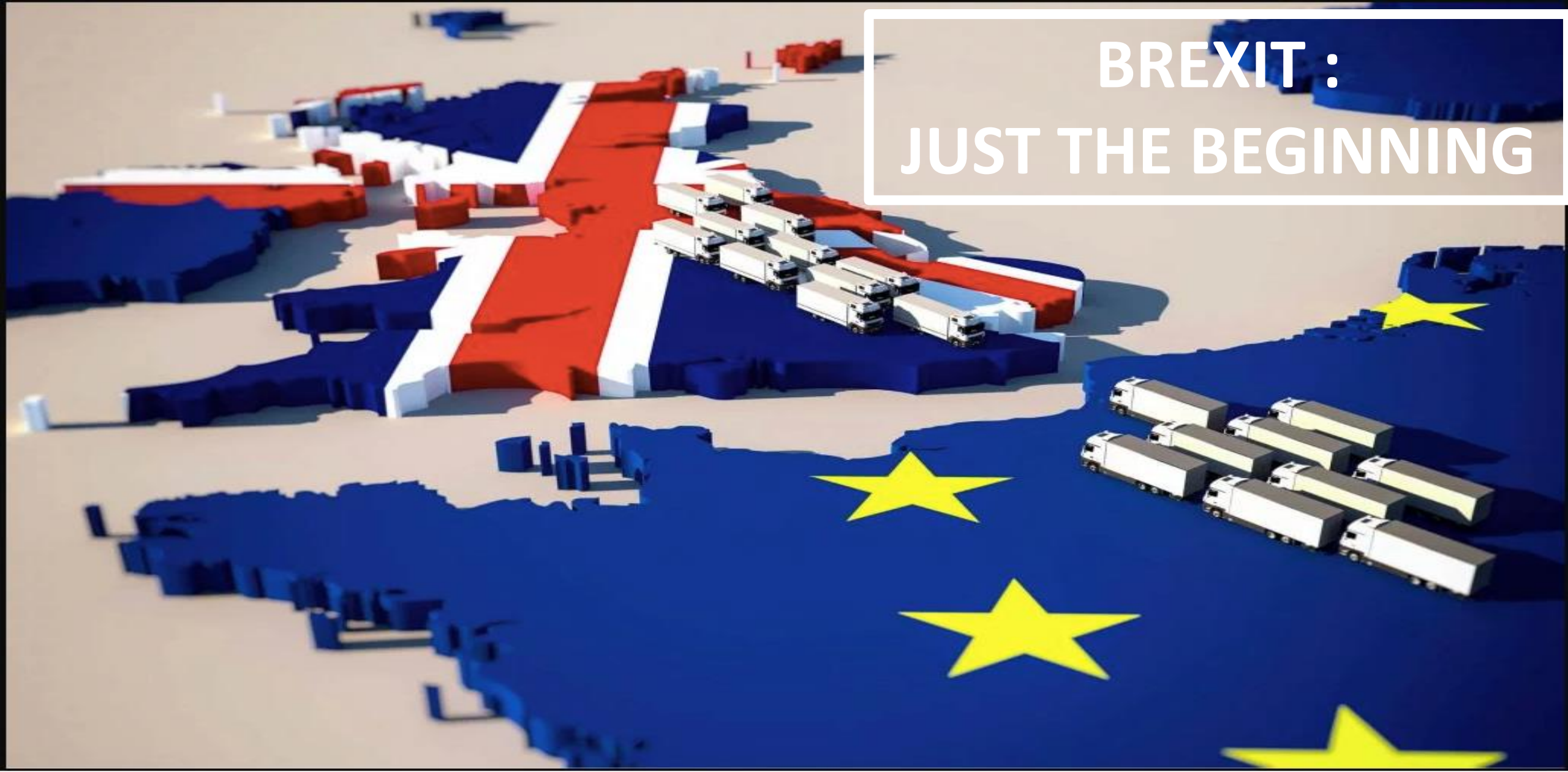


# BREXIT : JUST THE BEGINNING





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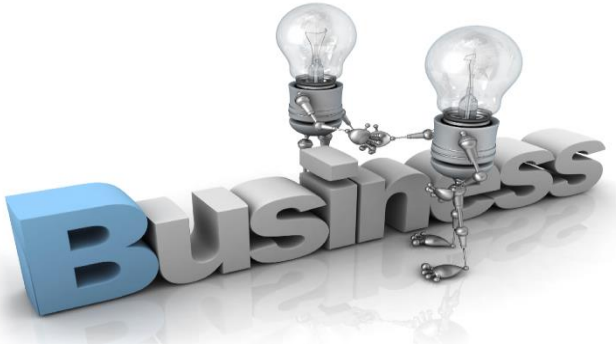


