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Working with Europe and the EU – A New Context

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Working with Europe and the EU – A New Context 18 – 20 September 2023

Day 2

How will the new framework of UK-EU relations work?

- **trade in goods**

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Trade and Cooperation Agreement: Overview

- Part 1: Common and Institutional Provisions
- **Part 2: Trade**
- Part 3: Law and Enforcement and Judicial Cooperation in Criminal Matters
- Part 4: Thematic Cooperation
- Part 5: Participation in Union Programmes
- Part 6: Dispute Settlement and Horizontal Provisions
- Part 7: Final Provisions + Annexes

Part 2: Trade

- **Heading One: Trade**
- Heading Two: Aviation
- Heading Three: Road Transport
- Heading Four: Social Security Coordination and Visas for short-term visits
- Heading Five: Fisheries

Part 2: Heading One (Trade)

- **Trade in Goods**
- Trade in Services and Investment
- Digital Trade
- Capital Movements and Payments
- Intellectual Property
- Public Procurement
- SMEs
- Energy
- Transparency
- Good regulatory practices and regulatory cooperation
- Level playing field provisions
- Exceptions

Part 2: Heading One (Trade)

- **Market access: no tariffs and no quotas**
 - But border controls
 - Customs formalities and checks (in particular on RoOs)
 - Regulatory checks
- **Non-tariff barriers**
 - Import and export restrictions (*Articles 19 and 26*)
 - Dual burden (home and host rules need to be met)
 - No harmonised trade rules
 - No certification of products for export
- **Level playing field provisions**

Part 2: Heading One (Trade)

- No customs duties (*Article 21*)
- But only for goods 'originating in the other parties' (see *Articles 37-68* and *six Annexes*)
- Rationale for **rules of origin**
 - To limit preferential tariffs that originate in the UK or EU
 - To avoid undermining arrangements with third countries (eg a product from a third country could just be repackaged in the UK and sold in the EU)
 - To avoid distortion of competition (import from countries with lower labour standards)

Part 2: Heading One (Trade)

- **Relevance for business**
 - Sufficient amount of processing necessary to qualify
 - Limits parts and ingredients from third countries (supply chains and sourcing)
 - Need to provide evidence of what is in the product
- **Otherwise, 'Most Favoured Nation' tariffs apply**
 - EU Common Customs Tariff
 - UK Global Tariff

Rules of Origin

- Principles to satisfy the originating rules
- Products are wholly obtained (agricultural products): *Articles 39(1) & 41*
- Products produced exclusively from originating materials in that party: *Article 39(1)(b)*
- Products produced in that party incorporating non-originating materials (subject to conditions in *Annex 3*): *Article 39(1)(c)*
 - But see *Article 42* on tolerances (originates even if it does not meet the conditions in *Annex 3*)
 - But see *Article 40* on bilateral cumulation
 - But see *Article 43* on insufficient production (in this case does not originate)- Percy Pigs produced in Germany, exported and stored in the UK and then exported back to Germany

Rules of Origin: Specific Rules

Rules on processing (*Article 39(2)*)

- The product has acquired originating status
- The product is incorporated as a material in another product
- Then the non-originating materials used in the production of that product are not considered as non-originating
- Example: UK engine consists of 30% non-originating content but is considered as originating
 - If the engine is included in a car, it counts as 100% towards the originating content of the car

Rules of Origin: Rules on cumulation

- **Product originating in the UK (or EU)** will be considered as originating in the EU (or UK) if that product is used as a material in the production of another product in the EU (or UK)

Example: EU tomatoes are used in the UK to produce chopped tomatoes (when the chopped tomatoes are exported back to the EU they are 'originating')

- **No bilateral cumulation in case of Article 43** (insufficient production)
- **No diagonal cumulation**

Cumulation in a third state with which both parties have an FTA

Example: a manufacturer who imports inputs from Japan into the UK (under the UK-Japan CEPA) will face tariffs when exporting the finished product to the EU

Claiming Preferential Treatment

- **Importer**

- Makes claim for preferential tariff treatment (PTT) based on *Article 54(2)*
- Claim must be included in the customs import declaration
 - Statement of origin that the product is originating by the exporter (*Article 56*) or Importer's knowledge that the product is originating (*Article 58*)
- Record-keeping requirement in *Article 59*

- **Exporter**

- Provides statement of origin (*Article 56*)
- Provides information that shows that the product is originating
- Bears responsibility of correctness of statement

Claiming Preferential Treatment, cont.

- **Verification** (*Article 61*)
 - Customs authority can conduct verification of whether a product is originating
Based on risk assessment (including random selection)
 - Request for information from the importer
 - Request for information from the other customs authority (*Article 62*)
- **Denial of PTT** (*Article 63*)
- Imposition of administrative measures and sanctions in case of breach (*Article 65*)

Non-Tariff Barriers

- **Import and Export Restrictions** (*Article 26*)
 - A party shall not adopt or maintain any prohibition or restrictions on the importation of any good of the other party (or on the exportation), except in accordance with *Article XI of GATT (1994)*
 - Prohibition of price restrictions or licensing requirements
- **National Treatment** (*Article 19*)
 - Each party shall accord national treatment to the goods of the other party in accordance with *Article III of GATT (1994)*

Non-Tariff Barriers, cont.

