



Brussels, 23 December 2020
REV4 – replaces the notice (REV3) dated 11
December 2020¹

GUIDANCE NOTE

WITHDRAWAL OF THE UNITED KINGDOM AND EU RULES IN THE FIELD OF CUSTOMS, INCLUDING PREFERENTIAL ORIGIN

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¹ The main change in REV3 related to ongoing movements (The UK has informed Commission services that it is unable to maintain the existing electronic connection for ECS and ICS beyond 31 December). Another change concerns the identifier for goods under special procedures or temporary storage (cf. section 9 of this notice). The changes in REV4 concern almost exclusively the implementation of the IE/NI protocol (Part B of this notice).

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INTRODUCTION

Since 1 February 2020, the United Kingdom ('UK') has withdrawn from the European Union and has become a 'third country'.² The Withdrawal Agreement³ provides for a transition period ending on 31 December 2020. Until that date, EU law applies to and in the UK.⁴

During the transition period, the EU and the UK will negotiate an agreement on a new partnership, providing notably for a free trade area. However, it is not certain whether such an agreement will be concluded and will enter into force at the end of the transition period. In any event, such an agreement would create a relationship which in terms of market access conditions will be very different from the UK's participation in the internal market,⁵ in the EU Customs Union, and in the VAT and excise duty area.

Therefore, all interested parties, and especially economic operators, are reminded of the legal situation as of the end of the transition period, including the relevant separation provisions of the Withdrawal Agreement (Part A below). This note also explains the rules applicable to Northern Ireland after the end of the transition period (Part B below).

An annex to this note provides information on the preferences and rules of origin during the transition period.

Advice to stakeholders:

To address the consequences set out in this note, stakeholders are in particular advised to

- consider whether they need to obtain an EORI number from an EU Member State;
- consult their competent customs authority for further advice on their individual situation; and
- adapt input and supply chains to take account that UK input will be non-originating for the purposes of tariff preferences with third countries.

² A third country is a country not member of the EU.

³ Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, OJ L 29, 31.1.2020, p. 7 ("Withdrawal Agreement").

⁴ Subject to certain exceptions provided for in Article 127 of the Withdrawal Agreement, none of which is relevant in the context of this note.

⁵ In particular, a free trade agreement does not provide for internal market concepts (in the area of goods and services) such as mutual recognition, the "country of origin principle", and harmonisation. Nor does a free trade agreement remove customs formalities and controls, including those concerning the origin of goods and their input, as well as prohibitions and restrictions for imports and exports.

Please note:

This note does not address EU rules on

- tariff rate quota, and their management;
- prohibitions and restrictions;
- value-added tax;
- excise duties.

For these aspects, other notices are in preparation or have been published.⁶

A. LEGAL SITUATION AFTER THE END OF THE TRANSITION PERIOD, INCLUDING SEPARATION PROVISIONS OF THE WITHDRAWAL AGREEMENT⁷

After the end of the transition period, the EU rules in the field of customs, and in particular the Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code⁸ ('UCC'), including its supplementing and implementing acts no longer apply in the UK.⁹ This has in particular the following consequences:

1. ECONOMIC OPERATOR REGISTRATION IDENTIFICATION (EORI)

At the end of the transition period, UK EORI numbers will cease to be valid in the Union and will be invalidated in the relevant IT system EOS/EORI, including those UK EORI numbers linked to the ongoing operations covered by the Withdrawal Agreement.

- a) After the end of the transition period, the trade patterns of persons, **established in the Union**, who currently carry out transactions only with persons in the UK might change. While they are currently not involved in trade with third countries but only in intra-Union transactions, and hence have not been assigned an EORI number by any Member State, they will carry out transactions requiring customs formalities. This requires, according to UCC legislation, them to register with customs authorities in the Member State where they are established.

Those persons may submit the required data (Annex 12-01 UCC DA¹⁰) or undertake the necessary steps for the registration already before the end of the transition period.

- b) Two categories of persons currently **established in the UK or registered with a UK EORI number** need to be distinguished:

⁶ https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/future-partnership/preparing-end-transition-period_en

⁷ Unless otherwise specified, the explanations provided in this Part relate to the UK excluding Northern Ireland.

⁸ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code, OJ L 269, 10.10.2013, p. 1.

⁹ Regarding the applicability of the UCC in Northern Ireland, see Part B of this notice.

¹⁰ Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code (OJ L 343, 29.12.2015, p. 1).

- Persons who are currently not involved in trade with third countries but only in intra-Union transactions, and who hence have not been assigned an EORI number by any Member State, but as of the end of the transition period intend to carry out transactions requiring customs formalities, which, according to UCC legislation, requires them to be registered with a customs authority of a Member State.
- Persons, including third country operators, who have a currently valid EORI number assigned by the UK customs authority which will be invalid in the Union as of the end of the transition period.

In this case, they must be aware of the fact that they have to register with the competent customs authority in a Member State and to use the new EORI number as of the end of the transition period.

After the end of the transition period, persons established in the UK or in another third country, who have a permanent business establishment in a Member State as defined in Article 5(32) UCC, have to register according to Article 9(1) UCC with the customs authorities in the Member State where the permanent business establishment is situated. Persons who do not have a permanent business establishment in a Member State, have to register according to Article 9(2) UCC with the competent customs authority in a Member State responsible for the place where they first lodge a declaration or apply for a decision; in addition, those economic operators need to appoint a tax representative, where required by current legislation.

Also those persons may submit the required data (Annex 12-01 UCC DA) or undertake the necessary steps for the registration already before the end of the transition period. Customs authorities of the Member States should accept requests already before the end of the transition period and assign to them EORI numbers. As economic operators can have only one EU EORI number valid at the time, the new EU EORI numbers of persons having a valid UK EORI number until the end of the transition period can only be valid after the end of that period (i.e., with the date following the date of the end of the transition period or thereafter as the "start date of EORI number").

2. CUSTOMS DECISIONS

2.1 Authorisations

The impact of the end of the transition period on authorisations depends on the type of authorisation including the issuing customs authority, the holder of the authorisation and the geographical coverage.

Authorisations granted by UK customs authorities

As a rule, any authorisations already granted by UK customs authorities are no longer valid in the Union as of the end of the transition period.¹¹ The UK customs authorities are no longer an EU competent customs authority as of that date.

¹¹ For exceptions, see the subsection below on Authorisations related to ongoing movements of goods under the Withdrawal Agreement and part B Applicable rules in Northern Ireland after the end of the transition period.

As the UK accedes to the Convention on a common transit procedure¹² (CTC) as a Contracting Party in its own right as of the date following the end of the transition period, authorisations granted by the UK for transit simplifications¹³ will no longer be valid in the EU Customs Decisions system, but need to be treated in the UK's national system as a Contracting Party to the CTC. Where then the UK communicates to the Member States which of those authorisations continue to be valid within the framework of the CTC the Member States are to accept those authorisations as valid.

Authorisations granted by the customs authorities of the Member States

In general, authorisations granted by the customs authority of a Member State will remain valid but need to be amended by the customs authority on their own initiative or following an application to amend from the economic operator in view of the geographical coverage or elements of the authorisation related to the UK.

However, authorisations granted to economic operators with UK EORI numbers are no longer valid in the Union as of the end of the transition period¹⁴, unless the economic operator has an establishment in the Union, has the possibility to obtain an EU EORI and to apply for an amendment of the authorisation to include the new EU EORI instead of the UK EORI number. Where an authorisation cannot be amended by replacing the UK EORI by an EU EORI, the economic operator should apply for a new authorisation with his new EU EORI.

The authorisations granted to economic operators with EU EORI numbers, which are currently also valid in the UK need to be amended in order to take account of the end of the transition period and the corresponding geographical coverage, e.g. in the authorisation concerning the Regular Shipping Service, the UK ports will have to be deleted, except for ports located in Northern Ireland.

A Single Authorisation for Simplified Procedures (SASP) which today covers the UK and one Member State will no longer be valid as of the end of the transition period. Nonetheless, it might be amended and could become a national authorisation. Where a SASP authorisation covers the UK and more than one Member State, that authorisation remains valid if the supervising customs office is situated in a Member State, but needs to be amended. In case the SASP authorisation covers simplified declarations, it should be noted that the economic

¹² OJ L 226, 13.8.1987, p. 2, as last amended by Decision 1/2017, OJ L 8, 12.1.2018, p 1.

¹³ Authorisations for comprehensive guarantee including waiver and authorisations to use the electronic transport document (ETD) as a transit declaration for goods carried by air as authorisations with a link to the EU.

The use of the comprehensive guarantee requires a recalculation of the reference amount due to the changes of the customs status of the goods to be covered under common transit.

¹⁴ For exceptions, see the subsection below on Authorisations related to ongoing movements of goods under the Withdrawal Agreement.

operator needs to submit the supplementary declaration covering also the UK only for the period until the end of the transition period¹⁵.

Where under an authorisation to use the comprehensive guarantee the holder uses a guarantee undertaking with a guarantor established in the UK, that undertaking is not valid any longer and may not be used to cover any new customs operations. The holder has to replace that undertaking by an undertaking which fulfils the conditions set out in Articles 94 and 95 UCC, including the condition of establishment in the Union.

The use of the comprehensive guarantee requires a recalculation of the reference amount due to the changes of the customs status of the goods or where part of it is valid in the UK only (the reference amount is split in accordance with Article 8 UCC TDA).

Economic operators who currently do not require authorisations but whose situation will change as of the end of the transition period need to apply for the relevant authorisation. Operators who are currently holders of authorisations granted by UK customs authorities and who consider that they continue to meet the UCC requirements as of the end of the transition period need to apply for the relevant authorisations with the customs authorities of a Member State. The applications may already be submitted in advance of the end of the transition period to allow the competent customs authority to prepare taking the decision. In any case, the decision is only to take effect as of the day following the end of the transition period at the earliest.

This applies also to economic operators who are currently registered with a UK EORI, and have an EU Member State EORI number with a future starting date. In their case, however, the Customs Decision System (CDS) does not accept an EORI number, which will become valid only in the future, while it allows for a future validity date of the authorisation. Consequently, applications for authorisations, which are covered by CDS¹⁶ and submitted by those economic operators, have to be dealt with outside CDS. As of the day following the end of the transition period, when the EORI becomes valid, the authorisation is to be entered into the system.

Authorisations related to ongoing movements of goods under the Withdrawal Agreement

The authorisations granted by the UK customs authorities or authorisations granted by the customs authorities of the Member States to operators holding a UK EORI number will continue to be valid exceptionally and exclusively when linked to the ongoing situations and procedures as referred to in Article 49(1) of the Withdrawal Agreement.

The authorisations are therefore to be considered as valid provided for that purpose until the situation is ended or the procedure discharged or the corresponding time-

¹⁵ Should the transition period be extended and not end at the end of a calendar month, a separate supplementary declaration covering the remaining Member States only has to be made for any remaining days of that calendar month.

¹⁶ See Article 5 of Implementing Regulation 2017/2089, OJ L 297, 15.11.2017, p. 13.

limits set out in Annex III to the Withdrawal Agreement have expired, whichever is earlier.

2.2 Decisions relating to binding tariff information (BTI decisions)

A decision relating to binding tariff information (BTI decision) is a decision by a customs authority taken upon application, which provides its holder with the tariff classification of goods prior to an import or export procedure. The BTI decision is binding on all customs authorities of the Member States and on the holder of the decision.

The BTI decisions already issued by the customs authorities of the UK will no longer be valid¹⁷ in the Union as of the end of the transition period.

