

# BREXIT

## Technical Advice Paper

### March 2020

#### ABOUT THIS TECHNICAL ADVICE PAPER

The information within this paper is based on the best known currently. Since the subject of Brexit and its potential outcomes is so volatile, even on an almost daily basis, we must caveat this communication by stating that it represents our current understanding and opinion only. We accept no liability for any actions taken based on the content herein. Nevertheless, Hellmann will naturally make every effort to support its customers in understanding both the opportunities and challenges Brexit doubtless presents.

*This technical advice paper draws on information published by the UK government, new and nascent legislation and our own research.*

The 'no deal' guidance [see section 27] issued by the UK government should not be taken as the whole or final picture. We have noted significant gaps in the guidance which we assume exist because giving answers may prejudice ongoing UK-EU negotiations. Equally there should be no assumption that if a deal is struck, there will not be implications with regards to official intervention in the movement of goods between the UK and the EU post Brexit. Government announcements in early 2020 make it clear that the official position is quite the contrary.

For example, if a trade deal is struck, it may be in relation to a Free Trade Agreement [see section 16] only. The Customs Bill [see section 8] repeals 'acquisition VAT' [see section 9] and a mechanism for recording import and export of cargo will be required in particular to create a duty point and advise basic consignment information. As things stand this mechanism must be assumed to be a frontier Customs declaration. This would create a position similar to that which existed before the Single Market came in to existence on 1<sup>st</sup> January 1993.

## 1. THE European Union (Withdrawal) Act 2018

Creates the legal basis for all EU laws to become UK laws at 11:00 PM 31<sup>st</sup> October 2019. Therefore, little will change immediately in the overall landscape – expect a more gradual divergence as the EU and UK start to make their own separate laws. **February 2020 update – now enacted and the UK has left the EU. A transition period now exists – see 2 below.**

<http://www.legislation.gov.uk/ukpga/2018/16/contents/enacted>

## 2. TRANSITION PERIOD

Post Brexit it has been agreed there will be a transition period until 31<sup>st</sup> December 2020 for changes to occur. There is no word on how this will happen in reality. The transition period is called the ‘implementation period’ in official guidance. In the event of a no deal, there will be no implementation period, leading to the so called ‘cliff edge scenario’. **February 2020 update – the transition period is now live. Official guidance is that nothing will change during the transition.**

## 3. EU PRE SINGLE MARKET

Prior to 1<sup>st</sup> January 1993 there was a FTA [see section 16] in place between EU member states. This meant that although goods moved between member states were technically liable to Customs duty, all duty rates were set to zero.

Frontier controls still existed, despite the FTA. Therefore, two Customs declarations were required for an intra EU movement of freight. The first was to declare the goods for export from the EU country of origin. The second to declare the goods at import into the country of destination. Whilst in transit the movement had to be guaranteed to the Customs authorities of the member state of origin and destination, but also to any country of transit in between. Any taxes payable [VAT and excise duty] were accounted for via the import declaration, usually via ‘Duty Deferment’ [see section 29].

Declarations also performed a statistical function, which after 1<sup>st</sup> January 1993 was replaced by ‘Intrastat’ [see section 11].

## 4. EU POST BREXIT – NO DEAL

The UK government has issued numerous guidance papers on what will happen in the event that the UK leaves the EU without a deal.

<https://www.gov.uk/government/collections/how-to-prepare-if-the-uk-leaves-the-eu-with-no-deal>

We recommend that you read these papers. Some are industry specific and therefore may directly affect your business.

Intra UK-EU trade will require frontier Customs declarations. Postponed accounting will be used for VAT on all import Customs entries. For other taxes, there is no specific advice, so it is thought these will have to be paid or accounted for outright at the time of clearance. Imports by unregistered legal entities will probably need to have VAT paid via the import declaration.

## 5. THE EUROPEAN WITHDRAWAL ACT 2018

The European Union Withdrawal Act 2018 will bring EU law onto the UK statute book on exit day. The act and some minor amendments the UK is making to the retained legislation, will ensure that the statute book works effectively after exit day. This means that at first there will be very little change post Brexit.

