

Impact of Brexit on Trade

Chemical Watch

Post-Brexit options for UK chemicals law

Paulette Vander Schueren
Edouard Gergondet
Mayer Brown Europe-Brussels LLP

29 September 2017

State of negotiations on the future EU-UK trade framework

- With negotiations ongoing, it is **very difficult or impossible to predict** with any precision what exactly will be the framework governing trade in goods between the UK and the EU following withdrawal of the UK from the EU
- **What is known however is that what the UK does not want:**
 - i. A customs union, because this would impede the UK's freedom to negotiate trade agreements with other countries, while the EU Courts would retain jurisdiction
 - ii. Remaining in the European Economic Area (EEA), as this implies the UK must implement into UK law EU rules over which it has no vote and involves the free movement of persons

State of negotiations on the future EU-UK trade framework

- In her **Florence Speech** (22 September 2017), PM May:
 - i. Recognized that the UK cannot leave the EU and have everything stay the same (i.e., responding to the so-called “cherry-picking” issue raised by the EU)
 - ii. Called for a "*a new deep and special partnership with the European Union*“ that goes beyond what was achieved with CETA or models enjoyed by other countries, exploiting the UK’s current alignment with the EU *acquis*.
 - iii. Proposed **an implementation period, of around two years**, where “*access to one another’s markets should continue on current terms ... The framework for this strictly time-limited period, which can be agreed under Article 50, would be the existing structure of EU rules and regulations*”.

State of negotiations on the future EU-UK trade framework

- The EU's position has remained the same since the adoption of **European Council's Guidelines (29 April 2017)** and the beginning of negotiations (19 June 2017):
 - The “**orderly withdrawal**” of the UK must be addressed **before** discussing the future EU-UK relationship
 - Three issues to be addressed before initiating any trade talks:
 - i. The UK's financial obligations (so-called “Brexit bill”)

Seen as the hottest topic: PM May's pledge estimated at 20 billion EUR, whereas the EU estimated the amount the UK should pay between 60 and 100 billion EUR
 - i. The status of the Northern Ireland border
 - ii. Citizens' rights

State of negotiations on the future EU-UK trade framework

- Although PM May's Florence Speech attempts to unlock the deadlock in negotiations, the EU's reaction was lukewarm, calling for the speech to be reflected in the negotiations:
 - *"The EU will continue to insist on sufficient progress in the key areas of the orderly withdrawal of the United Kingdom before opening discussions on the future relationship"* (i.e., no discussion on the transition period before the EU-27 deems that "sufficient progress" has been made)
 - *"PM May's statements are a step forward but they must now be translated into a precise negotiating position of the UK government"*

State of negotiations on the future EU-UK trade framework

- 6 months in the negotiations, the future trade framework remains difficult to predict:
 - While the UK has published some indications of how it foresees the future EU-UK relationship, the EU has so far refused to initiate similar talks
 - The 4th round of negotiations started on 25 September 2017. The EU will expect progress to be made, in particular on the Brexit bill, before moving forward with negotiations on the future EU-UK relationship
 - Currently, there is little chance that the EU will consider there has been “sufficient progress” before the summit of EU leaders to take place on 19-20 October, in particular because the UK has not accepted any specific financial commitments
 - The October summit is now seen as a “stepping stone” towards an “orderly withdrawal” deal, which is more likely to materialize in November or December, as opposed to the UK’s initial intent
 - Time is however of the essence: 6 months have already gone by and another 6 months will be necessary for ratification in the EU and UK. This leaves only 1 year to negotiate

State of negotiations on the future EU-UK trade framework

- If, and once, sufficient progress has been made in the “orderly withdrawal” negotiations, the EU should agree to start negotiation with the UK:
 - **A transitional arrangement**, dealing with the status, obligations and rights of the UK following its withdrawal from the EU on 29 March 2019 up.
 - **A long-term partnership.**

Possible form of a transitional arrangement

- In the **Florence Speech**, PM May expressly recognized the need for an **“implementation period”** based on the EU *acquis* for the first time, emphasizing that people and business need *“period to adjust to the new arrangements in a smooth and orderly way”*:
 - *“During the implementation period access to one another's markets should continue on current terms ... The framework for this strictly time-limited period, which can be agreed under Article 50, would be **the existing structure of EU rules and regulations**”*
 - PM May proposed an implementation period of around two years (based on the time necessary to prepare and implement the future partnership)...
 - ...although the UK and the EU *“could also agree to **bring forward aspects of that future framework such as new dispute resolution mechanisms more quickly if this can be done smoothly**”*