The BTI decisions issued by the customs authorities of the Member States to holders with UK EORI numbers will no longer be valid as of the end of the transition period, as the EORI numbers will no longer be valid in the customs territory of the Union and as BTI decisions may not be amended (Article 34(6) UCC). This will be reflected automatically in the EBTI-3 system. Those BTI decision holders are to register with the customs authorities in accordance with Article 9(2) and (3) UCC and Article 6 UCC DA to obtain a valid EORI number before applying for a new BTI decision in the Union. The applicant could request a reissuing of his previous BTI decision by including a reference thereto in the application form.

2.3 Decisions relating to binding origin information (BOI decisions)¹⁸

A decision relating to binding origin information (BOI decision) is a written decision by a customs authority taken upon application, which provides its holder with a determination of the origin of goods prior to an import or export procedure. The BOI decision is binding on all customs authorities of the Member States and on the holder of the decision.

The BOI decisions already issued by the customs authorities of the UK will no longer be valid in the Union as of the end of the transition period.

In addition, with a view to taking BOI decisions as of the end of the transition period, the customs authorities of the Member States are not to consider UK inputs (materials or processing operations) as having an 'EU origin' (for non-preferential purpose) or being 'originating in the EU' (for preferential purpose) for the determination of the origin of goods incorporating those inputs.

The BOI decisions issued by the customs authorities of the Member States to holders with UK EORI numbers will no longer be valid after the end of the transition period, as the EORI numbers will no longer be valid in the customs territory of the Union and as BOI decisions may not be amended (Article 34(6)

¹⁷ For exceptions, see part B Applicable rules in Northern Ireland after the end of the transition period.

¹⁸ For the purpose of BOI decisions, Northern Ireland content, as the content of the rest of the UK is to be considered as non-originating as of the end of the transition period.

UCC). Those BOI decision holders have the possibility to register with the customs authorities to obtain a valid EORI number before applying for a new BOI decision in the Union.

BOIs issued before the end of the transition period referred to goods including UK inputs (materials or processing operations) which were determinant for the acquisition of origin will no longer be valid as of the end of the transition period.

3. BAGGAGE TAGS

A baggage tag as set out in Annex 12-03 UCC IA¹⁹ may be affixed on hold baggage, which is scheduled to leave the UK with an aircraft before the end of the transition period, but arrives at an EU airport after that date.

4. PREFERENTIAL ORIGIN ASPECTS²⁰

As of the end of the transition period, the UK no longer forms part of the customs territory of the Union. Consequently, UK content (material or processing operations) is 'non-originating' under EU preferential trade arrangements for the determination of the preferential origin of goods incorporating that content.²¹

EU exporters and producers making out or applying for a proof of origin to export to a partner country²² are in particular advised to take account of UK input being 'non-originating' for any export effected after the end of the transition period.

EU importers claiming preferential treatment in the EU (based on a free trade agreement (FTA) or on an autonomous preference regime such as the General System of Preference) are advised to ensure that third country exporters are able to prove that the goods comply with the requirements on preferential origin, taking account of the consequences of the withdrawal of the UK.

Suppliers in EU Member States providing the exporter or the trader with the information necessary to determine the preferential origin of the goods through supplier's declarations should inform the exporters and traders of the changes on the originating status of the goods supplied before the end of the transition period and for which they provided such supplier's declarations.

¹⁹ Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 343, 29.12.2015, p. 558–893).

²⁰ For the purpose this section on Preferential origin aspects, Northern Ireland content, as the content of the rest of the UK is to be considered as non-originating after the end of the transition period.

²¹ In relation to UK Overseas Countries and Territories (Annex II TFEU), UK OCT content (material and work or processing) cannot be used for cumulation proposes in other relevant EU partners after the end of the transition period.

²² As part of the EU common commercial policy, the EU has also preferential trade arrangements in the Generalised Scheme of Preferences (http://ec.europa.eu/trade/policy/countries-and-regions/development/generalised-scheme-of-preferences/index_en.htm). With regard to the issues set out in this note (effect of United Kingdom input when determining the preferential origin for tariff treatment), the preferential tariff treatments in the Generalised Scheme of Preferences may be in practice less relevant than Free Trade Agreements. However, for the sake of completeness, both aspects are addressed in this note.

In the case of long-term supplier's declaration, the suppliers in EU Member States should inform the exporter or trader if the long-term supplier's declaration is not valid any longer as of the end of the transition period for all or some consignments covered by the long-term supplier's declaration.

4.1 Establishing preferential origin²³ for the purpose of EU preferential arrangements

Without prejudice to sub-section 4.2, goods imported into the Union from the UK after the end of the transition period become non-originating goods for the purposes of their use under EU preferential arrangements. This means the following:

- Goods produced in the UK, even if before the end of the transition period, if relocated to the Union or imported into the Union from the UK after the end of the transition period, are not considered as EU originating for the purposes of their use under EU preferential arrangements.
- Goods produced in the EU before the end of the transition period, if located in the UK before the end of the transition period and imported into the Union after the end of the transition period, are not considered as EU originating for the purposes of their use under EU preferential arrangements and in accordance with the principle of territoriality.
- Goods originating in EU preferential partner countries and imported into the UK before the end of the transition period in accordance with the preferences provided by EU preferential trade arrangements, if imported into the Union from the UK after the end of the transition period, are not considered as originating in the corresponding partner country. These goods can therefore not be used for cumulation purposes with that partner country (bilateral cumulation) or with other partner countries (diagonal cumulation) under the EU preferential arrangements.

4.2 Requirements for direct transportation/non-manipulation

EU originating goods **exported** after the end of the transition period **from the Union via the UK into a third country** with which the Union has a preferential arrangement may be entitled for preferential treatment in that third partner country, provided that the provisions on direct transport/non-manipulation contained in the origin provisions of the relevant EU preferential arrangement are respected.

Similarly, goods originating in a third partner country **imported** after the end of the transition period **from that partner country into the EU via the UK** may be entitled for preferential treatment in the EU provided that the provisions on direct transport/non-manipulation contained in the origin provisions of the relevant EU preferential arrangements are respected.

²³ References to "originating" or "non-originating" in this section should be considered only in relation to preferential origin.

4.3 Proofs of origin²⁴

Proofs of origin issued/made out before the end of the transition period

- Proofs of origin issued/made out in the EU or in the UK

Proofs of origin issued/made out in the EU in relation to goods with a UK content or in the UK before the end of the transition period are to be considered as valid proof of origin, **provided that the export of the consignment has been effected or ensured before the end of the transition period.**²⁵

The validity is limited to the period established under the relevant EU trade preferential arrangements, for the purpose of being used at importation in the partner country in accordance with the relevant provisions of the EU preferential arrangements.

However, EU preferential partner countries may question such proofs of origin and request verification when they accompany goods imported in the preferential partner countries after the end of the transition period. In those cases, the EU27 Member State customs authorities will reply to verification requests, in accordance with the possibilities available to them to confirm the originating status of the goods or the authenticity of those proofs. For those purposes, the EU origin is to be determined at the time when the exportation was effected, in light of the principle described in the first paragraph above.

- Proofs of origin issued/made out in the EU preferential partner countries

Proofs of origin issued or made out in EU preferential partner countries before the end of the transition period in relation to goods with UK content will be considered as valid proof of origin during its period of validity in the Union, provided the export of the consignment has been effected or ensured before the end of the transition period.

However, goods with EU origin incorporating UK content relevant for the acquisition of origin imported in the EU preferential partner countries and accompanied by a valid EU proof of origin may not be used in the EU preferential partner countries for cumulation purposes as of the end of the transition period.

²⁴ Proofs of origin issued or made out: certificates of origin issued, invoice declarations, origin declarations and statement on origin made out.

²⁵ EU preferential partner countries may question such proofs of origin and request verification when they accompany goods imported in the preferential partner countries as of the end of the transition period. In these cases, the EU Member State customs authorities will reply to verification requests in accordance with the possibilities available to them to confirm the originating status of the goods or the authenticity of those proofs.

Proofs of origin²⁶ issued/made out after the end of the transition period

In specific cases, specific types of proof or origin may be issued/made out after the end of the transition period for exportations, which were effected before the end of that period:

- Duplicate movement certificates

A duplicate movement certificate may be issued after the end of the transition period at the request of an EU exporter in relation to an original movement certificate issued by the customs authorities of the Member States before the end of that period.

- Movement certificates issued retrospectively

A movement certificate may be issued retrospectively after the end of the transition period at the request of an EU exporter where the goods were exported before the end of that period.

- Retrospective origin declarations, statements on origin and invoice declarations

An EU exporter may make out an origin declaration after the end of the transition period where the goods were exported before the end of that period.

4.4 Supplier's declarations for preferential trade purposes

Supplier's declarations are supporting documents on the basis of which proofs of origin can be issued or made out. As of the end of the transition period, they can be relied upon for the issuance of proofs of origin on the condition that they do not consider UK content for the acquisition of origin.

Exporters and competent customs or other competent authorities issuing or making out proofs of origin after the end of the transition period are required to ascertain whether supplier's declarations meet the conditions at the time the proof is issued / made out and the exportation effected.

As of the end of the transition period, supplier's declarations made out by UK suppliers before the end of the transition period may not be used for the purposes of issuing or making out proofs of origin in EU Member States.

4.5 Approved exporters

With respect to approved exporters for the purposes of making out invoice declarations or origin declarations in accordance with the relevant provisions on preferential origin of the Union the following applies:

- Authorisations granted by UK customs authorities to exporters and re-consignors to be approved exporters are no longer valid in the Union as of the end of the transition period.

²⁶ Proofs of origin issued or made out; certificates of origin issued; self-certification.

- Authorisations granted by the customs authorities of the Member States to exporters and re-consignors established in the UK are no longer valid in the Union as of the end of the transition period.
- Authorisations granted by the customs authorities of the Member States to exporters and re-consignors established in the Union with a UK EORI number are no longer valid in the Union as of the end of the transition period.
- EU approved exporters and re-consignors established in the Union should inform the concerned national customs authority regarding changes on the fulfilment of the conditions subject to which they were authorised, considering that UK content will be non-originating as of the end of the transition period. Accordingly, the customs authorities of the Member States which authorised those exporters and re-consignors as approved exporters will amend or withdraw the authorisation as appropriate.

4.6 Registered exporters (REX)

With respect to registered exporters (REX) for the purposes of making out statements on origin or origin declarations in accordance with the relevant provisions on preferential origin of the Union:

- Registration by UK customs authorities of exporters and re-consignors in REX are no longer valid in the Union as of the end of the transition period.
- Registrations by the customs authorities of the Member States to exporters and re-consignors established in the UK are no longer valid in the Union as of the end of the transition period.
- Registrations by the customs authorities of the Member States to exporters and re-consignors established in the Union with a UK EORI number are no longer valid in the Union as of the end of the transition period.
- EU registered exporters and re-consignors established in the Union should inform immediately the concerned national customs authority on any relevant change relating to information they provided for the purposes of their registration. Accordingly, the customs authorities of the Member States which have registered those exporters and re-consignors will revoke the registration if the conditions for being registered are no longer met.

4.7 Origin quota derogations established in certain EU FTAs

Since origin quota derogations are covered by Article 56(4) UCC, the same rules as those for tariff quotas will apply.

5. ENTRY OF GOODS INTO THE CUSTOMS TERRITORY OF THE UNION

5.1 Entry summary declaration (ENS)

Goods brought from the UK into the customs territory of the Union after the end of the transition period are to be covered by an entry summary declaration (ENS), where required, which has to be lodged within the time-limits set out in the

UCC DA²⁷. That covers also the goods moving between two points in the customs territory of the Union via the UK. A transit declaration comprising all security and safety data may be used, where possible, to comply with ENS requirements and subject to time-limits being respected, e.g. where common transit is used. For details on ENS requirements for specific transit or export scenarios, depending on the location of the goods at the end of the transition period, please see section 7.1 Transit and section 8.2 Export and re-export, respectively.