## 6. TRANSIT

Both the UK and EU governments have said transit guarantees will be needed for UK/EU trade post Brexit. The UK has been accepted for the Common Transit Convention [CTC] which means the required transit 'T Forms' raised in the UK will be recognised in all the remaining EU member states. Equally a T Form will be needed to bring goods from the EU to the UK.

## 7. TYPES OF TAX

The Taxation (Cross-border Trade) Act 2018 allows for the UK government to apply the same types of taxes which currently exist. These are:

- Customs Duty [applies to industrial products]
- Agricultural tax – the UK will no longer be part of the Common Agricultural Policy, but may elect to create its own agricultural duty regime
- Excise duty
- VAT

The difference will be that all taxes will be controlled and paid to the UK government, which will also decide on how to spend these revenues, with no EU involvement.

There is a little known export duty regime. Exports are currently not charged with any taxes, but the legal basis to do this has always existed and will continue to do so.

## 8. CUSTOMS BILL – now enacted as The Taxation (Cross-border Trade) Act 2018

This has received Royal Assent and entered the statute books. The start point is an intent to change as little as possible at outset. The Customs Bill therefore almost matches the existing Customs construct and regimes, simply replacing 'EU' with 'UK'. It creates the legal basis for a UK only Customs tariff, the power to set duty rates and various regimes including trade protection measures [aimed at preventing the dumping of cheap products in the home market place]. There is one significant change – the repeal of 'acquisition' VAT [see section 9].

## 9. ACQUISITION VAT

This is the system which controls VAT on pre Brexit intra EU trade in goods. The EU seller zero rates VAT at origin by stating the VAT number of the buyer in another EU member state on the commercial invoice. This creates a requirement on the buyer to account for VAT via a periodic VAT return at destination. This obviates the need for a Customs declaration at the UK/EU frontier for UK – EU and EU - UK trade. The Taxation (Cross-border Trade) Act 2018 abolishes acquisition VAT. Repeal means there must be a replacement mechanism to account for VAT [and any other applicable taxes] post Brexit. The government has issued guidance for this if there is a 'no deal' scenario.

<https://www.gov.uk/government/publications/trading-with-the-eu-if-theres-no-brexite-deal/trading-with-the-eu-if-theres-no-brexite-deal>

<https://www.gov.uk/government/publications/vat-for-businesses-if-theres-no-brexite-deal/vat-for-businesses-if-theres-no-brexite-deal>

This advice states that frontier Customs declarations will be required and that 'postponed' VAT accounting will be implemented. **February 2020 update – the UK government has confirmed the need for Customs declarations after the transition period – see:**

<https://www.gov.uk/government/news/government-confirms-plans-to-introduce-import-controls>

## 10. POSTPONED VAT

Postponed VAT will be used on all import Customs declarations in the event of a no deal Brexit. An import declaration will be required at the UK frontier to record the arrival of the cargo, the importer, establish a duty point and give basic information as to the type of goods and valuation. No VAT will be payable at this point – this will be handled via the importer's VAT return directly between the importer and HMRC. It must be assumed that any other taxes payable will have to be paid via the frontier declaration. Normally duty deferment would be used to do this [see section 29]. Logic dictates that for importers who are not VAT registered, any VAT liability will have to be paid via the import entry.

## 11. INTRASTAT

Intrastat is used to make statistical declarations for UK-EU trade. Post Brexit, there is currently no word on its future. It is probable that it will no longer exist since the UK government has stated that in the event of a no deal scenario, frontier entries will be required. These can simply perform the same function as Intrastat. Additionally, the current Intrastat rules mean many imports and exports would not be captured unless a frontier declaration is required.

## 12. CUSTOMS UNION

The UK Government has categorically stated that the UK will leave the Customs Union. Combined with the repeal of acquisition VAT, this makes some form of frontier paperwork highly probable post Brexit.

It also means the UK should be free to create its own FTAs [see section 16]. At the outset, existing FTAs will cease to include the UK.