# THE WEBINAR RULES

1. Help yourself to a nice cup of tea or coffee!
2. Don't forget to turn off your microphone and camera
3. Ask your questions in the conversation thread
4. You are not alone! If you have any doubts, contact us



# LHLF Law Firm: pictures better than words...



have fun.



# LHLF into the UK ? The real reasons...





# SUMMARY

**QUICK REMINDER**

**CUSTOMS ASPECTS**

**TAX ASPECTS**

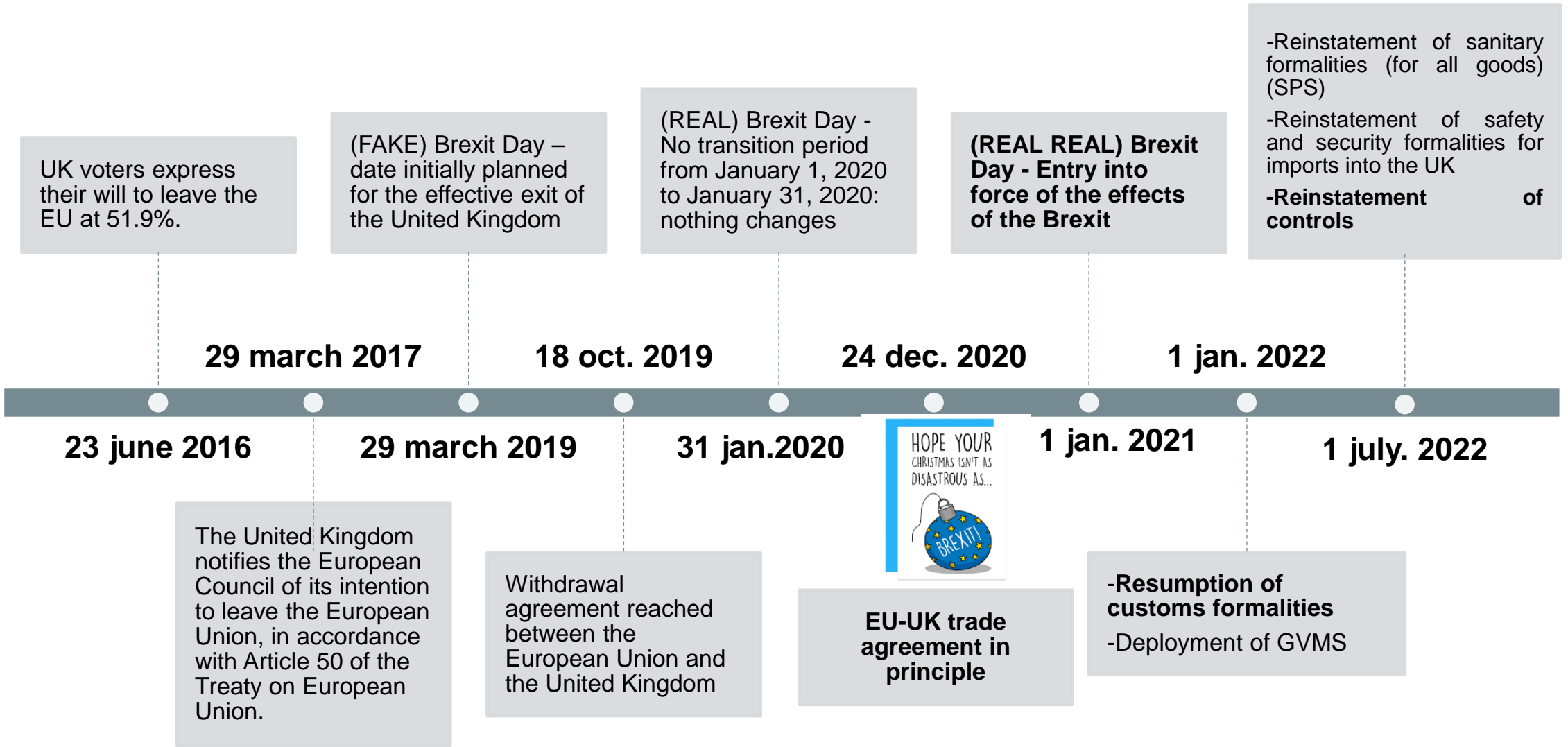
**WARNINGS 2022**



# QUICK REMINDER



# THE KEY DATES OF A TRAGI-COMEDY







## 2021 – 2022 : A FEW FIGURES



### **EXPLOSION OF CUSTOMS FORMALITIES**

+62% increase in the number of transit declarations generated

+29% increase in import clearance flows

+ Over 1 million export declarations

-15% of exports to the UK

-29% of exports to the EU

-Fall in imports as well

Non pro. international traders often prefer to stop flows

### **DECREASE OF THE FLOWS**



At least 20% of additional customs clearance time (without the timing of customs control to be implemented)



## 2021 – 2022 : A FEW FIGURES

- For 65% of companies surveyed, access to **European talent** and the additional cost of **recruitment** is the main impact of Brexit.
- For 20% of companies the main impact of Brexit **is the delays in the supply of goods** and the associated additional costs.
- 17.6% of the companies surveyed have **reduced their payroll** in the UK as a result of the Brexit and almost 12.2% plan to do so in the next 12 months.
