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Main problems regarding EU-UK trade and investment since the end of the transition period

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1. Main Immediate Problems

1.1. Horizontal Issues

Road and Rail Haulage and Shipping

- Requirements are complex for groupage and customs issues with single items in consignments lead to long delays, causing significant problems with demurrage and truck availability.
- Some freight companies are not prepared to take loads cross-channel.
- Lead times increase by 2-3 days for cross border shipments to/from the UK.
- Reduced flexibility regarding shipping lanes as paperwork is lane-specific.
- Problems when working with certain shipping companies that cannot guarantee on-time delivery and/or charge extra costs for shipments to/from UK.
- In the first weeks of the year, some of the haulage and logistics companies had to stop or at least suspend operations between the EU and the UK. This was due to incomplete or erroneous customs clearance documents of their customers.
- Rail freight companies that use the Channel Tunnel face a two-fold challenge. Firstly, UK operators now need an EU operating licence, safety certificate and drivers' licences. Secondly, customs formalities now apply for the first time since the opening of the Channel Tunnel. Due to a dispensation granted by the EU, UK operating licences and safety certificates continue to be recognised in France for the Calais-Dover connection. However, the EU dispensation will run out in October 2021.

Customs-related Issues

- Due to the last-minute publication of the trade deal and/or customs procedures (FR smart border), there was no time for businesses to make the required changes in their IT systems. IT providers are not fully able to provide EU-UK TCA-tailored IT solutions yet.
- Import clearance requirements differ depending on the country of EU import and even among the border control posts used for entry within the same member state. Moreover, there is often not enough staff to deal with the additional work. This leads to delays and inconsistencies in the implementation of customs procedures.
- Unstable customs systems at times of peak processing cause delays; there is a lack of/delayed response of the authorities.
- Customs clearing procedures in the UK differ depending on the port used for entry/exit causing confusion among exporters/importers/carriers.



- The process for the T1 transit procedure through Europe is not well understood and generally leads to confusion and delays.
- Customs clearance responsibility depends on incoterms. Suppliers prefer to move from Delivered Duty Paid (DDP) to Delivered at Place (DAP) incoterms rules. Customers request DDP rather than C-Group terms. Many companies do not understand Incoterms. They think that simple contractual terms release them from all legal obligations.
- Erroneous documents from UK vendors lacking necessary information lead to delays in customs clearance (e.g. no proper customs value, Country of Origin, HS Codes, goods description not self-explanatory).
- Excessive documentation requirements claimed by logistic partners (especially ferry services) without apparent legal basis for requests.
- In some member states, the additional information required by the staff at the border control posts must be delivered in writing, and no digital alternative is provided. This causes delays and worries companies when the information required is highly sensitive and no measures for data protection are taken.
- Article ORIG.16 of the TCA (“non-alteration”) is a challenge for splitting consignments destined to EEA/UK in a country other than the country of destination as the splitting of consignments has to be done by the exporter or under the responsibility of the exporter.
- Long lead times for obtaining UK VAT and EORI numbers.
- There are issues regarding the Smart-Border-Process at the French border. Goods must be presented to the customs office of departure and the T1-Movement Reference Number is scanned before the border is crossed. If the T1 number has not been scanned, the receiver faces problems with terminating the procedure. The receiver cannot identify, whether the Movement Reference Number was presented correctly at the customs office of departure . This means customs debt will incur already at the time of border-crossing, but it will cause additional effort and problems at the moment the procedure (which was not registered correctly) is closed. Receivers of goods have no way to avoid such mistakes caused by the hauliers.
- Handling and management of returnable packaging has become more difficult as rules are not clear in all EU country’s customs offices.
- UK customs system CHIEF does not accept unknown country of origin „QU” in standard customs declarations. The new UK customs system CDS will allow for „QU” to be stated in standard customs declarations. However, it has only been rolled out to approx. 5% and it will take much more time until it can be used by all customs brokers.