### 13. UK TARIFF

The Taxation (Cross-border Trade) Act 2018 gives the legal basis for the UK government to create its own tariff, classification and tax rates. At the outset at least, it is thought that this will mirror the existing EU trade tariff. A no deal Brexit could mean the UK government using the WTO [see section 14] fall back duty rates. Alternatively, it may be decided by the UK authorities to set different, lower duty rates up to and including zero rates. For the first 12 months, temporary Customs rates have been issued. 87% of products will have a full rate of Customs duty of 0%. **February 2020 update – the UK government has announced the withdrawal of ‘easements’ [see section 37]. It is unclear if the proposed 87% of products being full rate 0% is one of these easements.**

### 14. WTO [World Trade Organisation] DEFAULT DUTY CEILING

The UK and the EU are both members of the World Trade Organisation. WTO rules set maximum duty rates for any given product which may not be exceeded. In the event of a no deal Brexit, this will mean that a worst case scenario can be known. WTO rates vary depending on the product. Most are around 5% of the value. Some are 12% - with very few being higher than this. For many goods, the maximum rate is 0%. WTO rules operate under the ‘Most Favoured Nation’ principle – meaning full duty rates on any given good must be the same irrespective of their origin.

### 15. EXPORT REFUNDS

In theory WTO rules prevent the UK from operating a system of export refunds which would effectively subsidise exports. This is because of the possibility of creating an uneven playing field. In reality, there are examples of various countries still operating a disguised export refund system.

### 16. Free Trade Agreements - FTAs

Free Trade Agreements – or preferential agreements – permit goods between signatory countries to benefit from reduced or zero rates of Customs duty. Pre Brexit many of the UK’s imports from non EU countries take advantage of such reduced duty rates, depending on [complicated] origin rules. There are around 40 EU agreements with over 70 countries. Many of the countries with whom agreements exist allow UK goods to enter their countries under a reciprocal arrangement.

Post Brexit, these FTAs will cease to include the UK. UK government guidance states an intention to renegotiate bilateral deals as quickly as possible, based on as little change as can be achieved. The UK government has stated that some FTAs will be continued, since they are already non reciprocal. These apply especially to poorer nations, where there may be a monoculture. The aim is to promote stability and trade. The Taxation (Cross-border Trade) Act 2018 provides a power to allow unilateral FTAs with such developing countries – some 25 will benefit from day 1 post Brexit. In order to protect export markets, the UK government may elect to continue some reciprocal FTAs even if they become unilateral. In some cases other countries have stated they will immediately allow a full ‘roll over’ FTA with the UK – one example being Canada. For other countries negotiation will be required. This will take some time, although since the UK would be acting alone and not require the support of the other 27 EU member states, it seems probable such negotiations will be fairly speedily concluded. For countries requiring negotiation, the interim fall back position would be WTO rates of duty unless

the UK government elects to allow a one way FTA on that country's imports pending outcome of negotiations. In this event, were negotiations to fail, one would assume a reintroduction of WTO duty rates. Ultimately, with the UK free to negotiate a FTA with any country, it might be thought that long term the UK will have more FTAs in place than currently is the case.

## 17. TARIFF QUOTAS

These allow a certain amount of a given product to be imported at a reduced duty rate under a FTA. Provision 11 of The Taxation (Cross-border Trade) Act 2018 creates a power for the UK government to establish its own quota system post Brexit.

## 18. HEALTH CHECKS

Certain goods intended for human and animal consumption, plants and the like, require health checks to be performed on arrival, often including physical examination. Whereas the intent is to change as little as possible, the lack of Border Inspection Posts [BIPs] and port infrastructure mean conducting such checks will be highly challenging. The UK government has stated EU standards will be recognised for a limited period, but that the new UK system may not initially be accepted by the EU. There is no BIP at either Dover or the Channel Tunnel. High risk goods will not be permitted to transit these places [for example, products of animal origin, including honey].

## 19. TRADE REMEDIES

These are measures such as anti-dumping and countervailing duties which protect manufacturers from unfair competition. The Taxation (Cross-border Trade) Act 2018 has put in place a construct for the UK to have its own unique trade remedies scheme. This will be based on protecting UK producers only and therefore may have the effect of substantially reducing the cost of some imports [where these are currently liable to EU trade remedies which protect manufacturers in the other EU member states, rather than any UK based entity]. A greatly reduced list of products subject to such measures has been released by the UK government.