- 13.5% of the companies surveyed **have reduced their investments in the UK** due to Brexit and 12% intend to do so in the next 12 months.

*(Source : COM & CCFB - Panel of 100 French and British companies)*



# TRADE AND COOPERATION AGREEMENT

On December 24, 2020, the European and British negotiators have (finally) signed a Cooperation Agreement:  
A Christmas present ?Not so sure...

## Some background information :

- 1.300 pages including Title 2 and Annex 2 relating to Preferential origin (customs duties suspension)....BUT
- ONLY 30% of concerned companies use of the UK-EU agreement (a lot of compagnies pay customs duties whereas they may not!!!)



# CUSTOMS ASPECTS



# SUMMARY

1. Applicable customs formalities
2. Notions of importers / exporters
3. Preferential origin aspects (to avoid potential customs duties)
4. Special Procedures / reliefs (so potential suspend customs duties)
5. Import/Export risks
6. Specific regulations





# CUSTOMS FORMALITIES APPLICABLE ...



# NEW CUSTOMS FORMALITIES (even with the Agreement)

*Before*



*After*

**Intra-community flow**



**Import (IM) or Export (EX)**

**Declaration of exchange of goods (DEB)**



**Import and/or export declarations + Customs controls**

**No formalities**



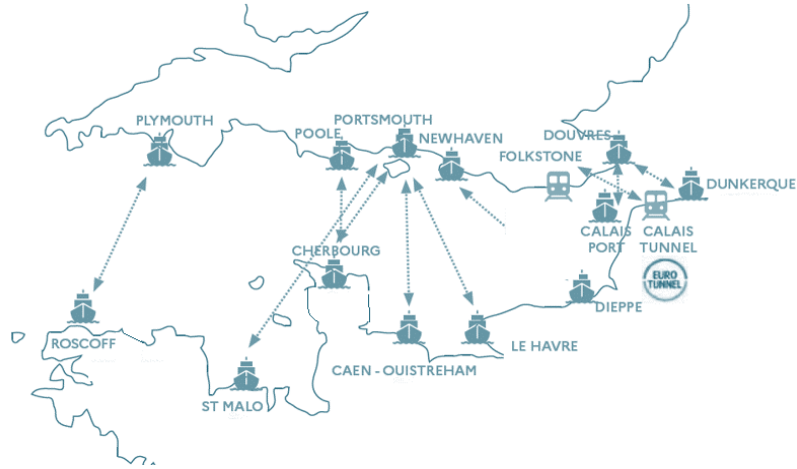
**EORI No. - Declarant's Choice – Importer/Exporter**