- UK (EU) goods must meet requirements (e.g. product standards) of the EU (UK) in addition to the UK (EU) requirements
 - But national treatment based on *Article 19* (no discrimination in respect of internal taxation and regulation)
- Mitigation measures
 - Sanitary and Phytosanitary (SPS) measures: *Articles 69-87*
 - Technical Barriers to Trade (TBT): *Articles 88-100, Annexes 11-15*
 - Customs and trade facilitation measures: *Articles 101-122*
 - Level Playing Field measures: *Articles 355-411*

Level Playing Field Provisions in Part 2: Heading One (Trade)

- **Areas**
 - Subsidy control; competition; state-owned enterprises; taxation; labour and social policy; environment and climate; other rules on trade and sustainability
 - Specific limitations for each area
- **Transparency provisions**
- **Enforcement**
 - Domestic enforcement mechanisms
 - Dispute Settlement under TCA (not for competition) with special procedures in LPF
 - Unilateral measures
- **Rebalancing Measures (*Article 411*)**

Northern Ireland

- The TCA does not apply to trade between the EU and Northern Ireland
- Trade is subject to the *Windsor Framework* as part of the Withdrawal Agreement
 - Northern Ireland applies EU internal market rules to ensure free trade (but VAT and excise duty adjustments; recognition of medicines approved in GB; restriction of EU subsidy control regime)
 - Some checks for trade between GB and NI
- Windsor Agreement seeks to ensure smooth flow of trade within the UK Internal Market
 - Green lanes and red lanes;
 - Recognition of medicines approved in GB
 - Supply of certain products (agrifood, parcels)

Northern Ireland

- **Trade between EU and NI**
 - No customs procedures or controls
- **Trade between GB and NI**
 - EU tariffs are applied to goods from GB by the UK on behalf of the EU unless those goods are not 'at risk' of moving to the EU (in particular Ireland)
 - Refund if it turns out that goods were not moved
 - When goods are 'at risk', it is to be decided by the joint committee
 - Checks when goods are at risk (red lane)
 - But simplified process of moving goods that are not 'at risk' (green lane)
 - Special framework for agrifood retail trade, parcel deliveries, and movement of pets
- **Trade between NI and GB**
 - Limited checks

Northern Ireland – Dispute Settlement and Safeguard measures

- **Dispute settlement options**
 - Infringement proceedings in CJEU or
 - Possibility of national courts to request a preliminary ruling from CJEU
- **Article 16: Safeguard Measures**
 - **Initiation**
 - Application of Protocol leads to serious economic, societal or environmental difficulties that are liable to persist or to diversion of trade
 - Unilateral action to take appropriate measures, but limited to what is strictly necessary (duration and scope)
 - Priority for those measures that least restrict the functioning of the Protocol
 - **Retaliation:** the other side can take rebalancing measures ‘as are strictly necessary to remedy the imbalance’

Northern Ireland – Stormont Brake (1)

- Set out in Article 13(3a) and (4), and Annex I of the Windsor Framework
- **Scope of application**
 - Applies when EU rules that apply in Northern Ireland are amended or replaced (separate process for new rules in Article 13(4) WF)
 - Applies only where the Stormont Executive has been restored and is operational (with a First Minister and Deputy First Minister), and Assembly is in regular session

Northern Ireland – Stormont Brake (2)

• Initiation

- Based on Petition of Concern: at least 30 MLAs from at least two parties notify UK government of their wish to apply the emergency break
- But notification can only be made under restrictive conditions
 - Notification is made in the most exceptional circumstances and as a last resort
 - Amended act significantly differs from original act and
 - amended act has a significant impact on an on-going basis on life of the communities in Northern Ireland
- Where those conditions are met, UK government notifies EU
 - Amended or replaced act does not apply in Northern Ireland
 - Joint Committee discusses to resolve the matter
 - Where the Joint Committee cannot agree to add the amended rule to the WF, “the Union shall be entitled, after giving notice to the United Kingdom, to take appropriate remedial measures”

Northern Ireland - Windsor Framework Agreement (summary)

- Amends and replaces the existing Northern Ireland Protocol
- Objective 1: To ensure the smooth flow of trade within the UK internal market
 - Simplified process of moving goods that are not 'at risk' from GB to NI
 - New framework for agrifood retail trade into NI
 - Simplified parcel deliveries into NI
- Objective 2: to safeguard Northern Ireland's place in the Union
 - VAT and excise duty adjustments
 - Recognition of medicines approved in GB and grace period for veterinary medicines
 - Simplified movement for a range of products and pets
 - Restricting the application of the EU subsidy control regime
- Objective 3: to address the democratic deficit
 - Removal of some EU law
 - Stormont brake
- Effects:
 - Allows for cooperation in a range of areas that are currently frozen (Horizon Europe)
 - UK withdraws NI Protocol Bill and EU Commission withdraws infringement proceedings

Future Developments

- **Reviews (selection)**

- Equivalence decisions for organics terminate 31 December 2023
- Wine review concludes 1 January 2024
- Rules of Origin for electric vehicles batteries change 1 January 2024
- Review of electric vehicles PSRs (Product Specific Rules) available 1 January 2025
- Aluminium quota review available 1 January 2026
- 30 June 2026: Adjustment period for access to waters ends
- 2027: Rules of Origin for electric vehicles batteries change again