## 20. REPAIR AND PROCESSING

Certain reliefs to import taxes currently exist where goods are imported temporarily for repair or process and subsequent re-export. The Taxation (Cross-border Trade) Act 2018 has put in place a construct for the UK to have its own repair and processing regimes. This will closely match the existing EU regimes, but be uniquely controlled by UK governmental agency.

## 21. RETURNED GOODS

Certain reliefs to import taxes currently exist where goods are re-imported after being exported temporarily. The Taxation (Cross-border Trade) Act 2018 has put in place a construct for the UK to have its own returned goods regime. This will closely match the existing EU regime, but be uniquely controlled by UK governmental agency.

## 22. END USE RELIEF

Certain reliefs to import taxes currently exist where goods are imported for a specific use or for certain organisations. The Taxation (Cross-border Trade) Act 2018 has put in place a construct for the UK to have its own end use regime. This will closely match the existing EU regime, but be uniquely controlled by UK governmental agency.

## 23. CUSTOMS WAREHOUSING

The Taxation (Cross-border Trade) Act 2018 has put in place a construct for the UK to have its own Customs Warehousing regime. This will closely match the existing EU regime, but be uniquely controlled by UK governmental agency.

## 24. TEMPORARY ADMISSION

Certain reliefs to import taxes currently exist where goods are imported for a temporary period of time. The Taxation (Cross-border Trade) Act 2018 has put in place a construct for the UK to have its own temporary admission regime. This will closely match the existing EU regime, but be uniquely controlled by UK governmental agency.

## 25. CARNETS

To date there has been no guidance on Carnets being used to guarantee certain types of transit. Since the Carnet regimes are much larger in scope than the EU, it is assumed these will be unaffected by Brexit.

## 26. RESTRICTED AND CONTROLLED GOODS – LICENCES

The Taxation (Cross-border Trade) Act 2018 has put in place a construct for the UK to have its own licensing and control regime. This will closely match the existing EU regime, but be uniquely controlled by UK governmental agency.

## 27. NO DEAL BREXIT PAPERS

The UK government has published a series of more than 100 guidance papers on the outcome of a no deal Brexit.

<https://www.gov.uk/government/collections/how-to-prepare-if-the-uk-leaves-the-eu-with-no-deal>

It is recommended these are read – many being specific to particular business sectors.

## 28. CUSTOMS ENTRIES FOR EU TRAFFIC

In the event of a no deal Brexit, Customs entries will be required for goods traded between the EU and the UK. This is contained within both UK and EU government advice. Please visit:

<https://www.gov.uk/government/publications/trading-with-the-eu-if-theres-no-brexit-deal/trading-with-the-eu-if-theres-no-brexit-deal>

and

<https://www.gov.uk/government/news/government-confirms-plans-to-introduce-import-controls>

## 29. DUTY DEFERMENT

This is used to account for taxes to HMR&C on Customs declarations. There has been no suggestion that the current duty deferment scheme will alter as a result of Brexit. Postponed VAT accounting will apply to all entries, irrespective of the origin of the goods. Duty deferment holders should consider the reduction of demand this will create on their deferment accounts for non EU traffic, but also factor in any EU-UK trade that may require the use of their deferment account post Brexit. It would be prudent to review all EU imports and theoretically apply WTO maximum duty rates to establish the potential additional duty deferment requirement post Brexit. WTO full duty rates can be found at

<https://www.gov.uk/trade-tariff>.

## 30. CDS

The Customs Declaration Service [CDS] is unrelated to Brexit, but happens to have similar timing. CDS will replace CHIEF, the existing and dated Customs entry processing system. CDS is the largest change in the last 35 years in the way Customs declarations will be handled. Additional information will have to be supplied by traders to freight forwarders and Custom clearance agents. A complete new set of encoding will have to be learned from scratch. HMR&C advise it is too complicated for training courses to be developed and must be learned on the job.

