### **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.

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### **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

# The Protocol on Ireland/Northern Ireland

**The NI Protocol becomes legally effective from 1 January 2021 irrespective of whether an FTA is agreed or not. Set out below are our comments on the main issues that remain outstanding in relation to the NI Protocol.**



- For NI businesses and businesses dealing with NI based customers and suppliers, there are very significant details yet to be agreed between the EU and the UK that will affect the supply chain of goods into and out of Northern Ireland and the systems and processes they need to put in place.
- The EU and UK will want appropriate checks and controls in place before the end of the Transition Period to make sure Northern Ireland is not capable of becoming a back door into their respective jurisdictions, however, there are clearly differences in how the parties think this should be achieved. A recently published **UK Command Paper** on the NI Protocol indicates that NI businesses will have unfettered access to sell their goods into the GB market, however, it doesn't detail how this will apply i.e., does it only apply to NI qualifying goods and if so how are these to be defined? Whilst the UK Command Paper accepts that customs declarations will be required on imports of goods from GB into NI, it indicates that this can be dealt with through new electronic import declarations and no new customs infrastructure will be required.
- Recent indications from HMRC is that they are working on the new IT platform that will be used to track movements of goods across the Irish Sea. We understand the system will be known as the "Goods Vehicle Movement Service" (GVMS) and will be trialed in the next few months. It is unclear if this will operate alongside HMRC's existing CHIEF and CDS customs declaration systems or whether GVMS will also be used to record customs declarations. We expect further details on these developments over the coming weeks.
- As the NI Protocol only covers goods but not services, this means that EU VAT rules will apply to goods but UK VAT rules will apply to services in respect of Northern Ireland.
- The EU have indicated in a **technical paper** published in April 2020 that supplies of goods between NI and GB are to be treated as exports and imports for VAT purposes. Whilst the UK Government have yet to comment on whether they agree with this interpretation regarding exports and imports in respect of VAT, this issue needs to be made clear for Northern Ireland businesses that will be required to operate any changes to the VAT system from 1 January 2021.
- Whilst a comprehensive FTA would simplify many aspects of implementing the NI Protocol, the systems and processes needed to operationalise the NI Protocol will need to be put in place and appropriate UK Government support will need to be provided to Northern Ireland businesses to enable them to understand and prepare for these changes in advance of the 1 January 2021 implementation date.
- All of this is creating significant concerns for business in Northern Ireland. KPMG have been directly involved in the NI Business Brexit Working Group (NIBBWG) which produced a very detailed paper on 29 May 2020 detailing the myriad of issues and questions that have yet to be resolved across a range of key areas including Customs, VAT and Labour supply. It raises significant concerns on behalf of businesses in NI and makes the strong case for mitigation, derogations and compensation arrangements to be put in place if NI businesses are to be able to navigate the transition. This paper is being reviewed at both UK Government and EU Commission level which should result in further engagement with the NIBBWG.
- Click on the **link here** to read the document produced by the NIBBWG.

# UK Global Tariff

**The new UK Global Tariff (UKGT) published on 19 May 2020 allows you to determine what tariffs will apply on the sale of goods from ROI to GB if an FTA is not agreed before the end of the Transition Period.**

**For NI based businesses the UKGT will apply to imports into NI from anywhere outside the rest of the UK and the EU (unless the goods are at risk of movement to the EU in which case EU tariffs may apply).**



The UKGT is a schedule of customs duty rates which the UK will apply to imports of goods from 1 January 2021 unless an FTA or other preferential arrangement is in place. It will replace the EU Common External Tariff (CET) which the UK currently applies.

Importantly, no tariffs should apply for direct imports into NI from ROI or other EU countries.

Understanding the impact of these tariffs may prompt businesses to revisit previous Brexit planning and a further review of supply chains. We have set out below our detailed comments on the UKGT and its potential impact on your business.

## **Our comments**

Many businesses previously carried out Brexit impact assessments based on the UK's provisional Tariff. The provisional Tariff, published by the UK in March 2019, was notable for the application of nil duties on 87% of imports into the UK.

By contrast, the new UK Global Tariff provides that approx. 60% of goods brought into the UK will be at the nil rate compared to approx. 47% currently.

The UK has also taken the opportunity to simplify its tariff regime and to eliminate low and nuisance tariffs. However, the UK is maintaining high tariffs that are largely aligned to the EU CET on sectors it wishes to protect, including the agricultural, automotive and ceramics industries.