Possible form of a transitional arrangement

- The EU seems to agree with the notion of a transitional period with continued access to the Single Market, on current terms, for a limited period of time
 - It nevertheless reiterated the position expressed in the European Council Guidelines of 29 April 2017 that then "*this would require existing Union regulatory, budgetary, supervisory, judiciary and enforcement instruments and structures to apply*".
- It is understood by both parties that a potential transitional arrangement would be based on a ***status quo*** situation, with the exception that, to the extent the UK would cease to be a EU Member, (i) it would **no longer enjoy political rights** and (ii) it would **no longer benefit from the EU's trade agreements**, but would be able to conduct its own trade negotiations (although these would not be implemented if in contradiction with the interim agreement).
- The devil will be in the details (e.g., on free movement of persons or the role of the ECJ).

Transitional arrangement in customs matters

- In all likelihood, the continuation of the *EU acquis* for a transitional period would imply that a **customs union would be maintained** between the EU and the UK
- In its 15 August 2017 **Paper on Future Customs Arrangement**, the UK recognizes the need for such an arrangement and proposes a “***new and time-limited customs union between the UK and the EU Customs Union, based on a shared external tariff and without customs processes and duties between the UK and the EU***”
- No cliff-edge through customs and duty free trade for a limited period of time, pending the implementation of new arrangements

Transitional arrangement in customs matters

- However, Barnier has emphasized that a *"short transition period will be part of the Article 50 withdrawal agreement"* so that *"without a withdrawal agreement, there is no transition"*.
 - This implies that, **absent any withdrawal agreement, there would be no transitional arrangement** between the EU and the UK
 - This situation however would neither be in the EU's or UK's interest, given the magnitude of trade flows between both parties
- Jon Thompson, chief executive of HMRC, stated that a post-Brexit customs accord needs to be reached between the end of December 2017 and the end of March 2018 so as to allow HMRC to adapt, with a particular emphasis on the need for a transitional arrangement:
 - *"What we would like to see sooner, rather than later is a decision on the interim period"*.

Possible form of a long term partnership

- The Florence Speech confirmed that the UK would be looking for a “**bespoke**” deal, that goes beyond the agreements already negotiated by other countries:
 - The idea is to **build on the existing convergence** between the UK’s and EU’s regulatory systems
 - A “**sector-by-sector**” approach to stay aligned with the Single Market, while taking control over law-making and migration
 - A **bespoke court** (neither EU nor UK courts) where the law should be interpreted in the same way by the EU and the UK.

Possible form of a long term partnership

- The “**deep and special partnership**” proposed by PM May remains **vague** and it is not clear how the EU would approach such an initiative:
 - The **EU has traditionally opposed any “cherry-picking”** stating it would not be possible for a third country to have the same benefits as Norway but the obligations of the Canadian model (although this seems to have been recognized in the Florence Speech)
 - There is no guarantee that the current regulatory convergence will endure, so that **mutual recognition issues** may arise
 - The EU will be **reluctant to accept that any court other than the ECJ** could interpret EU law
- While the framework of the long-term partnership is hard to predict, it could – as far as trade in goods are concerned – take a form similar to that of a **free trade agreement with special customs arrangements**

Long term partnership – What customs arrangements?

- In the **Paper on Future Customs Arrangement**, the UK foresees two approaches:
 - i. **A highly streamlined customs arrangement:** streamlining and simplifying requirements, leaving as few additional requirements on EU trade as possible (continuation of existing arrangements, negotiation of trade facilitations with the EU, implementation of unilateral facilitations in the UK and implementation of technology-based solutions)

Drawback: the UK recognizes that there will remain an **increase in administrative burden** compared to the EU Customs Union

Numerous customs controls would still apply and tariffs and rules of origin between the EU and the UK may continue to diverge (i.e., this would not lead to a “frictionless trade” as sought by the UK).

Long term partnership – What customs arrangements?

- ii. **A new customs partnership with the EU:** aligning the UK's approach to the customs border in a way that removes the need for a UK-EU customs border (the UK import requirements would mirror that of the EU where the final destination of the goods is the EU)

The UK would apply the same tariff and rules of origin as the EU for goods arriving the UK and destined for the EU, whereas the UK's own tariff and trade policy would apply to import from and export to non-EU countries

Drawback: this requires a **robust enforcement mechanism**, creates a risk of circumvention of customs duties, will imply that **businesses track their supply chain** to assess the origin and destination of the goods to break down between products destined for the EU and those that are not.