According to Article 48(1) of the Withdrawal Agreement, an ENS lodged at the customs office of first entry in the UK before the end of the transition period for goods arriving only after the end of that period, remains valid for subsequent ports or airports in the Union (or vice versa). Therefore, economic operators having lodged an ENS at the UK customs office of first entry by the time-limits set out in the UCC DA will have complied with their legal obligation.

However, the UK has informed Commission services that it is unable to maintain the existing Import Control System beyond 31 December; other Member States will thus not be able to retrieve information on those ENS lodged in the UK before the end of the transition period.

Economic operators are therefore advised to consult with the Member States how to proceed. After the end of the transition period, in order to ensure that a proper risk analysis can be conducted, some Member States will request that a new ENS is lodged at the customs office of the first point of entry in the EU at the latest upon arrival of the goods therein. By contrast, other Member States may proceed with processing the goods for subsequent customs formalities without requesting a new ENS and perform the necessary security and safety risk analysis based on the temporary storage declaration or the customs declaration for the subsequent customs procedure.

In the case of diversions (i.e., goods that were meant to arrive first to the UK but are diverted and arrive instead in the Union after the end of the transition period), the actual customs office of first entry in the Union will not receive the ENS that have been lodged before the end of the transition period with the customs office of first entry in the UK, unless the diversion notification was lodged and processed before the end of the transition period. In those situations, a new ENS is to be lodged.

In the specific cases where goods leave the UK directly for the Union before the end of the transition period and arrive in the customs territory of the Union after the end of that period, no ENS is required.

5.2 Temporary storage of goods (TS)

Authorisations granted by the customs authorities of the Member States including the possibility to move goods to a TS facility in the UK will have to be amended to exclude such possibility as of the end of the transition period.

²⁷ Articles 105 to 111 UCC DA. Article 105 UCC DA is amended to provide that the ENS covering goods brought by sea from all UK ports must be lodged at the latest 2 hours before the arrival to the Union.

Based on Article 49(1) of the Withdrawal Agreement, the UCC will apply to goods for which a TS declaration was lodged before the end of the transition period and which are located in the UK customs territory at the end of that period. Those goods will have to be placed under a customs procedure or re-exported within the 90-day time-limit set out in Article 149 UCC. In case of non-compliance, a customs debt will be incurred according to Article 79 UCC. Where the TS declaration lodged before the end of the transition period for goods located in the UK is invalidated after the end of the transition period (e.g. as the non-Union goods were not actually presented to customs according to Article 146(2) UCC), the UCC will only apply if the goods were actually in the Union before the end of the transition period.

In accordance with the second subparagraph of Article 49(1) of the Withdrawal Agreement, movements of goods between the Union and the UK according to Article 148(5)(b) and (c) UCC are not allowed, where they would end only after the end of the transition period.

Where goods in TS covered by an authorisation for the operation of TS facilities granted by the UK customs authorities arrive at the EU border after the end of the transition period, those goods will be treated as non-Union goods brought to the customs territory of the Union from a third country.

Where goods in TS arrive in the Union already before the end of the transition period, but their movement to an EU TS facility is intended to continue after that date, that movement will not be covered by a valid authorisation. Therefore, the TS situation for those goods covered by a non-valid authorisation should end before the end of the transition period (e.g. by placing the goods under a customs procedure or re-exporting them). Where due to exceptional circumstances the temporary storage for those goods cannot end before the end of the transition period, it should end without delay as soon as those circumstances have ended. If such regularisation does not take place, there will be a non-compliance of the obligations laid down in the customs legislation concerning the introduction of non-Union goods into the customs territory of the Union and therefore Article 79 UCC will apply, i.e. a customs debt due to non-compliance will be incurred.

5.3 Customs status of goods

Requirements of Article 47(1) and (2) of the Withdrawal Agreement

Union goods which are moving as intra-Union movement from the UK to the Union or vice versa around the end of the transition period may still be treated as an intra-Union movement, subject to the fulfilment of the requirements set out in Article 47 of the Withdrawal Agreement. This will equally apply to Union goods moving between two points in the customs territory of the Union via the UK.

According to Article 47(2) of the Withdrawal Agreement, the following is to be proven by the person concerned when those goods arrive at the respective border between the Union and the UK: (i) that those movements have started before the end of the transition period and ended thereafter; and (ii) that the goods have the

customs status of Union goods²⁸. The means of proof of the customs status of Union goods to be used for that purpose are set out in Article 199 UCC IA.

The proof of the start of the movement prior to the end of the transition period is to be provided by a transport document or any other document showing the date when the movement, which covers the border-crossing part, has started. This would in most cases be the date the carrier took over the goods for the transport; other cases may be where the goods are taken over by a freight forwarder who takes over the responsibility of the goods and who then later subcontracts a carrier. In the latter case, the economic operator will possibly not have any control over the timing of the transport; nonetheless, where he intends to make use of the Withdrawal Agreement for the respective movement of goods, he should provide a proof of status to the freight forwarder. Examples of transport documents are: CMR document, CIM consignment note, bill of lading, multimodal bill of lading, or air waybill.

Customs formalities applicable to goods entering the Union from the UK

Where an economic operator bringing goods from the UK to the customs territory of the Union after the end of the transition period, when presenting the goods to customs at the border between the UK and the Union after the end of that period, can provide proof that the goods are Union goods and that the movement started in the UK or in an EU Member State before the end of the transition period, those goods must be treated as Union goods, i.e. in free circulation in the customs territory of the Union, and do not need to be placed under a customs procedure.

Where, when arriving at the border between the Union and UK after the end of the transition period, the economic operator cannot provide the respective proofs, those goods will be treated as third country goods, i.e. the respective customs debt, VAT and excise duties, where applicable, will have to be paid when those goods are released for free circulation in the customs territory of the Union. Where applicable, import licenses will be required for those ongoing movements without proofs.

As explained further below, where required, goods brought from the UK into the customs territory of the Union after the end of the transition period are to be covered by an entry summary declaration (ENS).

Customs formalities applicable to goods exiting the Union to the UK

Where an economic operator takes Union goods out of the Union to the UK, and when presenting the goods to customs at the border after the end of the transition period he can provide the proof of their Union status and of the start of their movement before the end of the transition period, the customs authorities shall

²⁸ Article 47(2) of the Withdrawal Agreement sets out that the presumption of the customs status of Union goods in Article 153(1) UCC will no longer apply to the ongoing movements of goods between the UK and the EU. As long as those goods remain in the respective customs territory – of the Union or of the UK, respectively, no proof of the customs status of Union goods will be required. The non-application of the presumption steps in when the goods cross the border between the EU and the UK as of the end of the transition period.

treat that movement as an intra-Union movement. Therefore, those goods do not need to be placed under an export procedure for their exit from the Union.

As set out further below, where required, goods leaving the customs territory of the Union for the UK after the end of the transition period are to be covered by a pre-departure declaration. Member States may decide not to require those declarations for goods be taken out of the Union under Article 47(1) and (2) of the Withdrawal Agreement as set out below.

Where, when arriving at the border between the Union and UK after the end of the transition period, the economic operator cannot provide the respective proofs, those movements will be treated as an export for customs, VAT and excise purposes and the relevant formalities must be fulfilled before taking the goods out of the customs territory (export declaration and/or pre-departure declaration, as applicable). Export licenses²⁹ will also be required, where applicable.

Origin aspects

Where goods keep their customs status of Union goods, i.e. as set out above, where Union goods are moving between the EU and the UK at the end of the transition period and fulfil the criteria of Article 47(2) of the Withdrawal Agreement, those goods will be considered as originating for the purposes of their use under EU preferential arrangements, provided that the necessary documents to prove the origin of the goods are available according to the provisions of the concerned EU preferential regime, in the following two situations: (i) where those goods were goods produced in the EU and located in the UK at the end of the transition period; or (ii) where those goods originating in EU preferential partner countries were imported into the UK before the end of the transition period. This will equally apply also to Union goods moving between two points in the customs territory of the Union via the UK.

Goods carried by air under a single transport document (STD)

According to Article 47(3) of the Withdrawal Agreement, where Union goods are carried by air and have been loaded or transhipped at a Union airport for consignment to an UK airport or vice versa, and are carried under a single transport document (STD) according to Article 119(2)(a) UCC DA issued in a Member State or in the UK and that movement starts before the end of the transition period and arrives at the respective other airport after the end of the transition period, those goods will keep their Union status and no proof of the customs status of Union goods will be required. This will be practically relevant only for aircrafts leaving in the late hours before 00:00 CET on the date of the end of the transition period on a direct flight to the respective other airport and arriving there after 00:00 CET on the day following the end of the transition period.

²⁹ Cf. Notice to stakeholders on Prohibitions and restrictions of imports/exports, incl. import/export licences and the related specific notices on various prohibitions and restrictions

Goods carried by sea

Concerning the Regular Shipping Service (RSS), Article 47(4) and (5) of the Withdrawal Agreement cover voyages which have started before the end of the transition period, call at a UK port during the voyage, and end after the end of that period.

Where an RSS vessel has during an ongoing voyage called at UK port(s) before the end of the transition period, the customs status of Union goods transported on the RSS vessel is covered by the RSS and will not be altered. The same applies to Union goods loaded before the end of the transition period and unloaded in any ports thereafter, even where the RSS vessel has during an ongoing voyage called at any UK port(s) after the end of that period.

Where an RSS vessel has during an ongoing voyage called at UK port(s) after the end of the transition period, a proof of the customs status of Union goods will be required upon unloading for any Union goods loaded in any UK or Union ports called at after the end of that period. The means of proof of the customs status of Union goods which are to be used for that purpose are those set out in Article 199 UCC IA. This means that if an RSS vessel calls at a UK port after the end of the transition period, the RSS authorisation cannot be invoked any longer for the remaining part of the ongoing voyage.

5.4 Relief from import duty

Returned goods

Where Union goods were temporarily exported from the UK before the end of the transition period and are re-imported in the Union after the end of that period complying with the conditions established in Article 203 UCC, those goods are to be considered returned goods and hence be imported with total relief. Union goods are brought from the Union to the UK before the end of the transition period and where then such goods move back to the Union after the end of that period, the provisions on returned goods referred to in Article 203 UCC apply if the economic operator can provide evidence that the Union goods:

- were transported to the UK prior to the end of the transition period; and
- return in an unaltered state in accordance with Article 203(5) UCC and Article 158 UCC DA.

Please note that the end of the transition period is not one of the special circumstances that would allow exceeding the three-year period referred to in Article 203(1) UCC.

The transport documents should serve as proof that the Union goods were taken to the UK prior to the end of the transition period, if necessary, accompanied by other relevant documents (e.g. a lease contract). Where applicable, proof that the state of the goods has not been altered may be required.

Duty Relief Regulation

Concerning the duty relief for personal property belonging to natural persons transferring their normal place of residence from a third country to the Union, Article 5 of the Duty Relief Regulation (DRR)³⁰ foresees a continuous period of at least twelve months at a normal place of residence outside the customs territory of the Union for duty-free treatment.

For that personal property as well as for other categories of goods covered by the DRR, e.g. goods imported on the occasion of a marriage set out in Article 12 DRR, the requested periods, e.g. the period of residence, may include also the period prior to the end of the transition period for the purpose of application of the DRR.