**No Customs duties**



**Duties and taxes applicable to the import except for originating products which are exempted**

# THE CONCEPT OF THE « SMART BORDER »

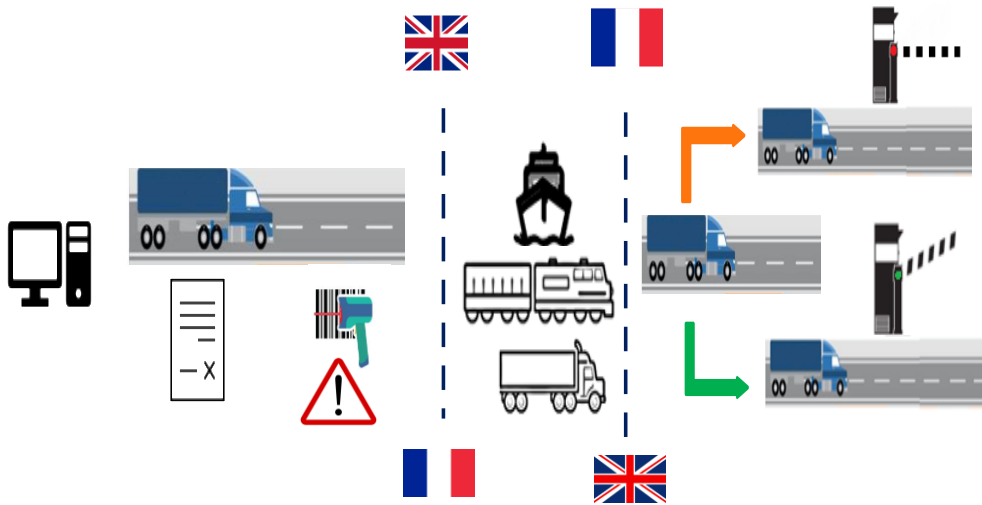


## Some figures:

- 85% of the flows between continental Europe and the UK via the Channel ;
- 20% of flows from the UK to France

## The Smart Border

Technological solution for exchanges in the Channel / North Sea area



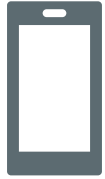
## Presentation

A solution based on anticipation and automation, and reinforced traceability:

- **anticipation:** possibility to prepare customs formalities before arrival at the border, thanks to digital tools (use of advance declaration);
- **identification:** complete traceability of flows by grouping information (relating to the means of transport + the goods it carries);
- **automation** and dematerialization of documentary controls => Green line (without controls) or Orange line (formalities and/or controls).



# SIMPLIFICATIONS ON THE UK SIDE



## Simplification with the smart border:

- Logistic envelope: application allowing to create under a single barcode, an envelope containing several customs declarations.
- Advance declaration and pairing system to streamline operations

## Progressive reinstatement of customs declaration requirements: no mandatory declarations in 2021:

- Traders could use basic declarations in the UK;
- These declarations were possible for most goods except controlled or regulated goods (food, tobacco, chemicals etc)



**Common transit:** The UK has signed the Common Transit Convention  
a common transit declaration is possible for both import and export

Advantages: suspension of duties and taxes until the point of clearance within the territory.

Empty trucks are not subject to any particular customs formalities  
customs formalities (simple verbal declaration).





# GVMS (Goods Vehicle Movement Service)



Anticipation of customs formalities	<ul style="list-style-type: none"><li>Filing of the British customs formalities (export declaration, import declaration or transit declaration) before the departure of the goods</li></ul>
Creation of a GMR (Goods movement reference) by the carrier	<ul style="list-style-type: none"><li><b>Mandatory step and necessarily carried out by the carrier</b></li><li>Information to be included in the GMR: references of the registration plates of the transport unit, references of the customs clearance formalities but also of the British safety and security formalities (July 1, 2022)</li></ul>
Scanning of the GMR	<ul style="list-style-type: none"><li>By the check-in agents of the cross-Channel transport company (Eurotunnel or ferry company)</li></ul>
Processing and automation of customs formalities	<ul style="list-style-type: none"><li>During the crossing</li><li>Via interconnections between GVMS and UK customs clearance applications</li></ul>
For UK imports only, orientation of trucks on landing	<ul style="list-style-type: none"><li>Based on the status of the UK customs formalities and the feedback from the risk analysis</li><li>Directing a truck to a <b>designated area for inspection on the arrival facility or to an inland site in case of inspection</b></li></ul>