CDS is a staggered release which started in August 2018 and was due to conclude in early 2019. However, software houses state they are still nowhere near ready, so HMR&C's continued assertion that all is on track is highly doubtful. Meanwhile, HMR&C has scaled the existing CHIEF system as a contingency. **February 2020 update – despite HMR&C continuing to propose an early implementation of CDS, software houses continue to see this as wishful thinking.**



### 31. RESPONSIBILITY FOR ERRORS

The party liable for errors on Customs entries will remain unchanged post Brexit. This is the exporter in the case of an export. For imports the responsible party is the importer. This is unchanged even if an intermediary such as a Customs clearance agent is used by the trader to raise the declaration on the trader's behalf. Liability is also unchanged by the terms of sale [known as 'Incoterms'].

### 32. INSTRUCTING AGENTS HOW TO CLEAR

Traders must instruct their freight forwarder or Customs clearance agent how to clear their goods through Customs. This includes classification and procedure [known as the 'regime']. Since the legal responsibility for error lies with the trader, this is entirely consistent with logic. When fully functional, CDS [see section 30] will require additional information known only to the trader. Those traders who only trade prior to Brexit with EU countries may be subject to a knowledge gap. It is recommended they talk to their freight forwarder or customs clearance agent at the earliest opportunity for guidance.

### 33. DIRECT REPRESENTATION

The concept of representation describes to HMR&C who is legally responsible for the accuracy of Customs entries. This is always the exporter for exports or the importer for imports. There are some more obscure regimes where liability could lie with another party or could be joint & several with more than one party. Therefore, a positive representation statement must be made on declarations. Since it is normally the trader who is responsible, agents will always ask their principal to authorise direct representation in their favour. If there is an error, HMR&C will always approach the trader in the first instance, so this does not prejudice the trader's pre-existing position. It does help to protect the agent's position, thus enabling the agent to minimise costs.

### 34. UK AS CUSTOMS WAREHOUSE EU

There is known to be some discussion about the concept of 'Customs Warehouse UK'. This is where overseas sellers, for example in China or the USA, might position stock in the UK post Brexit which is ultimately destined for the EU market. Whilst in the UK, the stock could be held in the Customs Warehousing regime, in suspense of UK taxes. Call forward to the ultimate consumers within the EU would be subject to a much shorter lead time than stock consigned from the overseas origin.

### 35. RECLAIMING DUTY ON EXPORTS OF DUTY PAID STOCK

For stock already in the UK on which local taxes have already been paid to HMR&C it is possible to claim a refund of some taxes when those goods are exported. Post Brexit it is assumed this facility to reclaim will continue.

### 36. PARTNERSHIP PACK

The government has released an on line information pack giving information on how to prepare for changes at the UK border in the event of a No Deal Brexit. This contains basic information and it is recommended traders seek further advice where needed.

<https://www.gov.uk/government/publications/partnership-pack-preparing-for-a-no-deal-eu-exit>

The Brexit team at Hellmann Worldwide continues to stand ready to assist with your enquiries. You can reach us at:

[CustomsClearanceEnquiries@hellmann.com](mailto:CustomsClearanceEnquiries@hellmann.com)

### 37. EASEMENTS

This is a term given to the temporary relaxation of regulations designed to smooth transition from membership of the EU to a fully functioning post Brexit Britain. Easements recognise the need for flexibility in light of the extent of change Brexit will entail. **February 2020 update – the UK government has announced the withdrawal of easements. Although these have not been listed, they are thought to include TSP [see section 38].**

### 38. TRANSITIONAL SIMPLIFIED PROCEDURES [TSP]

The government has created an easement know as TSP. Importers of EU goods post Brexit may apply for authorisation. TSP approval permits goods to be declared after they have been physically imported. Additional frontier declaration are required for restricted goods, such as those containing alcohol and tobacco or subject to licences [see section 26], making TSP for such cargoes problematic. **February 2020 update – The UK government has apparently withdrawn TSP or at the very least suspended it.**

### 39. OPERATION BROCK

This is the series of measures intended to keep highways open in the event of disruption to services across the Channel by using different holding areas for lorries as an overspill from existing facilities. **February 2020 update – Operation Brock has been cancelled and replaced with a scheme which will operate moveable barriers in the event of congestion.**