Rules of Origin

- Difficulty of complying with the rules of origin, especially for processed agricultural or industrial goods, which typically include components from different countries. This barrier is amplified by the highly integrated nature of the supply chains and distribution networks between UK and EU.
- The rules of origin in the FTA Switzerland-EU and the FTA Switzerland-UK are very restrictive. Since 1.1.2021, Swiss companies can no longer cumulate with EU intermediate products when exporting their goods to the UK. As UK content is non-originating under the EU FTA, pan-European value chains are affected, and third countries are restricted in their trade with both parties.
- Different approaches by EU local customs authorities on the acceptance of proof of origin based on “importer knowledge” are causing confusion.
- Companies need to be able to issue an origin declaration or a EUR.1 certificate if the UK goods are in their warehouse and the UK supplier has given them a long-term supplier declaration stating that the goods comply with the rules of origin with the third country.
- The TCA does not establish cross-border long-term supplier declarations. As the supply chain is highly interwoven, bilateral cumulation needs to be used. Therefore, the preferential status has to be proved by a proof of origin or a long-term proof of origin which causes huge additional effort.
- Some goods were produced in the EU in 2020 and exported to the UK in 2021. To issue a preferential statement, usually there must be the proof of preference by the production date. This means that for these products companies need to have Long Term Supplier Declarations (LTSDs) for 2020. Companies usually have the necessary LTSDs, but these do not include the UK (only countries with FTAs in place in 2020). Nonetheless, the Commission says that companies need to submit the LTSD for the UK for 2020 to export their goods tariff-free. However:
 1. there are no legal grounds on which suppliers can issue such an LTSD (because there was no EU-UK FTA at the time the LTSD has to cover) and
 2. it is nearly impossible to get all the LTSD required for the proof of the origin.

Affected companies either face duties on products produced in 2020 and shipped in 2021, or massive administrative work to get LTSD from suppliers for 2020. This is combined with legal risk for suppliers issuing and Original Equipment Manufacturers using LTSD without legal ground for 2020.

UK products produced in 2020 and exported to the EU from the UK or a Third country face similar problems.

This is also an issue for spare parts or parts for production which are used after the exit of the UK from the Single Market. In this regard, physical segregation is



often challenging – e.g. when spare parts with EU preference from the same supplier but with different production dates (e.g. 2020 and 2021) are stored by the consignee at the same location. Usually, a physical separation is not possible without significant additional effort. It would be important to be able to issue preferential documents for these parts.

Tariff exemptions and special procedures

Companies are subject to an immediate requirement to pay double customs duties when they:

- a) Import third country goods that are in transit in an EU member state before arriving in the UK. In this case, the company will need to apply for authorisation to use the transit procedure under the EU-UK trade agreement. Otherwise, the company will be subject to duties at the customs border of the EU as well as the UK.
- b) Import third country goods that are processed in an EU country and subsequently exported to the UK. In this case, the company needs to apply for authorisation to use inward processing to have duties suspended on raw materials, ingredients and semi-finalised goods at the EU's customs border.
- c) Import third country goods that are repacked in an EU country and subsequently exported to the UK. This is neither transit nor inward processing. Therefore, the company needs to apply for authorisation to store the goods at a customs warehouse where repackaging can take place without being subject to duties at the EU's customs border.
- d) Have a contract with a British provider for the maintenance and repair of their products. This implies that the products will temporarily be exported to the UK and subsequently re-imported into the EU where it will be set for sale.

As many SMEs have only traded in the EU's internal market, they often have limited experience on how to fulfil these requirements. In addition, the companies exporting third country goods to the UK also need to know if they are eligible for tariff preferences or what tariff they need to pay. This is in many cases unclear as the UK is still negotiating trade agreements.

Labelling requirements for conformity assessed products

- Distributors of products in the UK are now importers if they receive products from the EU. This is an obligation they do not necessarily want to undertake as the manufacturer in the EU does not necessarily want to provide the importer with all the needed information to undertake this role. Thus, the EU manufacturer may need to act as the importer. For conformity assessed products this requires them to have an authorised representative in the UK, which poses a market entry barrier especially to SMEs that do not have the necessary financial and human resources.
- For certain EU goods exported to the UK, the details of the importer, including the company name and contact address can be provided on accompanying documentation rather than on the product label itself until 31 December 2022. From 1 January 2023, such details must be affixed to the product or, in circumstances where the legislation allows, on the packaging or an



accompanying document. Companies wonder what kind of documents favoured by UK Authorities.