6. RELEASE FOR FREE CIRCULATION

The UCC will continue to apply in accordance with Article 49(1) of the Withdrawal Agreement to goods located in the UK customs territory for which the UK customs authorities accepted a customs declaration for release for free circulation before the end of the transition period, but which are released only after the end of that period. This may happen since the verification took some time, e.g. as the declarant had to provide additional documents or customs was awaiting the results of a laboratory analysis (Articles 77(1)(a), 188, 194 UCC).

Where a customs declaration for release for free circulation is invalidated after the end of the transition period and the goods were previously in TS, the goods declared in the invalidated customs declaration are considered to be in TS as of the date of acceptance of the customs declaration for release for free circulation, i.e. before the end of the transition period, and hence the UCC will apply to them. If such an invalidated customs declaration for release for free circulation covers goods which were previously placed under another customs procedure (e.g. customs warehousing), the goods declared will be considered to be in such customs procedure as of before the end of the transition period.

7. SPECIAL PROCEDURES

7.1 Transit

Union/common transit procedures³¹

As of the end of the transition period, the UK accedes to the Convention on a common transit procedure³² (CTC) in its own right, hence it may use common transit and continue to have access to the New Computerised Transit System (NCTS) and other related IT systems as a Contracting Party to the CTC. Consequently, the transit operations ongoing at the time of the end of the transition period are to continue in the NCTS.

³⁰ Council Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty, OJ L 324, 10.12.2009, p. 23.

³¹ DG TAXUD has published Annex I Brexit Transit Business Scenarios with practical examples for transit movements, as described in this section.

³² OJ L 226, 13.8.1987, p. 2, as last amended by Decision 1/2017, OJ L 8, 12.1.2018, p 1.

Situations where goods were released for a transit procedure in the Union or in a common transit country or in the UK and are located in the UK at the end of the transition period

Where the goods moving under transit will be located in the UK at the end of the transition period, the UCC will continue to apply to those scenarios in accordance with Article 49(1) of the Withdrawal Agreement. Alternatively, economic operators may in those situations, where the transit operation should end outside the UK, continue the respective transit under the CTC, as described for situations not covered by the Withdrawal Agreement.

- a) Where goods are placed under a Union transit procedure or under a common transit procedure in a common transit country with destination in the UK and where those goods are already located in the UK at the end of the transition period, the transit movement will continue as Union transit to the customs office of destination.
- b) Where goods are placed under a Union transit procedure in the UK with destination in the Union or in a common transit country and those goods are still located in the UK at the end of the transition period, the transit movement will continue as Union transit to the destination in the Union or in the common transit country. At the customs office of entry in the Union, the transit accompanying document (TAD) or the transit/security accompanying document (TSAD) with the movement reference number (MRN) of the transit operation prove that the transit operation is covered by the Withdrawal Agreement. An ENS has to be lodged for security and safety purposes, unless the particulars necessary for the ENS have already been provided with the transit declaration at the customs office of departure, and the obligation has therefore been fulfilled, or the obligation to lodge an ENS is waived under the UCC.
- c) Where goods move between a customs office of departure in a Member State or in a common transit country via the UK to a customs office of destination in a Member State or in a common transit country and those goods are located in the UK at the end of the transition period, the transit movement will continue as Union transit to its destination. At the customs office of entry in the Union, the TAD/TSAD with the movement reference number (MRN) of the transit operation prove that the transit operation is covered by the Withdrawal Agreement. An ENS has to be lodged, unless the particulars necessary for the ENS have already been provided with the transit declaration or the obligation to lodge an ENS is waived under the UCC.

To any enquiry or recovery procedures related to those transit movements, the UCC provisions on enquiry and recovery apply.

Situations where goods were released for a transit procedure in the Union or in a common transit country or in the UK, are moving to, from or via the UK and are not located in the UK at the end of the transition period

- a) Goods moving under a transit operation from a customs office of departure in the Union or in a common transit country **to a customs office of destination in the UK**

Where goods are placed under a Union transit procedure in the Union or under a common transit procedure in a common transit country with destination in the UK and those goods are still located in the Union at the end of the transition period, that Union transit procedure will continue as a common transit procedure in the UK. The customs office of entry in the UK will play the role of a customs office of transit, i.e. it is to request the relevant data from the customs office of departure and fulfil all tasks of a customs office of transit. At the external EU border an exit summary declaration (EXS) has to be lodged for security and safety purposes, unless the particulars necessary for risk analysis for security and safety purposes have already been provided with the transit declaration at the customs office of departure, and the obligation has therefore been fulfilled, or the obligation to lodge a pre-departure declaration is waived under the UCC.

- b) Goods moving under a transit operation **from a customs office of departure in the UK** to a customs office of destination in the Union or in a common transit country

Where goods are placed under a Union transit procedure in the UK with destination in the Union or in a common transit country and those goods are already located in the Union at the end of the transition period, that transit procedure continues to the destination in the Union or in the common transit country.

- c) Goods moving under a transit operation **via the UK**

Where goods move between a customs office of departure in a Member State or in a common transit country via the UK to a customs office of destination in a Member State or in a common transit country and those goods are still located in the Union or in a common transit country at the end of the transition period, that transit procedure will continue as a common transit procedure in the UK. The customs office of entry in the UK and the customs office of entry in the respective Member State where the movement re-enters the customs territory of the Union, respectively, will play the role of customs offices of transit. They are to request the relevant data from the customs office of departure and fulfil all tasks of a customs office of transit. When leaving the EU territory (before entering the UK) an EXS has to be lodged, unless the particulars necessary for risk analysis for security and safety purposes have already been provided with the transit declaration or the obligation to lodge a pre-departure declaration is waived under the UCC.

Where the goods have crossed the UK and re-entered the customs territory of the Union or of a common transit country before the end of the transition period, that transit operation will continue until its destination.

Where the goods covered by a transit declaration have crossed and left the UK directly for the Union, but have not yet re-entered the customs territory of the Union by the end of the transition period, the customs office of entry into the Union will act as a customs office of transit. It shall request the relevant data from the customs office of departure and fulfil all tasks of a customs office of transit.

Customs authorities may, for a period up to one year after UK accession to the CTC, continue to accept existing forms of the guarantor's undertakings and guarantee certificates³³ subject to the necessary geographical adaptations made manually and approved by the guarantor (in case of guarantor's undertakings) or by the customs authorities themselves (in case of guarantee certificates). By the end of that period, the holder of that procedure must provide a new undertaking according to the modified model.

Where an enquiry or recovery procedure was started, but not ended by the end of the transition period, it is continued in the NCTS.

Electronic transport document (ETD) used as a transit declaration for goods carried by air or sea

Where goods are placed under an ETD transit procedure for goods carried by air in the Union or in a common transit country with destination in the UK and the goods do not arrive in the UK before the end of the transition period that procedure will continue as an ETD common transit procedure to the UK airport of arrival as of that date.

Where goods are placed under an ETD transit procedure for goods carried by air in the UK with destination in the Union or in a common transit country and the goods do not arrive in the Union or in the common transit country before the end of the transition period that procedure will continue as an ETD common transit procedure to the airport in the Union or in a common transit country as of that date.

Where goods carried by sea under an ETD transit procedure between the UK and the Union move on an RSS vessel, and that move starts before the end of the transition period, the transit procedure will continue to its EU destination.

Where goods are carried by sea under an ETD transit procedure between the UK and the Union on a non-RSS vessel and that vessel has left the UK before the end of the transition period and arrived directly at a Union port after the end of the transition period, that transit procedure will continue to its EU destination.

Where goods placed under an ETD transit procedure are located in the UK at the end of the transition period, that transit procedure will continue under the UCC in accordance with Article 49(1) of the Withdrawal Agreement.

³³ Annexes 32-01, 32-02 and 32-03 and Chapters VI and VII in Part II of Annex 72-04 to the UCC IA.

Movement of goods under the TIR operations

The UK (just as all EU Member States) is already today a Contracting Party to the TIR Convention³⁴ in its own right. Although the UK will have access to the NCTS as a Contracting Party to the CTC, that access does not cover the use of the NCTS for TIR operations.

Where the goods moving under a TIR procedure³⁵ will be located in the UK at the end of the transition period, the UCC will continue to apply to those scenarios in accordance with Article 49(1) of the Withdrawal Agreement.

- a) Where goods are placed under a TIR procedure in the Union with destination/exit in the UK and the goods are already located in the UK, the TIR movement will continue under the UCC. The UK customs office of destination/exit will send the respective NCTS TIR messages to the customs office of departure/entry located in the Union.
- b) Where goods are placed under a TIR procedure in the UK with destination in the Union and the goods are still located in the UK at the end of the transition period, that TIR movement will continue under the UCC (and in the NCTS) until its destination in the Union. When the goods arrive at a customs office at the external EU border with the UK, the TIR carnet with the movement reference number (MRN) of the TIR operation prove that the operation is covered by the Withdrawal Agreement. At entry into the Union, an ENS has to be lodged, unless the particulars necessary for the ENS have already been provided or the obligation to lodge an ENS is waived under the UCC. The TIR movement will continue under the UCC to the EU customs office of destination/exit, which will send the respective NCTS TIR messages to the customs office of departure/entry located in the UK.
- c) Where goods covered by a TIR Carnet move between a customs office of departure/entry in a Member State via the UK to a customs office of destination/exit in another Member State and those goods are located in the UK at the end of the transition period, the TIR movement will continue under the UCC (and in the NCTS) until its destination. When the goods arrive at a re-entry customs office at the external EU border with the UK, the TIR carnet with the movement reference number (MRN) of the TIR operation prove that the operation is covered by the Withdrawal Agreement. Before entering the customs territory of the Union at the UK/EU border, an ENS has to be lodged unless the particulars necessary for the ENS have already been provided or the obligation to lodge an ENS is waived under the UCC. The TIR movement will continue under the UCC to the EU customs office of destination/exit, which will send the respective NCTS TIR messages to the customs office of departure/entry located in the Union.

³⁴ Customs Convention on the International Transport of Goods under cover of TIR carnets done at Geneva on 14 November 1975, OJ L 252, 14.9.1978, p. 2.

³⁵ In line with Articles 226(3), 227(2)(b) and 228 UCC.

In all other situations, i.e. where goods will not be located in the UK at the end of the transition period, the border formalities as at any other border with a third country will apply to TIR operations.

- a) Goods moving under a TIR operation from a customs office of departure/entry in the Union **to a customs office of destination/exit in the UK**

Where goods are placed under a TIR procedure in the Union with destination/exit in the UK and those goods are still located in the Union at the end of the transition period, that TIR procedure will, at the latest, be terminated for the Union territory at the customs office of the physical exit from the EU. That office will become the customs office of destination/exit. It is to request the relevant data from the customs office of departure and fulfil all tasks of a customs office of destination/exit³⁶. For the exit of the goods at the external border of the Union, an EXS is to be lodged, unless the particulars necessary for risk analysis for security and safety purposes have already been provided or the obligation to lodge a pre-departure declaration is waived under the UCC.

Where goods placed under a TIR procedure in the Union with destination/exit in the UK have left the Union but not yet arrived in the UK at the end of the transition period, the TIR movement will be subject to UK customs law and to the TIR Convention. The holders of the procedure will have to provide an alternative proof of terminating the TIR procedure, and the customs office of departure/entry in the Union will have to terminate and discharge the operation manually.

- b) Goods moving under a TIR operation **from a customs office of departure/entry in the UK** to a customs office of destination/exit in the Union

Where goods are placed under a TIR procedure in the UK with destination in the Union and the goods are already located in the Union at the end of the transition period, that TIR movement can continue until the destination in the Union. When the goods arrive at a customs office of destination/exit, the operation will be treated as any other TIR operation.