Long term partnership – What customs arrangements?

- While the UK's intent to ensure "UK-EU trade is as frictionless as possible" is praiseworthy, the implementation of the above proposals may prove complicated.
- **The level of frictionless cross-border trader in a customs union can hardly be replicated outside a customs union.**

The UK seems to recognize this insofar as it now seeks an arrangement that *"should mitigate to the greatest extent possible against any additional administrative burdens or delays"*.

What are the other interim / long-term partnership options?

- As part of an interim or long-term arrangement, and in spite of previous declarations, the following sort of EU-UK partnerships, previously foreseen, could still be relevant:

i. Customs Union (Turkish model)

Benefits: free access for Turkey-originating goods to the EU market, without customs duties, quotas or procedures (and vice versa)

Drawbacks: No liberalization of services

+ regulatory convergence requested by the EU

+ part of the EU commercial policy (i.e., no possibility to conclude FTA with other countries)

Why unlikely? The UK wishes to negotiate its own FTA with other countries

+ The UK does not want to apply EU Regulations

What are the other interim / long-term partnership options?

ii. EFTA + EEA (Norway model)

Benefits: full access to the Single Market

+ outside the EU commercial policy (i.e., possibility to conclude FTA with other countries)

Drawbacks: customs controls remain in place and duty-free access to the EU market is subject to satisfaction of the rules of origin

+ no control over laws governing the Single Market (incl. regulatory requirements)

Why unlikely? The UK does not want to accept the free movement of persons

+ The UK does not want to apply EU Regulations

+ EFTA Court must take CJEU rulings into account for interpreting the EEA

What are the other interim / long-term partnership options?

iii. EFTA + Multiple bilateral agreements (Swiss model)

Benefits: bespoke set of sectoral agreements

+ outside the EU commercial policy (i.e., possibility to conclude FTA with other countries)

Drawbacks: customs controls remain in place and duty-free access to the EU market is subject to satisfaction of the rules of origin

+ hybrid sectoral approach

+ to obtain certain advantages, Switzerland had to make important concessions (e.g., adoption of EU rules on agricultural products to avoid inspections on food exports)

Why unlikely? Given the complexity of the EU-Swiss trade relationship, the EU will likely seek to avoid similar arrangements.

What are the other interim / long-term partnership options?

iv. Other possibilities

- Association Agreement (framework for cooperation in a wide range of matters, which can include a comprehensive trade agreement [e.g., Ukraine])
- Partnership and cooperation agreement (framework for bilateral economic and political relations, without modifying the customs tariffs [e.g., Russia])
- No deal

What if there is no deal?

- As a member of the EU, **the UK currently – and will continue until 29 March 2019 – to benefit from all the rights attached to its status** including:
 - Movement of goods across the EU borders, free of duties, quotas or routine customs processes
 - The preferential trade agreements concluded by the EU
- **As from Brexit, and absent any deal, the UK would trade with the EU as it currently trades with non-EU countries, i.e.:**
 - Customs duties and imports VAT would be due on trade between the EU and the UK
 - Customs formalities would have to be complied with
 - Preferential arrangements previously enjoyed through the EU's agreements would no longer apply

What if there is no deal?

- The UK would therefore **trade on a so-called “WTO-basis”**, meaning that
 - The UK’s trade in goods would be subject to so-called **Most-Favoured-Nation (“MFN”) principle**. The EU would therefore apply the tariffs it applies to all WTO members without a preferential trade agreement
 - Furthermore, there are currently **debates as to whether and how the UK should re-negotiate its schedule of concessions**.

While DG Azevedo has emphasized that the UK is and will remain a WTO Member, he also considers that, when the UK formalizes its separation from the EU, the UK will need to present its new commitments, thereby triggering negotiations with other WTO Members.

In that respect, the UK in its **Paper on Future Customs Arrangement**, stated that *“[t]o minimise disruption, we will **prepare schedules that replicate as far as possible our current obligations**. We will work closely with the EU and other WTO members to secure a simple, fair and transparent transition”*

What will happen in the UK?