One could interpret from the new UKGT that the UK has moved from a policy perspective from that proposed in the March 2019 provisional Tariff: from seeking to be a low or zero-tariff trading zone to one that liberalises and simplifies tariffs in targeted areas but is less dramatic and wide ranging. The intention also seems to be to promote sectors such as renewable energy, energy efficiency and certain other manufacturing sectors where tariff cuts will apply. The UK has also taken the opportunity to eliminate tariffs on certain products where UK domestic production is zero, or very low, for example, cotton, textile fibres and wood are mentioned.

The introduction of tariffs on goods imported into GB from the EU will represent a significant cost and competition issue for Irish and EU exporters who currently sell product Duty free into GB. Irish businesses will now, in the absence of an FTA, find themselves selling product into the UK which may attract potentially high rates of Duty at the end of the Transition Period. As a result, the prospect of an FTA being concluded between the EU and the UK will take on even greater significance.

The publication of the UKGT will allow Irish businesses trading with GB to fully assess the impact of duty costs on the export of goods to GB from ROI from the end of the Transition Period if an FTA is not reached between the UK and the EU.

It is important that businesses refresh their impact assessment to take account of the newly announced duty rates and potential costs to their business from 1 January 2021, in particular, where planning decisions may have been made based on the provisional Tariff regime published in March 2019.

For NI businesses, the publication of the UKGT is also important as it sets out the tariff rates that will apply to imports of goods into NI from the rest of the world outside the rest of GB and the EU (which are not at risk of subsequently being moved into the EU). Many of the rates for higher tariff sectors such as food, drink, agriculture, as well as retail are not materially different from those currently applying to NI business importing goods from third countries under the CET but there will be changes for some NI businesses importing product from third countries (outside GB and the EU) under the new UKGT.

In addition, it is important to note that goods attracting lower tariffs under the UKGT than the CET may create further commercial and administrative issues, for example, in applying rules of origin on trade with the EU and on the NI-GB sea border. This makes the agreement of an FTA all the more important.

Businesses should continue to review the potential Customs Duty impact on their supply chains as the UK's new trading arrangements with EU and non-EU countries develop.

**Some of the key UK Global Tariff measures include:**

- 1 The Meursing table (currently used to determine tariff codes and hence duties) is being scrapped by the UK which should result in a significant reduction in the complexity faced by businesses in determining the rate of customs duty applicable to over 13,000 goods.  
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- 2 The agricultural sector will be deeply affected by high customs duties imposed on imports of goods into the UK, including beef (up to 12%+£254GBP/100kg), poultry (up to £85/100kg), lamb (12%+£260GBP/100kg), butter (£158/100kg) and cheese (£139GBP/100kg). The proposed UK duties are broadly the same as those currently applied by the EU to imports from third (Non-EU) countries.  
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- 3 The life sciences sector will welcome the UK's announcement that, similar to the EU tariff schedule, UK imports of finished pharmaceutical products will not attract customs duties. However, Active Pharmaceutical Ingredients (APIs) and key chemicals to produce APIs will see a duty imposition of 6%.  
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- 4 Most medical devices will be subject to nil customs duties.  
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- 5 A 0% rate of customs duty applies to imports of aircraft and helicopters of all weights as well as many aircraft parts. This is helpful for the airline and aviation leasing sector.  
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- 6 Irish exporters of bread and other bakery products will note the application of duties of 8% on many of their products sold from Ireland into the GB market.  
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- 7 Existing ("nuisance") tariffs of less than 2% will be abolished.  
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# 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

## 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 an 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.

## Policy and Business Strategy



**Brian Daly** leads our Brexit Team - working with clients, government and representative bodies to develop solutions to Brexit threats and opportunities.

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**Emer McGrath** is our Head of Consumer, Government and Enterprise with a deep knowledge of the issues confronting Irish business and with a pragmatic approach to Brexit matters.

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**Hubert Crehan** is our Head of FS Markets – working with Financial Services clients to understand and plan for a post Brexit environment and the opportunities Ireland can deliver for FS clients.

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**Johnny Hanna** is our Partner in Charge in Northern Ireland. Johnny works on cross-border and cross-channel tax and trade issues - working with clients on solutions to the complexity that Brexit can cause.

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## Supply Chain & Transformation



**Owen Lewis** is a partner in our Management Consulting team with over 10 years' experience at Toyota and can assist businesses with Brexit related supply chain issues and transformation projects.

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**Glenn Reynolds** is a partner in KPMG's indirect tax and customs practice with extensive experience in helping businesses analyse the customs and VAT costs Brexit may trigger.

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## VAT & Customs



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## People and Immigration



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# Navigating Brexit

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