- c) Goods moving under a TIR operation **via the UK**

Where goods move between a customs office of departure/entry in a Member State via the UK to a customs office of destination/exit in a Member State and those goods are still located in the Union, before crossing the UK, the following applies: as of the end of the transition period, that TIR procedure shall, at the latest, be terminated at the customs office of exit from the Union. This office then becomes the customs office of destination/exit. The "new" customs offices of destination/exit will request the relevant data from the customs office of departure and fulfil all tasks of a customs office of destination/exit. For the exit of the goods at the external border of the Union, an EXS is to be lodged, unless the particulars necessary for risk analysis for security and safety purposes have already been provided or the obligation to

³⁶ In particular the tasks stipulated by Articles 278 and 279 UCC IA.

lodge a pre-departure declaration is waived under the UCC. When the goods after crossing the UK arrive at the re-entry customs office of departure/entry in the Union, the operation will be treated as any other TIR operation.

Where the goods have crossed the UK and re-entered the customs territory of the Union before the end of the transition period the TIR movement can continue until destination.

7.2 Special procedures other than transit

Customs warehousing (CW)

Authorisations for customs warehousing (CW) facilities granted by the customs authorities of the Member States including movements of goods from CW facilities located in the Union to CW facilities located in the UK in accordance with Article 219 UCC and Article 179(3) UCC DA will have to be amended to exclude such possibility as of the end of the transition period.

Based on Article 49(1) of the Withdrawal Agreement, the UCC will apply to goods which were placed under CW before the end of the transition period and are located in a CW facility in the UK at the end of that period for twelve months after the end of that period, as set out in Annex III to the Withdrawal Agreement.

Where after the end of the transition period a customs declaration for placing goods under CW is invalidated (e.g. as the non-Union goods were not actually brought to the CW facilities), the goods covered by that declaration are deemed to be in their previous situation or procedure (i.e. in TS or under a special procedure) in which they were before the invalidated CW declaration was lodged. Where those goods are located in the UK, the UCC applies to that previous situation or procedure according to Article 49(1) of the Withdrawal Agreement.

In accordance with the second subparagraph of Article 49(1) of the Withdrawal Agreement, any movements of goods under CW between the Union and the UK according to Article 219 UCC are excluded, where those movements end only after the end of the transition period.

Where goods stored in a UK CW facility are brought to the Union after the end of the transition period, they have to fulfil the customs formalities established in the UCC for goods entering the customs territory of the Union from outside this territory (i.e. ENS, TS declaration and customs declaration).

Where goods moving between a CW facility in the UK and another one in the Union arrive in the Union within a short period before the end of the transition period without sufficient time to reach the destination, and their movement continues in the Union, as of that date those goods are not covered by an authorisation valid in the Union. Therefore, the concerned economic operator should discharge this procedure before the end of the transition period (e.g. by placing the goods under a subsequent customs procedure). Such subsequent procedure may be CW as well, provided that the goods are covered by a valid authorisation granted by the Union customs authorities. If such regularisation does not take place, the concerned goods would not comply with the obligations laid

down in the customs legislation concerning the storage of such goods within the customs territory of the Union and therefore Article 79 UCC will apply, i.e. a customs debt due to non-compliance will be incurred.

Free zones

Based on Article 49(1) of the Withdrawal Agreement, the UCC will apply to goods in a free zone in the UK only until the end of the transition period, as set out in Annex III to the Withdrawal Agreement.

Where goods placed under a free zone procedure in the UK are brought to the Union after the end of the transition period, they have to fulfil the customs formalities established in the UCC for goods entering the customs territory of the Union from outside this territory (i.e. ENS, TS declaration and customs declaration).

Temporary admission (TA)

Based on Article 49(1) of the Withdrawal Agreement, the UCC will apply to goods placed under temporary admission (TA) before the end of the transition period and located in the UK at the end of that period for twelve months after the release of the goods for that procedure, as set out in Annex III to the Withdrawal Agreement.

Where after the end of the transition period a customs declaration for placing goods under TA is invalidated, the goods covered by that declaration are deemed to be in their previous situation or procedure (e.g. in TS or under a special procedure) in which they were before the invalidated TA declaration was lodged. Where those goods are located in the UK, the UCC applies to that TS or the special procedure according to Article 49(1) of the Withdrawal Agreement.

In accordance with the second subparagraph of Article 49(1) of the Withdrawal Agreement, any movements of goods under TA between the Union and the UK according to Article 219 UCC are excluded, where those movements end only after the end of the transition period.

Where goods under TA are brought from the UK to the Union after the end of the transition period, they have to comply with the customs formalities established in the UCC for goods entering the customs territory of the Union from outside this territory (i.e. ENS, TS declaration and customs declaration).

Where goods placed under TA covered by a UK authorisation move according to Article 219 UCC to the Union before the end of the transition period and it is intended that they remain in the customs territory of the Union, that TA procedure should be discharged before the end of that period. The goods have to be a) re-exported, b) placed under a subsequent customs procedure, c) destroyed with no waste remaining, or d) abandoned to the State. Such subsequent procedure may be TA as well, provided that the goods are covered by a valid authorisation granted by the customs authorities of a Member State. If such discharge does not take place, the concerned goods would not comply with the obligations laid down in the customs legislation concerning the TA of such goods within the customs territory

of the Union and therefore Article 79 UCC will apply, i.e. a customs debt due to non-compliance will be incurred.

ATA Carnets

The UK is a Contracting Party in its own right to the ATA Convention³⁷ and to the Istanbul Convention³⁸, respectively. Therefore, UK ATA carnets remain valid for goods under temporary admission located in the UK at the end of the transition period.

Economic operators which are bringing goods from the UK to another Member State or *vice versa* on a temporary basis (e.g. goods brought to temporary expositions) before the end of the transition period will have to place the goods under the export procedure when the goods are taken out from the customs territory of the Union upon their return to the UK after the transition period.

Where goods covered by an ATA carnet were brought from a third country to the UK before the end of the transition period and those goods are re-exported from another Member State after that date, the customs office of exit will stamp the re-exportation voucher, which can be used as a proof of re-export. That proof can be provided to the customs office in the UK where the goods were previously brought in. Any other documentary proof showing that the goods are outside the customs territory of the Union may also be accepted as a proof of re-export (e.g. a customs declaration showing that the goods were brought into a third country). This also applies where an ATA carnet covers goods brought to the Union from a third country before the end of the transition period and re-exported from the UK after the end of that period.

ATA carnets issued in the Union for goods brought from the Union to the UK before the end of the transition period and brought from the UK to a third country after that date will be considered as an export declaration (Article 339 UCC IA).

The UK will accept ATA carnets issued in the Union before the end of the transition period to be used in the UK in 2021 and vice versa.

End-use (E-U)

Based on Article 49(1) of the Withdrawal Agreement, the UCC will apply to goods placed under end-use (E-U) before the end of the transition period and located in the UK at the end of that period for twelve months after the release of the goods for that procedure, as set out in Annex III to the Withdrawal Agreement.

Where after the end of the transition period a customs declaration for placing goods under E-U is invalidated, the goods covered by that declaration are deemed to be in their previous situation or procedure (e.g. in TS or under a special procedure) in which they were before the invalidated E-U declaration was lodged.

³⁷ Customs Convention on the ATA Carnet for the Temporary Admission of Goods done at Brussels on 6 December 1961, including any subsequent amendments thereof (ATA Convention).

³⁸ Convention on Temporary Admission, including any subsequent amendments thereof (Istanbul Convention), OJ L 130, 27.5.1993, p. 1.

Where those goods are located in the UK, the UCC applies to that TS or the special procedure according to Article 49(1) of the Withdrawal Agreement.

In accordance with the second subparagraph of Article 49(1) of the Withdrawal Agreement, any movements of goods under E-U between the Union and the UK according to Article 219 UCC are excluded, where those movements end only after the end of the transition period.

Where goods under E-U are brought from the UK to the Union after the end of the transition period, they have to comply with customs formalities applicable to any other third-country goods (i.e. ENS, TS declaration and customs declaration).

Where goods placed under E-U covered by a UK authorisation move according to Article 219 UCC to the Union before the end of the transition period and it is intended that they remain in the customs territory of the Union, that E-U procedure should be discharged before that date. The goods have to be a) taken out of the customs territory of the Union, b) used for the purposes laid down for the application of the duty exemption or reduced rate of duty, c) destroyed with or without waste remaining, or d) abandoned to the State. The same applies in the case of authorisations for Transfer of Rights and Obligations (TORO) and for movement of goods as established in Articles 218 and 219 UCC. If the discharge mentioned above does not take place, the concerned goods would not comply with the obligations laid down in the customs legislation concerning the E-U of such goods within the customs territory of the Union and therefore Article 79 UCC will apply, i.e. a customs debt due to non-compliance will be incurred.

Inward processing (IP)

Based on Article 49(1) and Annex III of the Withdrawal Agreement, the UCC will apply to goods placed under inward processing (IP) before the end of the transition period and located in the UK at the end of that period for twelve months after the release of the goods for that procedure or within the time-limit established in the authorisation whichever is shorter.

Where after the end of the transition period a customs declaration for placing goods under IP is invalidated, the goods covered by that declaration are deemed to be in their previous situation or procedure (e.g. in TS or under a special procedure) in which they were before the invalidated IP declaration was lodged. Where those goods are located in the UK, the UCC applies to that TS or the special procedure according to Article 49(1) of the Withdrawal Agreement.

In accordance with the second subparagraph of Article 49(1) of the Withdrawal Agreement, any movements of goods under IP between the Union and the UK according to Article 219 UCC are excluded, where those movements end after the end of the transition period.

Where goods placed under IP covered by a UK authorisation move according to Article 219 UCC to the Union before the end of the transition period, and it is intended that they remain in the customs territory of the Union, that IP procedure should be discharged before that date. The goods have to be a) re-exported, b) placed under a subsequent customs procedure, c) destroyed with no waste

remaining, or d) abandoned to the State. Such subsequent procedure may be IP as well, provided that the goods are covered by a valid authorisation granted by the customs authorities of a Member State. If such discharge does not take place, the concerned goods would not comply with the obligations laid down in the customs legislation concerning the processing of such goods within the customs territory of the Union and therefore Article 79 UCC will apply, i.e. a customs debt due to non-compliance will be incurred.

Where goods under IP are brought from the UK to the Union after the end of the transition period, they have to comply with the customs formalities established in the UCC for goods entering the customs territory of the Union from outside this territory (i.e. ENS, TS declaration and customs declaration).

Where based on Article 49(1) of the Withdrawal Agreement the UCC applies to an IP EX/IM procedure, if equivalent goods are exported before the end of the transition period, the equivalent amount of goods (raw material) can be imported with total relief from import duty even after the end of the transition period, provided that such import is done within the time-limit established in the authorisation according to the UCC or in Annex III to the Withdrawal Agreement, whichever is shorter.

Outward processing (OP)

Based on Article 49(1) of the Withdrawal Agreement, the UCC will apply to goods placed under outward processing (OP) in the UK before the end of the transition period, where the respective processed products are brought back to the UK or to the Union after the end of that period. The UCC will apply until the expiry of the time-limit established in the authorisation according to the UCC or in Annex III to the Withdrawal Agreement, whichever is shorter.

Where after the end of the transition period a customs declaration for placing the goods under the OP procedure is invalidated, the goods are deemed to be non-Union goods when re-imported to the Union after the end of that period.

Where based on Article 49(1) of the Withdrawal Agreement the UCC applies to an OP IM/EX procedure, the export of the equivalent amount of goods (raw material) can take place within the time-limit established in the authorisation according to the UCC or in Annex III to the WA, whichever is shorter. If such export does not take place, this would entail a non-compliance with the obligations laid down in the customs legislation concerning the OP procedure and therefore Article 79 UCC will apply, i.e. a customs debt due to non-compliance will be incurred.