- Likely, many products are non-compliant in the EU now, as many small EU companies that used to be distributors of UK products are not aware of their new obligations as importers. Amongst others, importers need to make sure that goods are labelled correctly, including with their company details, goods have been conformity assessed, comply with relevant requirements, and are accompanied by the necessary documentation.

Professional qualifications and workers mobility

- The information about rules and application processes on intra-corporate transferees, postings in general, short-term business visitors and recognition of professional qualifications is not sufficiently clear. Especially, the UK requirements on visa and recognition of professional qualifications cause much confusion for companies.
- Regarding visa requirements, the UK imposed a set of immigration rules. While the UK government agencies have provided an overview of the new rules, it is hard for companies to interpret which specific provisions apply in their case.
- The UK exempts employees from visa requirements if they provide a service related to products manufactured by the company that employs them. However, if this service is provided by a subcontractor, its employees need to apply for a UK visa. This discrimination jeopardises the timely processing of orders and may force companies to reorganise their business models substantially, e.g. regarding maintenance and repair services, after-sales or after-lease services.
- For some kinds of services that are supplied alongside goods sold to the UK (e.g. installation, maintenance and repair services), the maximum stay of six months for short-term business visitors (visa-free) is not enough. At the same time, the conditions for receiving a short-term visa as a contractual service supplier are too restrictive for many highly specialised professionals. This may have an impact on the quality of the services EU companies can deliver to their UK customers, particularly for large projects.
- Companies are experiencing problems with issuing work visas for non-EU employees due to a lack of clear guidance for this visa category.
- Regarding professional qualifications, companies now need to apply for recognition at local UK authorities. The UK Centre for Professional Qualifications updated its website with information on rules and application procedures. However, there are still many unanswered questions and the procedures have become very burdensome.
- Amongst many SMEs, there is still a lack of awareness of the far-reaching changes in this area that have occurred since the end of the transition period.



Other Issues

- UK companies that previously reported under EU International Accounting Standards now need to report under the UK equivalent. Any exemptions from having an EU parent company may no longer be relevant, and additional information may need to be included.
- The change to VAT accounting systems poses challenges: the new regime requires to amend the tax codes in companies' accounting systems so that the VAT reports and returns derived directly from them disclose EU cross border transactions correctly.

1.2. Sector-specific Issues

Aviation

- Without an agreement on an Airport Transit Visa (ATV) and its fair application, EU carriers are at a competitive disadvantage when compared with UK and other 3rd country carriers. Passengers from 12 countries (Afghanistan, Bangladesh, Congo (Democratic Republic), Eritrea, Ethiopia, Ghana, Iran, Iraq, Nigeria, Pakistan, Somalia and Sri Lanka) are obliged to request this ATV 2-4 weeks in advance at the local embassy or External Service Provider of the respective transit State and costs approximately 65 euro. The ATV is only valid for a maximum of 6 months. Not only is an ATV an extra cost for the passenger, but it is also an additional obstacle for travel to the UK. This ATV requirement only applies to passengers flying to the UK who transfer at an EU airport. If this issue is not resolved, EU carriers stand to lose thousands of passengers, resulting in weakened EU hubs.

Chemicals

- Increased relabeling costs, due to the printing of the UK address and telephone number.
- Uncertainty about the type of data to be provided when making Downstream User Import Notifications (DUINs) under UK-REACH and obtaining formal confirmation that such DUINs have been made.
- Difficulty in finding information on legislation and obligations for EU companies selling chemicals in the UK and manufacturing chemicals in the EU under their own and third-party brands.

Pharmaceuticals

- Increased complexity of the logistic network compelled some companies to diversify flows and suppliers (e.g. new logistic operators and wholesalers for the UK and Ireland).