- Whether or not there is a deal, the UK will need to legislate to incorporate into UK laws subjects that were previously dealt with at the EU level:
 - **Great Repeal Bill White Paper** confirms that the UK will convert existing EU law into UK law to ensure predictability.
 - The UK will in addition introduce a **Customs Bill** to establish a framework to implement a UK customs regime, insofar as the requirement for a UK customs regime cannot be met merely by incorporating EU law
 - As per the Paper on Future Customs Arrangement, *“the rules governing customs are mostly in EU law and current UK customs legislation is insufficient to create a standalone customs regime”*

It also clarifies that Bill will also *“ensure that UK law remains as consistent as possible with EU law and responds to business requests for continuity and certainty”*

What will happen in the UK?

- The Customs Bill will be likely to incorporate provisions on the following lines into UK customs legislation:
 - The customs provisions of the Union Customs Code and the relevant implementing provisions
 - The duty rates then applicable under the EU Common Customs Tariff
 - The basic provisions of the EU's Generalised System of Preferences
 - The EU's basic requirements on granting duty suspensions and tariff rate quotas
 - The EU's basic requirements on inward and outward processing

What will happen in the UK? – Customs Bill

- The background notes to the Queen’s Speech have not changed this expectation, and announce the adoption of a Customs Bill as follows:

The purpose of the Bill is to:

- *Provide new domestic legislation to replace EU customs legislation and modify elements of the indirect taxes system. This will allow the UK to operate standalone customs and indirect taxes regimes on exit from the EU, whatever the outcome of the negotiations.*

The main benefits of the Bill would be:

- *To allow the Government to operate standalone domestic customs and indirect taxes regimes when the UK leaves the EU, whatever the outcome of negotiations. The Bill will allow the UK to continue to provide a world-leading customs service after the UK exits the EU. In order to provide continuity for businesses, the customs legislation will mostly be based on existing EU law.*

What will happen in the UK? – Customs Bill

The main elements of the Bill are:

- *To provide a domestic legislative framework allowing the Government to:*
 - *charge customs duties on imported goods and adjust the rates of these duties;*
 - *collect payments of customs duties, administer the customs regime, and tackle duty evasion;*
 - *control the import and export of goods;*
 - *accommodate potential negotiated arrangements with the EU.*
- The background notes open the possibility of the customs provisions and customs duties differing from the EU provisions, but time may be too short to achieve a major revision by the time of entry into force of Brexit

What will happen in the UK? – Trade Bill

- The UK will need to adopt trade legislation on trade remedies (including anti-dumping) and provisions on the negotiation of trade agreements. On trade remedies, one can expect the new provisions to be fairly close to the EU trade defence provisions as the UK will also wish to comply with the basic WTO trade defence provisions
- The background notes to the Trade Bill announced in the Queen's speech provide as follows:

The purpose of the Bill is:

- *To support the UK in making a smooth exit from the European Union and ensure that UK businesses are able to benefit from trade with the rest of the world.*
- *To cement the UK's leading role as a great, global trading nation, whilst ensuring UK businesses are protected from unfair trading practices.*

What will happen in the UK? – Trade Bill

The main benefits of the Bill would be:

- To establish the tools we need to deliver the best international trading framework for the UK outside of the European Union, including an effective trade remedies regime.*
- To ensure our trade policy reflects the needs and potential of businesses and consumers throughout the UK, and helps create a country that is stronger, fairer, more united and more outward-looking than ever before.*
- To meet the manifesto commitment to “introduce a Trade Bill in the next Parliament”.*

The main elements of the Bill are:

- To put in place the essential and necessary legislative framework to allow the UK to operate its own independent trade policy upon exit from the European Union.*

Looking forward: what should UK post-Brexit tariffs look like?

- As the UK leaves the EU, it will **no longer be bound by the Common Customs Tariff of the EU** (except, potentially, during the transition period if the UK remains in a special customs union with the EU).
- This means that the UK will be – in principle – **free to set its own external tariff system** and these customs duties under the EU and UK’s respective external tariffs will apply to UK-EU trade
 - The UK will need to set its external tariffs **at a rate at or below the “bound rates”** to which the UK will have to commit in the WTO framework (i.e., the maximum rate which it concedes to impose on a given product in respect of imports from other countries with whom it does not have a preferential agreement – these bound rates are part of each WTO Member’s schedule of concession)
- Given the **limited timeframe for implementation**, and the UK’s willingness to prepare schedules that replicate as far as possible its current obligations, the UK’s external tariffs are **likely to be same as the current EU’s MFN duty rates**.