# IMPORTER/EXPORTER STATUS / CUSTOMS CLEARANCE

**Exporter: mandatory** to be established in the territory of export (EU/GB) = impossible to export from the EU for British operators not established in the customs territory of the EU (and vice versa)

- **Need to use a representative or a subsidiary to act as an exporter**

**Importer: recommended** to be established in the customs territory

- **If the company is not established, it will be necessary to call upon a customs representative in indirect representation (=share liability...so be negotiated)**

## CONCRETE RECOMMENDATIONS :

- ✓ **Review the incoterms:**
  - ✓ Impossibility to be in charge of the export without being established!
  - ✓ Prohibit the DDP and EXW Incoterms
- ✓ **Review the contracts with the customs representative**
  - ✓ Plan the missions and responsibilities
  - ✓ Review the costs
- ✓ **Obtain an EORI number on both sides**
- ✓ **Be aware of your responsibilities towards the customs authorities (risk analysis)**



# FOCUS ON IMPORT RISKS (CUSTOMS FUNDAMENTALS)

## Classification

Taking into account the new customs tariff in the UK: NOT THE SAME CUSTOMS CODES than in the EU  
Modification of the Nomenclatures from Jan. 2022

## Origin

The UK will no longer be able to benefit from the free trade agreements negotiated and concluded by the EU  
The preferential origin of goods in the UK will therefore have to be examined solely in the light of the free trade agreements that the UK has concluded  
UK goods can no longer be included in the determination of EU origin

## Value

The customs value is in principle calculated on the basis of the invoice price.

Before the Brexit: prices were not constructed taking into account the customs regulations on customs value

After Brexit: it is recommended to use prices that take into account the elements to be included in the customs value

And specific warning regarding value and chain sales...

## Import duties and taxes

***Latest news: "Brexit freedoms bill" (last BoJo idea) : reform in a regulatory way all the laws adopted on the Brexit in order to modify them because at this stage it is « too much a total resumption of the EU regulations »***



# FOCUS ON CONTRACTUAL RELATIONS

## Contractual management of suppliers/customers

### (i) The pillars of customs

The problem:

Incorrect infos (customs code, origin, value) will impact customs duties, thus it may impact the liability as supplier or buyer

Solutions:

Review of contracts: shared responsibility and correct infos to be provided for customs declarations

### (ii) The choice of the incoterm

The problem :

The choice of the incoterm will have consequences on the quality of the importer/exporter and the customs value

The solutions :

Incoterm DDP and EXW to be avoided because DDP involves that the seller will be importer in the buyer country and EXW involves that the buyer will be exporter in the seller country

## The difficult management of customs representative

### Reminder

In indirect representation: The representative is **jointly liable** for the information on the customs declarations and for the customs debt on import (customs duties and VAT)

In direct representation: The company is the **only one responsible** for the information appearing on its declaration and for its customs debt. The customs representative is only responsible if he makes a mistake

### Points of attention

Only companies established in the UK can benefit from these facilities.

**Mandates and contracts in accordance with local rules must be provided for, including the sharing of responsibilities/risks.**



**...ALLOWING A POSSIBLE EXEMPTION...**



# PREFERENTIAL ORIGIN: EXEMPTION FROM CUSTOMS DUTIES

- Principle - Exemption (art. 5):

*"Prohibition of customs duties.*

*Except as otherwise provided in this Agreement, the imposition of customs duties on all goods originating in the other Party is prohibited."*

- This exemption covers in principle all products
- Even if this exemption (financial aspect), does not eliminate the risk of control (declarative or normative aspects, etc.)





# PREFERENTIAL ORIGIN : CONDITIONS?

Qualification of the goods as originating => compliance with the rules of origin (Annex 2, Part II, Title I, Chapter 2 - pages 415 to 485).

## The product must be either:

- Fully obtained; or,
- Sufficiently processed: according to the listing rules specified in the agreement according to the customs code of the goods (important to check the classification of the goods).

