

## EU Trade Update: Trade Aspects of the July 2018 U.K. Government White Paper on the Future U.K. EU Relationship

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### Key Points

- The White Paper sets out in detail the shape and scope of the U.K.'s desired future "association" relationship with the EU post Brexit. The U.K. government hopes that it will accelerate negotiations with the EU with a view to agreeing the substantive elements of a "future framework" alongside the withdrawal formalities by the end of 2018.
- The White Paper is wide-ranging and covers the potential for a future economic partnership, and a defence and security partnership, as well as measures designed to ensure appropriate democratic accountability through joint institutional arrangements.
- In particular, the White Paper sets out how the U.K. government seeks to achieve frictionless trade in goods between the U.K. and the EU—despite the U.K. existing outside of the Customs Union and the Single Market.

### A Free Trade Area for Goods

The United Kingdom (U.K.) government takes the view that, to achieve a Brexit that respects the outcome of the 2016 referendum, the U.K. must leave both the EU Single Market and the EU Customs Union. However, the U.K. government aims to reduce the damage that this is likely to cause businesses by entering into a "deep and comprehensive" economic partnership with the European Union (EU). At the heart of the U.K. government's proposal is the creation of a free trade area for goods. The stated purpose of the free trade area is to "avoid friction at the border [between the UK and EU] and ensure that both sides meet their commitments to Northern Ireland and Ireland through the overall future relationship."

The cornerstone of the U.K. government's free trade area is the implementation of a Facilitated Customs Arrangement (FCA). The U.K. government hopes that the FCA will enable near frictionless trade with the EU by essentially mirroring the existing mechanisms of the Customs Union through a duty-remittance scheme and adherence

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to a common rulebook. However, by remaining formally outside of the Customs Union, the U.K. would not be bound by the EU's Common Commercial Policy, and, as such, would be free to enter into new trade agreements with third countries (to the extent that such agreements are compatible with its proposed commitments with the EU).

In terms of timing, the White Paper notes that the FCA would receive a "phased" implementation. The U.K. has committed to remaining in the Customs Union during the transition period, which is scheduled to end in December 2020. As such, it leaves open the possibility that the U.K. may continue to stay within the Customs Union beyond December 2020 to introduce the FCA in a gradual manner, to the extent that the U.K. and EU are not ready by January 2021.

- *The Introduction of a Duty Remittance Mechanism*

In terms of mechanics, the U.K. would apply the EU's duties and trade policy measures for all goods landing in the U.K. but destined for the EU. Where goods land and are destined for the U.K., then the U.K. will apply its own duties and trade policy measures (to the extent that they differ). The EU would not, however, be expected to apply U.K. duties and trade policy measures at its borders. The U.K. has instead proposed that the U.K. duties be settled as part of a wider duty-remittance mechanism. The U.K. concludes that, because all goods entering the EU via the U.K. should have complied with EU customs processes and duty measures, there would be no need to introduce formal customs processes between the U.K. and the EU (notably rules of origin requirements).

The White Paper provides a worked example on how the U.K. government intends for importers to settle any duties owed at the point that goods enter the U.K. The example states that, when the goods' destination can be "robustly" demonstrated by a "trusted trader," the importer will pay the duty amount that corresponds to that destination. In contrast, where the goods' destination cannot be ascertained, then the importer must pay the higher of the U.K. or EU duty and seek reimbursement (if the goods' destination were to a lower-duty jurisdiction).

The example, while brief, raises a number of issues. First, it fails to clarify what "robust" evidence "trusted traders" would need to provide with respect to validating the final destination of a consignment. In addition, it raises the question as to whether importers that are not "trusted traders" but otherwise provide "robust" evidence will always be required to declare the higher duty rate. The White Paper also states that the U.K. and EU should "agree a new trusted trader scheme to allow firms to pay the correct tariff at the UK border." This calls into question how pre-existing schemes, notably Authorised Economic Operator (for which the White Paper proposes mutual recognition), will exist alongside any new requirements. For materials imported and subsequently processed in the U.K., the U.K. government proposes repayment as soon as possible, (e.g., at the point where the materials have been substantially transformed into U.K. goods). The U.K. government points to the pan-Euro-Mediterranean trade agreement as an example for rules of origin.

More broadly, the proposal is likely to place several new compliance burdens on U.K. businesses. For example, importers often do not know the final destination of their goods upon initial entry into the EU, but now will be required to do so. Moreover, in instances where U.K. businesses seek to obtain a refund due to paying additional duty (because, for example, they cannot assert the final destination of their goods at

import), such businesses would be required to track the goods and evidence their consumption within the EU.

- *A Common Rulebook for Trade in Goods*

The U.K. government has conceded that, to maximize the possibility for frictionless trade in goods post Brexit, it will need to maintain a common rulebook relating to all rules necessary to facilitate such trade at the U.K.-EU border (e.g., product conformity legislation). In reality, the U.K. government appears to have accepted that this will require it to continue to implement certain EU legislation beyond the U.K.'s departure date, with the White Paper citing the Union Customs Code as one piece of EU legislation to which the U.K. would continue to adhere.

As part of this, the U.K. government has requested participation in all EU technical committees and regulatory agencies relating to legislation that forms part of the common rulebook (such as the European Medicines Agency and the European Chemicals Agency). The U.K. government asserts that participation in these committees and agencies should mean, for example, that manufacturers have to undergo only one conformity assessment in either the U.K. or EU in order to place a product on both markets.

The U.K. acknowledges, however, that it would not have voting rights in such committees and agencies. This raises the question as to how much influence the U.K. will continue to have over EU legislation that will directly impact the manufacturing requirements and product standards to which U.K. businesses must adhere. To this end, the U.K. government has proposed a series of institutional provisions designed to ensure that there are sufficient checks and balances in place to mitigate the risk that a change in EU legislation (that forms part of the common rulebook) does not adversely harm U.K. interests. If any such measure were to enter into force, then the U.K. government states that it would reserve the right not to implement ultimately (but acknowledges that this could have an adverse impact on the wider relationship). The White Paper also proposes an independent arbitration panel, including sectoral technical experts, to resolve disputes on regulation and could refer questions related to the common rule book to the European Court of Justice.

## **EU Response**

The EU's initial reaction to the U.K. government's White Paper has been one of guarded optimism, perhaps due to the fact that it envisages a closer relationship between the U.K. and the EU than what has previously been suggested by the U.K. The EU has, however, previously stated that it would not entertain a "single market" for goods, since it deems this to be "cherry-picking." Moreover, when the U.K. government first raised the idea of a customs partnership between the U.K. and the EU earlier this year, the EU raised a number of substantive concerns regarding its viability, notably that the arrangement would be a target for customs and value added tax fraud. This is no doubt exacerbated by the fact that the European Commission launched a £2.4 billion claim against the U.K. in March 2018 for unpaid customs duties relating to fraudulent Chinese imports. The U.K. government acknowledges that the mechanics of the proposed free trade area would require vigorous surveillance and enforcement; however, the White Paper does not provide any detail on how this would be achieved.

If, therefore, the U.K. government's latest proposals as set out in the White Paper fail to gain traction with the EU, then this is likely to make the U.K. government's current leadership more unstable and a "no deal" situation more of a possibility. As such, it is critical that businesses plan accordingly.