Looking forward: what would a free trade agreement imply for cross-border trade and customs?

- Between Brexit and entry into force of the free trade agreement:
 - **Temporary arrangements**, which would need to be negotiated, would provide for trade in goods between the EU and the UK during an interim period
 - If based on the current *EU acquis*, it would **most likely** take the form of a **customs union**, thereby avoiding disruption (*status quo*)
 - However, the UK would **no longer benefit from the EU's trade agreements**

In that respect, it is highly unlikely that free trade agreements with countries other than the EU would be in place by the time of the entry into force of Brexit or that the UK would be able automatically to assume the provisions of the FTAs concluded by the EU

Looking forward: what would a free trade agreement imply for cross-border trade and customs?

- After the entry into force of the free trade agreement:
 - **Customs duties** would apply as a matter of principle on EU-UK trade
 - Customs duties would not be levied and customs quotas would not be applied entirely or partially to the extent that the **origin rules** of the free trade agreement are satisfied
 - Import and export transactions between the UK and the EU (including Ireland) would be subject to **customs controls and formalities**, unless special customs arrangements are implemented

Cross-border trade and customs – Scenario 1

Scenario 1:

DEHP phthalates products (CAS 117-81-7) are manufactured in the EU and exported to the UK

- Non-EU raw materials (e.g., phthalic anhydride [CAS 85-44-9]) are imported into the EU-27 from a non-EU country
- They are processed in the EU-27 into a manufactured DEHP phthalate product that is exported from the EU-27 to the UK
- The products are packaged in the UK
- The final product is partially sold in the UK and is also exported to Ireland

Cross-border trade and customs – Scenario 1

<u>Pre-Brexit</u>	<u>Post-Brexit with an EU-UK FTA</u>
<p>Duties apply upon the importation into the EU of the raw materials at the rates set forth in the EU's Common Customs Tariff.</p> <p>The raw materials may also be exempted in whole or part from duties if they originate in an EU GSP country, in a country with which the EU has an FTA or if they benefit from an EU duty suspension or tariff rate quota.</p> <p>There are no duties upon the importation of the manufactured products from the EU-27 into the UK.</p> <p>There are no duties upon the importation into Ireland of the manufactured products packaged in the UK.</p>	<p><u>Duties apply upon the importation into the EU of the raw materials</u> at the rates set forth in the EU's Common Customs Tariff (heading 2917 35 00: 6,5%)</p> <p>There might be no customs duty to be settled in the EU on the imported raw materials in the following circumstances:</p> <ul style="list-style-type: none">(i) The raw materials originate in a country to which the EU has granted the status as beneficiary of the EU's General System of Preferences.(ii) The EU grants duty suspensions or tariff quotas to the raw materials.(iii) The EU implements an inward processing regime whereby customs duties are suspended on raw materials used for the processing of products exported outside the EU. <p><u>However</u>, beware of a possible duty drawback prohibition in the EU – UK FTA requiring that customs duties be settled on the materials for originating materials to be imported duty-free if meeting the substantive rules of origin.</p>

Cross-border trade and customs – Scenario 1

<u>Pre-Brexit</u>	<u>Post-Brexit with an EU-UK FTA</u>
	<p data-bbox="981 287 1792 362"><u>Upon the importation into the UK of the products manufactured in the EU:</u></p> <p data-bbox="981 419 1792 629">(i) Customs duties will apply if the products do not meet the origin requirements of the EU – UK FTA. The duty rates might be those currently set forth in the EU’s Common Customs Tariff. By way of illustration:</p> <ul data-bbox="1020 686 1792 762" style="list-style-type: none"><li data-bbox="1020 686 1792 762">- DEHP phtalates of tariff heading 2917 32 00: 6,5% <p data-bbox="981 833 1522 862">⇒ Same if there is no EU – UK FTA.</p> <p data-bbox="981 933 1792 1009">(ii) No customs duties will apply if the products meet the origin requirements of the EU – UK FTA.</p>