- Problems with finding appropriate companies in UK for EOR/IOR (Export of Records/ Import of Records) services for active pharmaceutical ingredients.
- SPS measures are no longer aligned between the EU and the UK. Therefore, sera (animal by product-ABP, ingredient for pharmaceuticals) exported from the UK into the EU need to be accompanied by specific documents. Due to major backlogs at the Dutch border, the Dutch authorities now require UK exporters of sera to have their shipments pre-approved before the shipment is made. Shipments that have not been pre-approved are held up or turned away at the border. The affected company exports the same sera to the Netherlands from other third countries (New Zealand, Australia, USA). The submission and pre-approval of documents before allowing shipments to leave these countries is not a practice the company has ever been required to follow and it is not being enforced for these countries now, either.

Food and Drink

- When certificates will be necessary to export SPS products to the UK, business operators are concerned that the competent authorities in EU Member States will lack the capacity to issue these certificates in a sufficiently swift manner. To resolve this, digital certification is needed. Regarding products of animal origin, the future UK formalities and border controls could also complicate the business-to-consumer (B2C) online sale models of many SMEs.
- UK food and drink exporters struggle with diverging requirements regarding SPS measures and certification in different Member States.

2. Main issues in the medium to long-term

2.1. Horizontal issues

Technical Barriers to Trade

- As related UK grace periods expire after 2021, new problems will arise related to the compliance with UKCA marking. This will require new documentation, approval processes and audits solely for the UK market.
- There is great uncertainty regarding product requirements for placing products on the UK market. In the event of any changes to UK product requirements, products must be adapted. In the medium term, this creates a dilemma for companies as they will need to decide if it is worth paying the cost to design and test products specifically for the UK market.
- For the products that have so far been covered by the mutual recognition agreement of testing and certification inside the European Economic Area (EEA) (e.g. medical products), EEA companies will have to install an authorised



representative in the UK by summer 2021 if they want to continue exporting their products to the UK. They will have to change labelling, etc. These problems will become even bigger if the legislation in the UK and the EU will differ. The result will be higher costs and administrative burden for conformity assessment.

- Regulatory divergence poses a risk that is difficult to foresee and mitigate. This may challenge the competitive position of EU players in the UK market and vice-versa.

Sanitary and Phytosanitary Measures

- Additional complications are expected with the end of UK grace periods for recognition of EU SPS rules and certifications.

Data flows

- It is vital that a data adequacy decision is agreed as soon as possible. A cliff edge outcome in this area would cause major disruptions to companies on both sides of the channel. Data flows take place in virtually all types of today's businesses: without a free flow of data, companies will face serious obstacles in basic operations including salary payments, customer relationship management, or data backups. And in the aviation sector the exchange of passenger name record information is critical.

Workers

- Movement of people will become more difficult once the COVID travel restrictions are lifted. Requirements for postings and the mobility of workers will pose an additional administrative burden on companies. Moreover, companies face great legal uncertainty in this area.
- The coordination of social security is limited to a maximum of 24 months, even though the agreement allows a longer stay for intra-group postings (up to three years). Thus, from the third year on, employees will be subject fully to social security deductions and tax in the UK. At the same time, employees want to remain in the social security system of their home country. This causes additional costs that usually need to be covered by the employer.

Other

- There is a lack of detail on the functioning of the new UK emissions trading system (UK ETS) and the links or differences with EU ETS (e.g., whether the UK ETS will be pegged to the EU ETS).
- Commercial dispute resolution: several uncertainties remain regarding resolution of commercial disputes in cases involving the UK and the EU.



2.2. Sector-specific issues

Automotive industry

- Regarding batteries and battery cells, the rules of origin for the first phase of the transition period (2021 to 2023) are workable. However, the rules of origin for the second phase of the transition period (2024 to 2026) are too ambitious and most probably not workable for motor vehicle manufacturers. As of 2027, the rules of origin applied to electric vehicles and their batteries are extremely restrictive and require very high levels of originating material.

Chemicals

- Potential regulatory divergence in some areas, such as REACH and CLP, and end of grace periods for UK-REACH pose a challenge.
- Additional costs for the registration of substances under UK-REACH that have previously been successfully registered under EU-REACH. The fees under UK-REACH are the same as under EU-REACH although the size of the UK market is only a fraction of the EU market.

