

EU-UK Future Trade – Update October 2020

EU-UK FTA

The negotiations continue with the same main sticking points as before, e.g. fisheries and state aid. UK Government officials are aware that while fisheries are not a concern for our industries, most of the work of the Orgalim Trade Policy WG now relates to level-playing field issues, whether on subsidies, state-supported enterprises, CBAM or others so this is not an area that can be treated lightly. It appears clear that the previous hope to ratify an agreement at the EU Council of 15th October will not be achieved and it is likely that any agreement will not be made until November. This would not leave much time for ratification and still less for businesses to adjust to a new trading model. There is also the further obstacle of the UK Internal Market Bill, which diverges from Treaty commitments with regard to Northern Ireland and has prompted the early stages of a legal claim against the UK from the EU Commission. It is assumed that the removal of the offending clauses will be tied in with FTA agreement, but it is possible that an FTA will be agreed but its implementation will be delayed pending a resolution of this.

In any event, although we would very much wish to see an FTA agreed, the ambitions for something which allows for greatly streamlined trading processes between the EU and UK appear now to be gone, for the initial agreement at least. It is likely that the benefits for trade in goods will be restricted to zero-tariffs, bilateral cumulation for RoO and easier movement for business travel and posting of workers. Of course, while we would hope for more, these features alone would make a very substantial financial difference for our members compared to the no-deal scenario.

UK Tariffs

If an FTA is agreed, all indications are that it will be fully zero-tariff and zero-quota, which is very much welcomed compared to the effects of WTO MFN tariffs. If no FTA is agreed, the published UK Global Tariff will apply in replacement of the EU Common External Tariff.

Information on the UK Global Tariff can be found at <https://www.gov.uk/guidance/uk-tariffs-from-1-january-2021>

As you will see, for HS Codes 84 and 85, many tariffs are set at zero and others are at 2 or 4%. While the reductions from WTO MFN are welcomed, the imposition of even a small additional percentage will cause significant additional costs on some imports into the UK even for technical products. In some areas, such as agricultural goods and automotive, the tariff impacts will be much more substantial, making the need for a zero-tariff FTA all the more important.

A table has been prepared by UK Government to show some broad comparisons of UK Global Tariff and the CET:

	UK Global Tariff	Common External Tariff
Tariff free tariff lines (%)	47%	27%
Agriculture	23%	16%
Fish	8%	8%
Processed Agricultural Products	41%	29%
Industrial Goods	57%	31%
Average tariff (%)	5.7%	7.2%
Agriculture	16.1%	18.3%
Fish	11.0%	11.7%
Processed Agricultural Products	10.6%	15.9%
Industrial Goods	2.5%	3.7%

Non-Tariff Barriers

The UK Government approach to the UK-EU trade relationship has put the emphasis on regulatory autonomy it has been clear for some time that there will be no agreement for regulatory alignment. UK trade associations, along with Orgalim, promote strongly the highest level of regulatory cooperation and in particular the need to ensure one standard, one test, accepted everywhere.

As of January 2021, at least, all regulatory requirements in the UK will match those in the EU although some practical variances will apply. One point that may emerge from the FTA negotiations would be an MRA for conformity assessment, although this is currently resisted by the EU negotiators.

UKCA/CE Marking

Even if an MRA is agreed, the UK will have a new product marking for conformity assessment, the UKCA mark. This will replace CE marking to show regulatory compliance for 'New Approach' goods. Further information at <https://www.gov.uk/guidance/using-the-ukca-mark-from-1-january-2021>

Due to the provisions of the Northern Ireland Protocol to the UK Withdrawal Agreement, UKCA will not apply in Northern Ireland, where CE marking will continue. In addition, for 2021, CE marked goods will continue to be accepted as compliant in Great Britain and during 2022 it will be possible to apply the UKCA marking on an accompanying document with the goods, rather than directly affixing to the product itself. Further information at <https://www.gov.uk/guidance/placing-manufactured-goods-on-the-market-in-great-britain-from-1-january-2021>

Note that for multinational companies who currently place CE marked goods on the GB market with the name and address of the EU-based parent company Manufacturer only, the name and address of the UK subsidiary company may need to be added as the Importer from 1st January 2021. During 2021 (for CE marking) and 2022 (for UKCA marking) this can be on an accompanying document rather than directly affixed to the product.

Further steps may be needed for goods that are subject to mandatory third-party conformity assessment. UK Notified Bodies will become Approved Bodies after 2020 and will no longer be recognised for the purposes of CE marking. Existing certification by UK conformity assessment bodies will need to be re-issued by an EU NB to maintain the validity of CE marking. Once UKCA marking becomes mandatory for the GB market, existing EU NB certification may need to be re-issued by a UK Approved Body for UKCA purposes.

REACH

From 1st January, the UK will adopt a separate version of the chemicals regulation system, REACH. The substance of the regulations will remain the same, initially at least, but the processes for registration and databases involved will be UK-only. Further details at <https://www.gov.uk/guidance/how-to-comply-with-reach-chemical-regulations>

Ecodesign & Energy Labelling

The UK is currently consulting on the Ecodesign and Energy Labelling Regulations to apply from 2021: <https://www.gov.uk/government/consultations/draft-ecodesign-and-energy-labelling-regulations-2021>

The requirements from 1st January 2021 will remain the same as apply in the EU regime, with the exception that the Energy Label, which carries a European flag in the EU design, will need to have a UK Union Jack flag symbol for the UK regulations. It appears that it will be acceptable to supply both an EU and a UK label with a product.

Customs Processes

Although there is an aspiration in both the UK and EU FTA negotiation mandates for customs processes to be made more efficient and streamlined, any additional facilitation methods that might be proposed will not be ready to apply from January 2021. Both UK and EU exporters must assume that the customs processes and declarations will be in every way those that apply to any third-country import on the border.

UK Government assessments of the immediate impact at the UK border have been summarised in a “reasonable worst case scenario” document here, which foresees a risk of very substantial disruption, at least in the initial period, details at <https://www.gov.uk/government/publications/reasonable-worst-case-scenario-for-borders-at-the-end-of-the-transition-period-on-31-december-2020>

As noted, UK Customs procedures (in Great Britain at least) from 2021 will require the usual declarations that apply to any third-country trade. For the first 6 months, to reduce the impact on traders, the declarations can be deferred but they will need to be submitted up to 6 months after the date of import into GB. All internal records must be kept to allow the declarations to be made and for any tariffs and duties to be settled later. The UK government information is here: <https://www.gov.uk/guidance/declaring-goods-brought-into-great-britain-from-the-eu-from-1-january-2021>

Andrew Willman
BEAMA Director of Legal, Trade, Economics & Finance
andrew.willman@beama.org.uk