Cross-border trade and customs – Scenario 1

<u>Pre-Brexit</u>	<u>Post-Brexit with an EU-UK FTA</u>
	<p>By way of illustration, the substantive rules of origin from the EU agreement with Canada are the following:</p> <p>-For Chapter 29, products will be originating if they result from:</p> <p>(i) An applicable change in tariff classification as follows:</p> <div data-bbox="981 711 1798 861" style="border: 1px solid black; padding: 5px;"><p>A change from any other subheading; or A change from within any one of these subheadings, whether or not there is also a change from any other subheading, provided that the value of non-originating materials classified in the same subheading as the final product does not exceed 20 per cent of the transaction value or ex-works price of the product.</p></div> <p>(i) A chemical reaction (as described in the ROO) (ii) Purification (as described in ROO)</p> <p>The ROO for Chapter 29 in addition provides for a “separation prohibition” (as described in ROO), where certain operations do not confer origin.</p>

Cross-border trade and customs – Scenario 1

<u>Pre-Brexit</u>	<u>Post-Brexit with an EU-UK FTA</u>		
	<p>By way of comparison, reference is also made to the rules of origin in the EU – South Korea FTA for Chapter 29 (with certain exclusions that do not concern Heading 2917 covering DEHP and anhydric acid):</p> <table border="1" data-bbox="993 548 1785 776"><tr><td data-bbox="993 548 1387 776">Manufacture from materials of any heading, except that of the product. However, materials of the same heading as the product may be used, provided that their total value does not exceed 20 % of the ex-works price of the product</td><td data-bbox="1389 548 1785 776">Manufacture in which the value of all the materials used does not exceed 50 % of the ex-works price of the product</td></tr></table> <p>→ The EU-KOR and CETA rules of origin for Chapter 29 are very different and it may be harder to comply with the EU-KOR ROO than with the CETA ROO.</p>	Manufacture from materials of any heading, except that of the product. However, materials of the same heading as the product may be used, provided that their total value does not exceed 20 % of the ex-works price of the product	Manufacture in which the value of all the materials used does not exceed 50 % of the ex-works price of the product
Manufacture from materials of any heading, except that of the product. However, materials of the same heading as the product may be used, provided that their total value does not exceed 20 % of the ex-works price of the product	Manufacture in which the value of all the materials used does not exceed 50 % of the ex-works price of the product		

Cross-border trade and customs – Scenario 1

<u>Pre-Brexit</u>	<u>Post-Brexit with an EU-UK FTA</u>
	<p><u>If the products are packaged in the UK and then transported to Ireland</u>, the packaged products must be customs cleared into Ireland as a member of the EU. This could probably be done duty-free if the product is considered to be of UK origin through the effect of cumulating the EU origin with the work done in the UK. If the product does not have EU origin at importation in the UK, that may be difficult.</p> <p>The provisions on cumulation of the EU – UK FTA will need to be monitored as well as the provisions on minimal processing.</p> <p>It may be preferable overall to export the products straight to Ireland from the EU Member States on the continent.</p> <p>⇒ If there is no EU – UK FTA, the products packaged in the UK would normally be made subject to customs duties at customs clearance into Ireland. However, no duties may have to be paid in the UK if an inward processing authorisation could be obtained there.</p>

Cross-border trade and customs – Scenario 2

Scenario 2:

Polymers of ethylene in primary forms are manufactured in South Korea and exported to the UK

- Non-EU raw materials (e.g., ethylene [CAS 74-85-1]) are imported into South Korea from outside the EU and South Korea
- They are processed in South Korea into polymers of ethylene that are exported from South Korea to the UK
- The products are packaged in the UK
- The final product is partially sold in the UK and is also exported to Ireland

Cross-border trade and customs – Scenario 2

<u>Pre-Brexit</u>	<u>Post-Brexit without a UK – Swiss FTA</u>
<p>Duties apply upon the importation in South Korea of the raw materials at the rates set forth in South Korea's external tariff.</p> <p>Upon the importation into the UK of the products manufactured in South Korea:</p> <p>(i) Customs duties will apply if the products do not meet the origin requirements of the EU – KOR FTA. The duty rates are those currently set forth in the EU's Common Customs Tariff. By way of illustration:</p> <ul style="list-style-type: none">- Polymers of ethylene, in primary forms of tariff heading 3901: 6,5% (with the exception of sub-heading 3901 20 10, which concerns specific polyethylene for the manufacture of chlorosulphonated polyethylene which enter the EU duty-free) <p>(ii) No customs duties will apply if the products meet the origin requirements of the EU – KOR FTA.</p>	<p>It is unlikely that the UK will have FTAs in place by the time of Brexit entering into force (e.g., CETA took 7 years to negotiate).</p> <p><u>However</u>, in the absence of a UK – KOR FTA, customs duties will apply to the products manufactured in South Korea and imported into the UK (see left panel).</p> <p>Moreover, if the products are packaged in the UK and then exported into Ireland where the packaged products are customs cleared, customs duties would be levied again at the rate of the EU's Common Customs Tariff. This is the case because products must be transported directly from South Korea to the EU and cannot be the subject of processing in the UK for the benefit of the EU – KOR FTA to apply.</p> <p>No customs duties would have to be settled in the UK if an inward processing arrangement could be obtained</p>