8. GOODS TAKEN OUT OF THE CUSTOMS TERRITORY OF THE UNION

8.1 Pre-departure declaration

According to Article 263(3) UCC, the pre-departure declaration takes the form of either (i) a customs declaration for goods to be taken out of the customs territory of the Union; (ii) a re-export declaration; or (iii) an EXS. In most cases, the pre-departure declaration will be provided in the form of a customs declaration. For details on pre-departure declaration requirements for specific transit or export

scenarios, depending on the location of the goods at the end of the transition period, please see section 7.1 Transit and 8.2 Export and re-export, respectively.

According to Article 48(1) of the Withdrawal Agreement, a pre-departure declaration covering goods that were released for export in the UK or in the Union before the end of the transition period, remains valid, even if the goods exit after the end of the transition period. The UK has informed Commission services that it is unable to maintain the existing electronic connection for ECS beyond 31 December 2020. The disconnection from ECS will take place on 30 December 2020 at 07:00 (UK time). This will have no impact in relation to pre-departure declarations. The reason is that, if the pre-departure declaration has been lodged together with the customs declaration for export before the end of the transition period, the relevant information would have already been sent to the customs office of exit. Therefore, no new pre-departure declaration will be required for goods that have been released for export in the UK or in the Union, before the end of the transition period where a pre-departure declaration has been lodged with the customs declaration for export.

For a period of seven days following the end of the transition period, the customs authorities of the Member States may decide not to require pre-departure declarations for goods leaving the customs territory of the Union for the UK and fulfilling the conditions of Article 47(1) and (2) of the Withdrawal Agreement.

8.2 Export and re-export³⁹

Goods released for export located in the UK at the end of the transition period

Where goods released for export are located in the UK at the end of the transition period, the UCC will continue to apply in accordance with Article 49(1) of the Withdrawal Agreement. The UK has informed Commission services that it is unable to maintain the existing electronic connection for ECS beyond 31 December 2020. The disconnection from ECS will take place on 30 December 2020 at 07:00 (UK time). Therefore, alternative ways will have to be used for the purpose of that exchange.

- a) Where goods were released for export in the Union before the end of the transition period and are carried to the customs office of exit in the UK or cross the UK on their way to a customs office of exit in another Member State, and are located in the UK at the end of the transition period, those goods will continue their movement to the customs office of exit under the UCC. The customs office of exit in the UK will not send the respective message via ECS confirming the physical exit of the goods to the customs office of export in the Union because as of the end of the transition period the UK will have no access to ECS. The economic operator should initiate the closure of the export movement in the customs office of export based on an alternative proof according to Article 335 (4) UCC IA. That process can be initiated by the economic operator (the declarant) as soon as he is in the possession of an

³⁹ DG TAXUD has published Annex II Brexit Export Business Scenarios with practical examples for export movements, as described in this section.

alternative proof and do not need to wait for customs authorities to inform him. In the second case, when the goods are transported via the UK to customs office of exit located in the EU, the customs office will confirm the physical exit of the goods and send the respective message to the customs office of export in ECS.

- b) Where goods released for export in the UK with a customs office of exit in the Union are still located in the UK at the end of the transition period, they will continue their movement to the customs office of exit in the Union under the UCC. The customs office of exit will register the physical exit of the goods in ECS but it will not send the respective message to the UK customs office of export as long as the UK has no access to ECS as of the end of the transition period. When those goods enter the customs territory of the Union after the end of the transition period, an ENS needs to be lodged.

Goods released for export located in the Union at the end of the transition period

- a) Where goods released for export in the Union before the end of the transition period are to be carried to the customs office of exit in the UK or cross the UK on their way to a customs office of exit in another Member State, and those goods are still located in the Union before the end of the transition period, the previously foreseen customs office of exit needs to be replaced by a customs office of exit located at the EU border (the diversion of the export movement is executed in ECS). This customs office will confirm the physical exit of the goods and send the respective message to the customs office of export.
- b) Where those goods already have crossed the UK on their way to a customs office of exit located in another Member State, and are already in the customs territory of the Union at the end of the transition period, there will be no impact on the current procedure (i.e. the customs office of exit at the external EU border will still confirm the physical exit of the goods to the customs office of export in ECS).
- c) Where goods released for export in the UK via an EU customs office of exit are already located in the Union at the end of the transition period and thereafter reach the envisaged EU customs office of exit, that customs office will register the physical exit of the goods in ECS but it will not send the respective message to the UK customs office of export as the UK has no access to ECS as of the end of the transition period.
- d) Where goods released for export in the UK before the end of the transition period are to be carried to the customs office of exit in the EU and those goods are still located in the Union after the end of the transition period but the goods will leave the Union from another customs office of exit than the previously declared customs office of exit, the diversion of the export movement cannot be executed in ECS electronically as the UK will have no access to ECS as of the end of the transition period. The actual EU customs office of exit shall perform the formalities on exit the goods, including confirmation of exit using the fall-back procedures (e.g. usage of EAD).

9. CUSTOMS DEBT

Where a customs debt is incurred in the UK as a result of situations or customs procedures listed below, that customs debt will be established and made available to the EU budget as set out in the UCC and the EU own resources regulations, in accordance with Article 49(1) and (2) and taking into account Article 136(3)(c) of the Withdrawal Agreement:

- The ending or discharge of TS or a special procedure ongoing at the end of the transition period within the time-limits set out in Annex III to the Withdrawal Agreement by release for free circulation, including under E-U provisions or TA with partial relief from import duty referred to in Article 49(2) of the Withdrawal Agreement in accordance with Article 77(1) UCC.
- The non-compliance with the UCC with regard to TS or a customs procedure referred to in Article 49(1) of the Withdrawal Agreement in accordance with Article 79 UCC. That covers also non-compliance with the UCC time-limits for goods in TS.

In general, the time limit for notifying a customs debt is set at 3 years from its incurrence in accordance with Article 103(1) UCC.

In order for the Union and the UK to effectively measure and mutually assure their mutual liabilities covered by Article 49(1) and (2) in accordance with Article 136(3)(c) (in respect of the UK) and covered by the last sentence of the second subparagraph of Article 140(4) of the Withdrawal Agreement, the customs administrations are to be able to identify the amounts of the customs debt concerning goods that were in TS or under a special procedure at the end of the transition period either in the UK or in the EU, and are presented to customs to end the TS or discharge the special procedure by releasing the goods for free circulation under the conditions of the UCC after the end of the transition period.

This means that when lodging customs declarations for release for free circulation economic operators in the UK but also in the EU have to distinguish goods that were in TS or under a special procedure at the end of the transition period.

In the customs declaration for release for free circulation of those goods, an identifier in the form of a Union code (Y067) has to be used by the economic operators as follows:

- in box 44 of the SAD where the declaration will be made on the basis of Annex 9 to Delegated Regulation 2016/341;
- in data element 2/3 where the declaration will be made on the basis of Annex B to Delegated Regulation 2015/2446 and Annex B to Implementing Regulation 2015/2447.

Once the amendment adopted by the Commission on 7 December 2020 to Delegated Regulation 2015/2446⁴⁰ and corresponding amendments to Implementing Regulation 2015/2447 (in adoption process) to enact the new Annex B enter into force, the code must be stated in:

- box 44 of the SAD where the declaration will be made on the basis of Annex 9 to Delegated Regulation 2016/341;
- data element 2/3 where the declaration will be made on the basis of Annex D to Delegated Regulation 2015/2446 and Annex C to Implementing Regulation 2015/2447
- data element 12 04 002 000 where the declaration will be made on the basis of Annex B to Delegated Regulation 2015/2446 and Annex B to Implementing Regulation 2015/2447.

The use of the data elements above is depending on the state of play of the upgrade of the national import system of each Member State.

⁴⁰ [C\(2020\) 8454](#) - currently adopted by the Commission but under scrutiny by the European Parliament and the Council until 7 February 2020.

The use of that additional code has been agreed to avoid that the UK and the Member States' customs administrations have to take stock themselves of all goods in TS and under special procedures at the end of the transition period and monitor them henceforth.

By lodging queries in their national declaration systems or by any other appropriate means, the customs authorities will need to determine the monthly total of all amounts on national level of customs debts incurred, established (and made available), pursuant to the acceptance of a declaration for release for free circulation that related to goods which were already under a special procedure or in TS at the end of the transition period.

The Member States will be requested to report those amounts in addition to their normal reporting to the European Commission.

10. ADMINISTRATIVE COOPERATION FOR CUSTOMS

In accordance with Article 98 of the Withdrawal Agreement certain administrative cooperation procedures between a Member State and the UK are to be completed according to the relevant provisions of Union law:

- where one of the administrative cooperation procedures listed in Annex VI of the Withdrawal Agreement was launched before the end of the transition period in accordance with Article 98(1) of the Withdrawal Agreement;

Administrative cooperation procedures related to ongoing procedures or situations in accordance with Article 49(1) of the Withdrawal Agreement, such as e.g. an enquiry procedure started for a Union transit operation, do not fall under Article 98(1) of the Withdrawal Agreement; the UCC applies to those procedures in accordance with Article 49(1) of the Withdrawal Agreement.

- where an administrative cooperation procedure is launched within three years after the end of the transition period concerning facts that occurred before, but were identified only after the end of that period in accordance with Article 98(2) of the Withdrawal Agreement.

This may concern cases of erroneously discharged operations, e.g. where a procedure was illegally discharged by a corrupt official. The customs authorities of the Member States may also ask the customs authorities of the UK within a period of 3 years after the end of the transition period to confirm the origin of the products for which a supplier's declaration was made out in the UK before the end of the transition period; the customs authorities of the Member States may similarly be requested by the customs authorities of the UK to confirm the origin of the products for which a supplier's declaration was made out in the EU before the end of the transition period.

The application of the UCC by the UK authorities in accordance with Article 98 of the Withdrawal Agreement does not entail any access to information systems or databases; therefore, economic operators may be contacted by means other than electronic data-processing techniques.

B. APPLICABLE RULES IN NORTHERN IRELAND AFTER THE END OF THE TRANSITION PERIOD

After the end of the transition period, the Protocol on Ireland/Northern Ireland (“IE/Ni Protocol”) applies.⁴¹ The IE/Ni Protocol is subject to periodic consent of the Northern Ireland Legislative Assembly, the initial period of application extending to 4 years after the end of the transition period.⁴²

The IE/Ni Protocol makes certain provisions of EU law applicable also to and in the United Kingdom in respect of Northern Ireland. In the IE/Ni Protocol, the EU and the United Kingdom have furthermore agreed that insofar as EU rules apply to and in the United Kingdom in respect of Northern Ireland, Northern Ireland is treated as if it were a Member State.⁴³

The provisions of EU law made applicable to and in the United Kingdom in respect of Northern Ireland include the EU customs legislation and obligations stemming from the international agreements concluded by the Union, or by Member States acting on its behalf, or by the Union and its Member States acting jointly, insofar as they relate to trade in goods between the Union and third countries.⁴⁴

The IE/Ni Protocol also explicitly provides that any references to the customs territory of the Union in the applicable provisions of the Withdrawal Agreement and of the IE/Ni Protocol, as well as in the provisions of Union law made applicable to and in the UK in respect of Northern Ireland by the IE/Ni Protocol, is to be read as including Northern Ireland.⁴⁵ This means that insofar as EU customs rules apply to and in the UK in respect of Northern Ireland, the EU and the UK agree to treat Northern Ireland, for the purpose of the application of those rules, as if it were part of the customs territory of the Union.⁴⁶

At the same time, seeing that Northern Ireland is part of the customs territory of the UK, in respect of the rights and obligations of third countries (including the Union’s preferential partner countries), Northern Ireland is not part of the Union customs territory.