3. Impact of the main problems

3.1. Increased costs

- Increased spot rates on haulage both into and out of the UK.
- Extra costs related to demurrage, delays at customs.
- Extra costs related to re-routing of trucks.
- Carriers prefer empty return leg over risk of demurrage and therefore charge higher freight fee.
- Extra costs related to stockouts.
- Additional costs as goods must now be delivered on ISPM Standard 15 pallets, which are more expensive. ISPM Standard 15 pallets are not required for trade within the Single Market.
- Every import consignment needs to be customs cleared, costing approx. £50/£60 per entry. A similar cost accrues for the EU exporter, creating a double increase in customs costs which endangers competitiveness.
- As centralised clearance is still not possible for another 5 years, huge costs occur for customs clearance in other member states (brokerage needed).



- Customs duties need to be paid on products that do not meet the origin requirements, leading to increased costs for customers and final consumers.
- Extra manpower necessary to cope with increased workload due to documentation requirements.
- Investment cost in IT system modifications for information exchange with broker and customs office.
- Extra costs related to trainings for staff on the rules for extra-EU export and import requirements.
- Many SMEs need to pay for external assistance from consultancies to fulfil new requirements and procedures in their trade with the UK.
- Many companies need to increase their levels of inventories to avoid running out of stock. This also led to an increase of associated costs, e.g. for supplementary warehouse space.
- Reduced profit margins, discouraging the continued sale of certain EU products in the UK market and vice-versa.
- Due to visa requirements, assignments to the UK become more expensive (*approx. £2.5k per European national*). Regarding the length of the processes, companies estimate roughly 3 months.

3.2. Delays

- Paperwork requirements place additional work on the whole supply chain and so overall lead times have increased. Moreover, additional effort is needed to correct errors due to insufficient performance by customs brokers/forwarders.
- Customs declarations for import/export to/from the UK need to be made far in advance. For all other third countries EU customs does not require as early a pre-notification.
- Shipments delayed or stopped due to missing or incomplete paperwork (e.g. missing Importer of Record, incorrect HS codes, etc.).
- Significant delays in clearing shipments with high volumes of small parcels (IT systems failing to cope with mass submissions).
- Customers face delayed deliveries and even risk production line shutdowns due to supply interruption. This deteriorates relations with customers, who may look for alternatives.
- New UK product regulation causes prolonged registration time for products.



3.3. Other

- Some companies will have to find new customers/explore new markets/redesign supply chains.
- The renegotiation of sales contracts (to change delivery conditions), the organization of external warehouses (e.g., for petrochemical products, to mitigate the impact of border delays) and adapting distribution network are also challenges companies face.

4. Problems relating to Ireland and Northern Ireland

- Uncertainty on declaration process for movements of goods to and from Northern Ireland (to and from the mainland UK and EU member states). Industry struggles with conflicting messages from public authorities and customs. There have been cases where trucks that successfully crossed the Northern Irish border on previous occasions were refused entry a week later although they used the same paperwork.
- Companies need extra customizing of shipping and customs systems to differentiate between customers in GB and in Northern Ireland.
- The recognised customs procedures including customs warehouses, transit (T2) arrangements and returned goods relief may avoid the imposition of tariffs on EU origin goods on subsequent import to the EU following distribution via Britain for some businesses, but for many these are too costly and complex. For others, mainly SMEs, it is not possible to change supply chains to exclude Britain. This is challenging for all companies using distribution hubs in the UK, but acutely and uniquely affects Ireland. The primary sectors affected include mainly manufacturers and retailers, in sectors such as food and drink, pharmaceuticals and medicines, and clothing.
- Companies transporting goods to Northern Ireland reported problems due to customs duties on finished products manufactured on the EU mainland and transported to Ireland via UK warehouses. This is partly due to a lack of documentation/guidance on the UK government website regarding preferential origin and its rules.
- The “goods at risk” test is proving to be problematic for manufacturers bringing intermediate goods into NI for processing. The definition of goods “at risk” under the Protocol (which captures any form of commercial processing with limited exceptions) means duties often fall due.
- T1 transit procedures must be opened if goods are transferred from Ireland to the EU via UK territory.
- Implementation of preferential rules for Northern Ireland is very complex and not easily adjustable to existing IT systems. For instance, there is a different VAT



treatment depending on the destination (EU-GB or EU-NI), and this leads to issues in the Enterprise Resource Planning system set up.