Cross-border trade and customs – Scenario 2

Pre-Brexit

These rules of origin are the following by way of illustration:

- For Headings 3901 to 3921:

Manufacture from materials of any heading, except that of the product	Manufacture in which the value of all the materials used does not exceed 25 % of the ex-works price of the product
---	--

However, whether or not customs duties are levied at customs clearance in the UK, the packaged products can be imported from the UK into Ireland without customs duties being levied.

Post-Brexit with an EU-UK FTA

Looking forward: potential issues in the field of customs

- If customs duties were to apply between the EU and the UK, either because there was no customs union or no FTA or because the products did not meet the origin requirements of the UK – EU FTA, many **new customs issues** may fall onto the importers. By way of illustration, in the field of **customs valuation**:

If duties applied, a **customs value for the goods being traded would have to be determined** and a host of issues would arise that do not exist in the context of the current customs union

- Would **royalties and licence fees** paid have to be added to the customs value? (Even in the EU, this is in a state of flux in light of the new provisions of the Union Customs Code and the related implementing provisions)
- Where **packaging in the UK was done on the basis of a tolling agreement**, there would be no sale when the manufactured goods entered the UK because the toller would remain the owner of the goods during the processing in the UK. There being no sale, an alternative to transaction value would have to be used for determining the customs value

Looking forward: potential issues in the field of customs

- Where the **sale** from the EU to the UK was **between related importers**, Customs in the UK may query the arm's length nature of the customs value.
 - A **divergence of interpretation in the customs classification** of a product that is currently resolved in discussions between the EU Member States and the Commission would have to be resolved at the level of the Harmonized Systems Committee of the World Customs Organization
- ⇒ In addition to delays and the cost of administrative formalities at the border, such issues would **hamper EU – UK trade** compared to the current free movement of goods within a customs union

Summary of cross-border trade and customs issues

- **Negotiations are currently stalled**, with the EU requiring that the withdrawal of the UK be addressed before discussing the future EU-UK relationship. However, recent evolutions show that the **most likely scenario** consists in:
 - An **interim arrangement** providing for the *status quo* for a period of 2 years, the details of which would need to be negotiated
 - A **deep and special partnership**, reflecting **FTAs** as far as trade in goods are concerned, with potentially **special customs arrangements**
- While the *status quo* would remain during the transitional period as far as EU-UK trade is concerned, trade from the UK would **no longer enjoy the benefits of the EU's preferential trade agreements as from Brexit Day**
 - It is unlikely that, as from Brexit Day, the UK will have any preferential trade agreement in place

Summary of cross-border trade and customs issues

- **As from the entry into force of the FTA**, a number of issues would arise for importers and exporters involved in EU-UK trade and, in particular:
 - **Customs tariffs** would apply in principle, unless it is demonstrated that **rules of origin** of the FTA are complied with. Therefore, businesses would need to consider carefully rules of origin to avoid the imposition of tariffs,
 - Trade between the EU and the UK would still be subject to **customs controls**, unless preferential customs arrangements are implemented,
 - **Novel issues** would arise from a customs perspective, in particular in the field of **customs valuation**.
- This however is subject to future developments in negotiations, which should be carefully monitored.

Cross-border trade and customs – Short-term actions

- **Monitor** developments with regard to the direction taken and, in the case of an FTA, lobby the UK and the EU authorities for appropriate rules of origin
- In the case of an FTA, **lobby** to make sure that your products benefit from a regulatory regime that is as favourable as possible to the movement of your goods between the UK and the EU
- **Support** the efforts towards the early conclusion of agreements at WTO level with bound rates (i.e., maximum duty rates) established at the lowest possible level (as mentioned, the actual customs duty rates will probably be those currently applied in the EU's Common Customs Tariff)

THANK YOU