More specifically, after the end of the transition period, this means *inter alia* the following:

⁴¹ Article 185 of the Withdrawal Agreement.

⁴² Article 18 of the IE/Ni Protocol.

⁴³ Article 7(1) of the Withdrawal Agreement in conjunction with Article 13(1) of the IE/Ni Protocol.

⁴⁴ Articles 5(3), 5(4) and sections 1 and 4 of annex 2 of the IE/Ni Protocol.

⁴⁵ Article 13(1) of the IE/Ni Protocol. This irrespective of Article 4 of the IE/Ni Protocol, as Article 13(1) operates “[n]otwithstanding any other provisions of this Protocol”.

⁴⁶ In this context, attention is also drawn to the Decision No 6/2020 of the Joint Committee of 17 December 2020 providing for the practical working arrangements relating to the exercise of the rights of Union representatives referred to in Article 12(2) of the Protocol on Ireland/Northern Ireland.

1. ECONOMIC OPERATOR REGISTRATION IDENTIFICATION (EORI)

Economic Operators established in Northern Ireland or economic operators not established in Northern Ireland (nor in the EU) but who will perform customs formalities first in Northern Ireland must be registered by the UK customs authorities⁴⁷ in respect of Northern Ireland. The EORI numbers issued by the ‘UK in respect of Northern Ireland’ shall start with the code “XI⁴⁸”.

The registration and the attribution of an XI EORI number is subject to UCC rules, it has to be included in the EU EOS/EORI database and as such will be considered as an EORI number issued by a Member State.

Any EORI number attributed by a Member State (and Northern Ireland being considered as Member State in this context) is valid in all Member States throughout the EU.

2. CUSTOMS DECISIONS AND AUTHORISATIONS

2.1 Authorisations and decisions issued by the UK customs authorities before the end of the transition period to economic operators established in Northern Ireland

By way of derogation from the rule that any authorisations already granted by UK customs authorities are no longer valid in the Union as of the end of the transition period (see part A, point 2.1 Authorisations of this guidance note), certain authorisations granted to economic operators established in NI and thus eligible for keeping their current authorisations will remain valid after the end of the transition period. This holds for the authorisations for AEO and certain special procedures.

2.2 Authorisations and decisions to be issued by the UK customs authorities after the end of the transition period

In general, customs authorisations necessary and required for economic operators in Northern Ireland carrying out customs operations under the Union Customs Code (UCC) will be granted by the UK customs authorities in respect of Northern Ireland according to the UCC rules and requirements. The rules stipulated in the UCC with regard to competent authority, consultations, issuing and management of authorisations etc. apply in Northern Ireland.

All applications and decisions which may have an impact beyond Northern Ireland in one or more Member State will be handled in the Customs Decision System (including using the EU Trader Portal).

Decisions concerning binding tariff information will be handled through the EU trader portal and the EBTI system.

(a) Guarantees

⁴⁷ For more practical details and information, please consult the UK customs authorities.

⁴⁸ For more detailed guidance on the use of the ‘XI’ and ‘GB’ codes please refer to “Guidance on the Use of ‘GB’ and ‘XI’ codes (Annex B) - Geonomenclature codes for the implementation of the IE/NI Protocol”, published on:
https://ec.europa.eu/taxation_customs/sites/taxation/files/use_of_gb_and_xi_codes_guidance.pdf.

If a guarantee is required, the undertaking can be from a financial institution established in NI. However, since IE/NI Protocol does not extend financial market rules to Northern Ireland, a credit institution, financial institution or insurance company in Northern Ireland, would not be “accredited in the Union in accordance with Union provisions in force⁴⁹”, and hence the UK customs authorities will have to approve them as guarantors.

(b) AEO

The granting and management of new AEO authorisations relating to operators established in Northern Ireland will take place in line with the relevant provisions of the UCC and its delegated and implementing acts. In particular, provisions on the electronic system relating to the AEO status (Article 29 (1) first subparagraph UCC IA) will apply with regard to the UK competent authority to use EOS/AEO for the exchange and storage of information, and management of AEO authorisations.

However, the EU Customs Trader Portal for AEO (eAEO) (Article 29 (1) second subparagraph UCC IA) will not be used.

The AEO authorisation granted to operators established in NI will be valid only with reference to the premises located in Northern Ireland. The address of the place of business in Northern Ireland is the one that shall be indicated in the related boxes of the AEO applications and authorisations when they are registered in the EOS/AEO central system.

3. ENTRY OF GOODS TO THE CUSTOMS TERRITORY OF THE UNION VIA NORTHERN IRELAND

Goods brought to Northern Ireland from third countries or from other parts of the UK will be subject to customs supervision and may be subject to customs controls; customs formalities apply to those goods, respective declarations and notifications have to be lodged and customs authorities may require guarantees for potential or existing customs debts. Those goods will also be subject to Union law listed in annex 2 to the IE/NI protocol to the Withdrawal agreement.⁵⁰

Goods brought to Northern Ireland by direct transport and released for free circulation there will be subject to UCC rules and procedures, including to the Common Customs Tariff⁵¹ according to Article 5(3) of the IE/NI Protocol, if those goods risk entering the EU's Single Market.

However, if goods are considered not at risk of entering the EU's Single Market, no tariff is payable when goods enter Northern Ireland from the rest of the United Kingdom and the UK's external tariff is payable when goods enter Northern Ireland from outside the UK or the EU.

The conditions for considering that a good brought into Northern Ireland is not at risk of moving into the EU and will not be subject to commercial processing in Northern Ireland are

⁴⁹ Article 94 UCC

⁵⁰ Cf. Notice to stakeholders on Prohibitions and restrictions of imports/exports, incl. import/export licences and the related specific notices on various prohibitions and restrictions.

⁵¹ Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, OJ L 256,7.9.1987, p. 1.

established in Decision No 4/2020 of the Joint Committee of 17 December 2020 on the determination of goods not at risk (hereafter ‘the Decision’).

For the purpose of application of Article 3 of the Decision ‘direct transport’ is considered the transport from the start, as per contractual arrangement, of the shipment movement till the end (e.g. shipment shipped from CN to NI, transshipment in the UK doesn’t affect the rule of direct transport as long as the goods stay under customs supervision).

Traders that want to use the trusted trader scheme envisaged in the Decision must submit an application to the UK competent authorities⁵² and provide evidence that they comply with the requirements established in the Decision. Once verified and authorised by the UK authorities, traders must continue to comply with the conditions or risk that their authorisation be suspended or revoked.

Having an authorisation for using the trusted trader scheme does not replace the obligation to lodge a customs declaration for the goods to be released for free circulation.

4. TRANSIT

A transit operation departing from Northern Ireland will be considered as Union transit procedure in the customs territory of Northern Ireland.

Example 1: Northern Ireland to Great Britain

The Office of departure (OoD) is situated in Northern Ireland and the goods leave Northern Ireland via a ferry port. The office of transit (OoT) is situated in the port in Great Britain.

- use of the external transit procedure T1 for non-Union goods (or for export followed by transit procedure when art. 189 UCC DA is applicable);

- use of the internal transit procedure T2: Union goods exported and followed by a transit procedure.

Example 2: Germany via France and Great Britain to Northern Ireland.

The OoD is situated in Germany and the goods leave the EU via a ferry port in France. The first OoT is situated in the ferry port of arrival in Great Britain. The transit procedure continues in Great Britain to the ferry port where the goods enter a ferry with destination Northern Ireland. In the ferry port in Great Britain when leaving Great Britain no formalities are required. When entering a port in Northern Ireland the formalities of the OoT are applied.

Example 3: Germany via the Netherlands, Great Britain and Ireland to Northern Ireland.

The OoD is situated in Germany and the goods leave the EU via a ferry port in the Netherlands. The first OoT is situated in the ferry port of arrival in Great Britain. The transit procedure continues in Great Britain to the ferry port where the goods enter a ferry with destination Ireland. At arrival in Ireland, the formalities of the OoT are applied. The transit procedure continues in Ireland and the goods pass the border between Ireland and Northern Ireland without any customs formalities. The goods are presented at the office of destination in Northern Ireland.

Example 4: Great Britain via Northern Ireland to Ireland

The OoD is situated in Great Britain and the goods leave Great Britain via a ferry port. The OoT is situated in the port in Northern Ireland. The goods pass the border between Northern

⁵² For more practical details and information, please consult the UK customs authorities.

Ireland and Ireland without any further customs formalities. The goods are presented at the office of destination in Ireland.

Use of the external transit procedure T1.

Example 5: Ireland, via Northern Ireland, Great Britain, Belgium, France, Switzerland to Italy

The OoD is situated in Ireland. The goods pass the border between Ireland and Northern Ireland without any customs formalities and the transit procedure continues in Northern Ireland. The goods leave Northern Ireland via a ferry port. The first OoT is situated in the ferry port of arrival in Great Britain. The transit procedure continues in Great Britain to the ferry port where the goods enter a ferry with destination Belgium. At arrival in Belgium, the formalities of the second OoT are applied. The transit procedure continues in the EU. The third OoT is the first customs office in CH. The fourth OoT is the first customs office in Italy. The goods are presented at the office of destination in Italy.

5. PREFERENTIAL ORIGIN ASPECTS

5.1 Preferential origin in trade within the scope of EU preferential arrangements with third countries

In relation to origin for preferential purposes, the rules set out above apply to Northern Ireland in the same way as they do to other parts of the UK. This means in particular:

Goods **produced in Northern Ireland**, even before the end of the transition period, are not considered as EU originating for the purposes of their direct exportation, or exportation after further processing, to an EU preferential partner country;

Goods **originating in the EU and located in Northern Ireland or originating in EU partner countries and located in Northern Ireland** before the end of the transition period, if moving as an intra-Union movement from Northern Ireland to the EU in compliance with the requirements of Article 47(1) of the Withdrawal Agreement can still be considered as originating when re-entering the customs territory of the Union, provided that the necessary documents to prove the origin of the goods are available according to the provisions of the concerned EU preferential regime.

EU originating goods **exported** after the end of the transition period **from the Union via Northern Ireland into a third country** with which the Union has a preferential arrangement may be entitled for preferential treatment in that third partner country, provided that the provisions on direct transport/non-manipulation contained in the origin provisions of the relevant EU preferential arrangement are respected.

Similarly, goods originating in a third partner country **imported** after the end of the transition period **from that partner country into the EU via the UK** may be entitled for preferential treatment in the EU provided that the provisions on direct transport/non-manipulation contained in the origin provisions of the relevant EU preferential arrangements are respected [see however, point 6.2].

5.2 Preferential origin aspects when importing in Northern Ireland

When goods are **brought by direct transport to Northern Ireland** from third countries and released for free circulation they are subject to the UCC rules and procedures including the

common customs tariffs⁵³ according to Article 5(3) of the IE/NI Protocol, if those goods risk entering the EU's Single Market.

The Common Customs Tariff comprises inter alia **preferential tariff measures under arrangements that the Union has concluded with, or adopted unilaterally** in respect of certain countries or territories. This covers:

- i. Goods brought in Northern Ireland under EU **preferences with third countries other than the with UK**, which are understood to be brought in Northern Ireland by direct transport other than from the Union or from another part of the United Kingdom [Article 5 (1) 2nd paragraph of the Protocol and Article 3 (1) (b) Joint Decision].
- ii. Goods brought in Northern Ireland under EU **preferences with the UK**, which are understood to be brought in Northern Ireland by direct transport from another part of the United Kingdom [Article 5 (1) 1st paragraph of the Protocol and Article 3 (1) (a) Joint Decision].