- The Rules of Origin provisions risk distorting Irish trade in some sectors. An example is the bakery sector where Ireland relies on importing flour from Britain which has third country content in excess of the TCA's tolerance levels, in the absence of industrial milling capacity in Ireland.
- The deadline for fully putting in place the UK Trader Support Service keeps moving.
- There is a lack of clear guidance regarding the situation in Northern Ireland. Irish partners need export documents and transit papers for using the UK land bridge to the EEA and do not know if these are available. Incoterms do not work as desired. XI EORI number for internal transfers.
- Many retailers have yet to communicate their requirements for the Groupage Export Facilitation Scheme (GEFS). The inconsistency of approaches and systems to GEFS means that not everyone will be able to manage it effectively.
- In the pharmaceutical sector there are issues with the supply of biologicals: a company sends its main products via pharmaceutical wholesalers in the UK, who act as the importer. However, hospitals in Northern Ireland do not agree with this procedure for the biological products they buy. Therefore, the company may need to start supplying via a pharmaceutical wholesaler in Northern Ireland. This will add additional costs and made them review their pricing package.

5. Actions necessary to mitigate these problems

5.1. Training and guidance

- More training offers for companies regarding proper shipping documents and customs requirements are required. Companies also need to be informed and trained on EORI or tariff classification, Export Accompanying Documents, Single Administrative Document, etc.
- An awareness-raising and education campaign for border control officials in the EU and the UK on the new rules is needed. This will reduce the room for interpretation, which is currently causing inconsistencies and confusion over how the new rules and procedures work in practice. These measures should be complemented with guidance documents and dedicated helplines.
- A clear, comprehensive timeline of the changes (end of grace periods, reviews, etc.) over the coming months, as well as more SME-friendly guidance (e.g. checklists) is needed.



5.2. Customs

- Customs procedures and documentation should be automated and digitised if and where possible.
- EU governments, their agencies, and the Commission should engage with the UK Government and its agencies to share lessons learned in the opening weeks of 2021 regarding import procedures. They should cooperate towards minimising disruptions to trade with the UK over the coming months while making sure that any bilateral cooperation between the UK and an EU member state does not lead to inconsistencies in the application of the TCA.
- A legal ground/exception to either request Long-Term Supplier Declarations retrospectively or to allow for “preference-simulation” for goods produced in 2020 should be created (the latter one is the preferred option).
- The statement of unknown country of origin “QU” should be made possible under UK CHIEF system.

5.3. Business Travel and Migration

- The UK Government should provide a clear, understandable and detailed overview of visa criteria and respective visa routes and set up a hotline to help companies regarding the UK’s new immigration rules.
- Greater co-ordination and sharing of information should take place between the UK and Member States so that guidance on what is required for business travel between the UK and EU Member States is accurate and accessible. This information could be hosted on national governments’ websites, including business-friendly guidance for each Member State on gov.uk.
- The EU should add the UK to the list of 3rd countries under the EU Visa Code that already have a derogation for the ATV requirement, such as Canada, the USA and Japan. Until a structural solution is found, a temporary “grace period” should be offered waiving ATV obligations (for some countries) for the UK to immediately restore the level playing field.

5.4. Actions relating to Northern Ireland

- Considering the particular situation of Northern Ireland, it is important that the EU and the UK jointly work on pragmatic and flexible solutions to the current impasse while at the same time ensuring that everything is done to respect and implement the Protocol on Ireland and Northern Ireland. The Protocol must be supported and advanced on a continuous basis through close collaboration between the EU and the UK to reflect its evolving nature.
- The structures under the Withdrawal Agreement, in particular relating to the Protocol on Ireland and Northern Ireland should provide for formal engagement with European, Irish, Northern Irish, and British businesses, in a structured,



coherent and regular manner to reflect its evolving nature and to recognise the important role of business in ensuring the Protocol functions and performs its role from a practical perspective.

- The EU and UK should work on proper guidance on the transit procedure through the UK for deliveries to Northern Ireland. This would facilitate clear contractual terms between exporter and importer.
- Greater awareness of the provisions of the Protocol is needed in EU member states, to ensure that the distinction between trading with NI and Great Britain is understood.