For the application of the preferential rules of origin aspects in Northern Ireland the Commission implementing Regulation 2020/2163 of 18 December 2020⁵⁴ establishes some measures to facilitate and ensure the correct application of the relevant conditions related to the preferential origin. The main elements are as follows:

- (i) The partner country benefiting from the EU preferences in Northern Ireland has undertaken measures to ensure compliance with the related rules of origin, covering the substantive aspects of the rules of origin, the proofs of origin, the verification procedures and other conditions related to origin.
- (ii) Proofs of origin to be used when claiming preferential origin in Northern Ireland indicate 'the United Kingdom in respect of Northern Ireland'.
- (iii) Northern Irish materials and processes are not considered as EU materials or processes when goods are imported in Northern Ireland from third countries under preferences.

5.3 Preferential origin aspects when exporting from Northern Ireland

The bilateral arrangements between the Union and the United Kingdom under the Protocol do not give rise to rights and obligations for other third countries. This means that Northern Ireland is a third country from the perspective of EU existing preferential arrangements to the effect of goods exported from Northern Ireland. Consequently:

- (i) Exporters in Northern Ireland cannot be registered or authorised to make out statements on origin for exports covered by EU preferential arrangements
- (ii) UK customs authorities in respect of Northern Ireland cannot issue EU movement certificates

⁵³ For the cases where the common customs tariffs will not apply, please see point 4 and goods considered not at risk of being subsequently moved into the Union.

⁵⁴ OJ L 431 du 21.12.2020, p. 55.

6. OTHER PREFERENTIAL ASPECTS: EU CUSTOMS UNIONS

When goods are **brought by direct transport to Northern Ireland** from third countries they are subject to the EU customs legislation, including **international agreements** containing customs provisions.

International agreements containing customs provisions cover **agreements establishing a customs union** between the Union and third countries. Goods moved to Northern Ireland under an EU customs union with a third country are understood to be moved to Northern Ireland by direct transport other than from the Union or from another part of the United Kingdom [Article 5 (1) 2nd paragraph of the Protocol and Article 3 (1) (b) Joint Decision].

Except when the goods are not at risk of entering into the EU's Single Market, the provisions on free circulation under the EU customs union agreements with third countries apply in Northern Ireland.

For the application of the provisions:

- (i) the partner country undertakes measures to ensure compliance with the related provisions including the implementation of the provisions on free circulation, its proof, verification procedures and other related conditions.
- ii) documentary evidence proving that the provisions on free circulation are met indicates 'the United Kingdom in respect of Northern Ireland'.

7. TARIFF QUOTAS

When goods are **brought by direct transport to Northern Ireland** from third countries and released for free circulation there, they are subject to the UCC, including the common customs tariffs.⁵⁵

However, according to Regulation (EU)2020/2170 of 16 December 2020⁵⁶, goods imported from outside the Union into Northern Ireland are not eligible for treatment pursuant to Union import tariff rate quotas or other import quotas or pursuant to export tariff rate quotas applied by third countries.

8. GOODS TAKEN OUT OF THE CUSTOMS TERRITORY OF THE UNION VIA NORTHERN IRELAND

Goods, including domestic goods of Northern Ireland, to be taken out from Northern Ireland or from the Union via Northern Ireland to third countries or to other parts of the UK will be subject to customs supervision and may be subject to customs controls, customs formalities and provision of respective declarations and notifications as per applicable UCC rules and requirements. Those goods will also be subject to Union law listed in annex 2 to the IE/NI protocol to the Withdrawal agreement.⁵⁷

⁵⁵ For the cases where the common customs tariffs will not apply, please see point 4 and goods considered not at risk of being subsequently moved into the Union.

⁵⁶ *OJ L 432, 21.12.2020*

⁵⁷ Cf. Notice to stakeholders on Prohibitions and restrictions of imports/exports, incl. import/export licences from 15 May 2020 and the related specific notices on various prohibitions and restrictions.

The UK indicated⁵⁸ that in respect of goods moving from Northern Ireland to other parts of the United Kingdom's internal market, the United Kingdom may give effect to Article 263(1) and Article 269(1) of Regulation (EU) No 952/2013 by deeming a pre-departure and/or export declaration to have been made where equivalence regarding the content and timeliness of information provided to the competent customs authorities of the United Kingdom is ensured by other means and by using appropriate electronic data-processing techniques. The United Kingdom will ensure that information relating to the implementation of the preceding sentence will be made available to the Union representatives referred to in Decision No 6/2020 of the Joint Committee of 17 December 2020 providing for the practical working arrangements relating to the exercise of the rights of Union representatives referred to in Article 12(2) of the Protocol on Ireland/Northern Ireland.

In this regard, the United Kingdom confirms its intention that standard export procedures will apply where goods:

1. are placed under a procedure listed in Article 210 UCC,
2. are in temporary storage in accordance with Article 144 UCC,
3. are subject to provisions of Union law falling within the second sentence of Article 6(1) of the Protocol which prohibit or restrict the exportation of goods,
4. are placed under the export procedure within the Union, or
5. do not exceed EUR 3000 in value and are packed or loaded for export shipment within the Union.

9. MOVEMENT OF GOODS BETWEEN NORTHER IRELAND AND THE UNION

In principle, no customs supervision, controls or formalities shall be applicable to goods moving between Northern Ireland and the Union, where those goods move as an intra-Union movement.

Rules applicable to movement of goods between two EU MS will apply to goods moving between Northern Ireland and any MS and vice-versa.

9.1 Movement of Union goods

Union goods benefit from the free movement of goods within the EU and no customs duties or other charges apply to these goods. This principle applies also to Union goods moving from the EU to Northern Ireland and vice versa. However, when Union goods are taken out of the customs territory, they lose their Union status and will be treated as non-Union goods when re-entering the EU or Northern Ireland. This is inevitable when moving goods between the EU mainland and Northern Ireland.

Nevertheless, Union goods may leave the customs territory of the Union and keep their Union status under one of the following conditions:

- they are placed under the T2 transit procedure (at least one common transit country must be involved, e.g. departure from Italy via Switzerland and France to Northern Ireland)
- they are carried by an RSS vessel;
- they are carried from an EU airport to an airport in Northern Ireland or vice versa without a stop outside of the EU; or

⁵⁸ Unilateral declaration by the United Kingdom in the 5th ordinary EU-UK Joint Committee meeting held on 17 December 2020.

- they are carried in accordance with Article 119(3) UCC DA and their proof of Union status can be proven using one of the means listed in Article 199(1) UCC IA.

9.2 Movement of non-Union goods

When non-Union goods are moved from Northern Ireland to the EU mainland and vice-versa, the economic operator has several options:

- place the goods under the T1 Union transit procedure. At the customs office of destination in Northern Ireland (or in the EU) a subsequent customs procedure is required;
- where applicable, use movement between temporary storage facilities or when goods are under special procedure;
- declare goods for re-export when leaving from Northern Ireland (or from the EU) and consecutively place them under another customs procedure (e.g. release for free circulation) on re-entry in the EU mainland (or in Northern Ireland).

Non-Union goods shall remain under customs supervision until their customs status is changed, or they are taken out of the customs territory of the Union or destroyed.

Dedicated websites of the Commission provide further information on:

- [customs and tax-related aspects of the UK withdrawal](#);
- the [UCC](#);
- general information on [customs procedures and formalities](#);
- [general aspects of preferential origin of goods](#);
- and [external trade aspects of preferential origin of goods](#) (Market Access Database).

European Commission

Directorate-General Taxation and Customs Union

1. ANNEX⁵⁹: PREFERENCES AND RULES OF ORIGIN DURING THE TRANSITION PERIOD

1. PREFERENTIAL ORIGIN⁶⁰ ASPECTS

According to Article 127(1) of the Withdrawal Agreement, EU law (including the international agreements concluded by the EU) applies to and in the UK during the transition period.

The territorial scope for trade in goods of these agreements is generally defined as the territories where the EU Treaties apply, and in some cases (e.g. more recent Free Trade Agreements (FTAs) with Canada, Central America, Andean countries or Japan) also the areas which are part of the customs territory of the Union.

Under the Withdrawal Agreement, the EU Treaties apply to and in the UK during the transition period, and during that time the UK is part of the customs territory of the Union.

According to Article 129(1) of the Withdrawal Agreement, the UK is bound by those international agreements during the transition period.

This also applies to FTAs with preferences concluded by the EU.⁶¹

As a consequence

- UK products/materials/processes are to be treated by the Union as EU products/materials/processes during the transition period;
- Products/materials/processes of the EU's FTA partners are to be treated by the United Kingdom as products/materials/processes originating in an FTA partner and are to receive the relevant preferences.

While the Union formally notified its international partners that the UK is "to be treated as a Member State" during the transition period,⁶² there is no certainty that FTA partners

⁵⁹ This Annex refers to the consideration of the UK during the transition period from the perspective of the EU preferential rules of origin. As from the end of the transition period, point 4 of Part A and point 5 of part B apply and this Annex has only relevance to consider operations which happened before the end of the transition period as in the case of verifications addressed after the end of the transition period on exports effected before.

⁶⁰ References to "originating" or "non-originating" in this section should be considered only in relation to preferential origin.

⁶¹ As part of the EU common commercial policy, the EU has also preferential trade arrangements in the Generalised Scheme of Preferences (http://ec.europa.eu/trade/policy/countries-and-regions/development/generalised-scheme-of-preferences/index_en.htm). With regard to the issues set out in this note (effect of UK input when determining the preferential origin for tariff treatment), the preferential tariff treatments in the Generalised Scheme of Preferences may be in practice less relevant than FTAs. However, for the sake of completeness, both aspects are addressed in this note.

⁶² To this end, a *note verbale* has been sent to third countries informing them that the UK "is treated as a Member State [...] for the purposes of [international agreements]" during the transition period (see https://ec.europa.eu/info/files/note-verbale_en).

will treat the UK as a Member State during the transition period for the purposes of the FTAs.⁶³

2. VERIFICATION OF ORIGIN

According to the origin protocols of the EU FTAs, preferences can be denied only after a verification process. If a third country requests the verification of the EU origin of a product which is considered as originating because of its UK contents, the following applies:

- Member States customs authorities have to apply EU law, according to which UK products/materials/processes are considered as EU products/materials/processes. Therefore, they will have to confirm the origin of the products concerned considering the UK content as qualifying for preferential EU origin.
- FTA partners could only deny the preferences in the context of verification in line with the conditions established in the FTA origin protocols. Generally, the preference can be denied by the FTA partner only if, after a request of verification:⁶⁴
 - there is no reply provided by the authorities of the exporting country; or
 - the reply does not confirm
 - the authenticity of the origin proof,
 - the (preferential) origin of the products, or
 - the compliance with other conditions established in the origin protocol.

⁶³ To date, the Commission has only received replies to its *note verbale* from a limited number of FTA partners. Nevertheless, several FTA partners have publically expressed their intention to continue treating the UK as a Member State during the transition period (e.g. Norway, Canada or Mexico). There is, however, a possibility that some of our FTA partners might express a different view, which means that there is no guarantee that they will all treat the UK as a Member State for the purposes of international agreements during the transition period. Also, other partners may not at all or only later respond to the *note verbale*. This uncertainty is inevitable given that the EU and UK could only agree bilaterally on the obligations (not the rights) under the FTAs through the Withdrawal Agreement.

⁶⁴ Only in two cases (agreements with Canada and Japan) could the authorities of the importing country take a different decision in line with the FTAs on the basis of sufficient justification and after consultation with the other party.