Several criteria can be applied alternatively:

- ✓ **Change in tariff heading** (i.e., production from non-originating materials of any heading except that of the product) OR,
- ✓ **Value-added rule** (Maximum % of non-originating products in the finished product OR,
- ✓ **Specific operation.**

FTA UK:

Albania  
Andean countries  
Canada  
Cameroon  
CARIFORUM  
Central America  
Chile  
Côte d'Ivoire  
Eastern and Southern  
Africa (ESA)  
Egypt  
Faroe Islands  
Georgia  
Ghana  
Iceland and Norway  
Israel  
Japan  
Jordan  
Kenya  
Kosovo  
Lebanon  
Liechtenstein  
Mexico  
Moldova  
Morocco  
North Macedonia  
Pacific states  
Palestinian Authority  
Serbia  
Singapore  
South Korea  
Southern Africa Customs  
Union and Mozambique  
Switzerland  
Tunisia  
Turkey  
Ukraine  
Vietnam



# PREFERENTIAL ORIGIN: EVIDENCES?

- **Exporter's declaration of origin** (on invoice or other document, 12 months, 3 years after), as part of the REX system
  - ✓ For products worth more than 6,000 euros: obligation to obtain the status of registered exporter (Note: only one number per establishment)
- **Knowledge of the importer** (proof to be provided at the first request of the customs)
  - ✓ Preferably between companies of the same group
- Specific codes on the SAD



# PREFERENTIAL ORIGIN - Warnings

- Insufficient transformations? Listed in the agreement
- Direct transport ? Mandatory except for customs supervision
- Retroactivity? Possible but under specific conditions only
- ***In case of control:*** production records, invoices, accounting details, suppliers' declarations, limitation periods

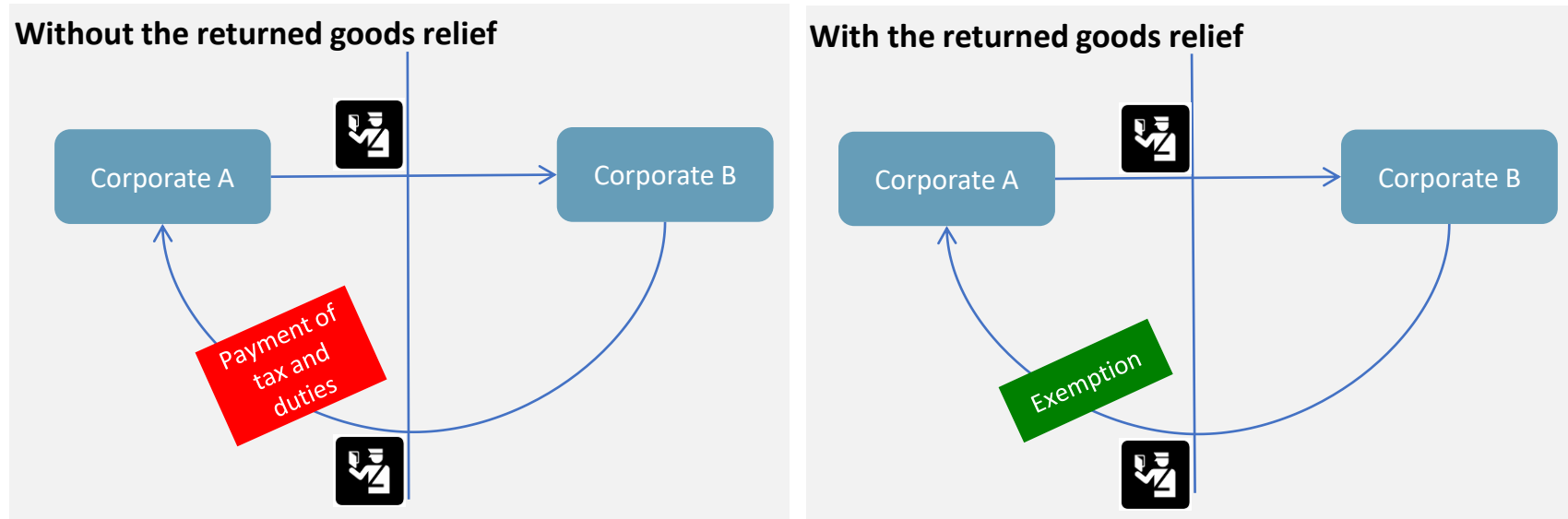


***AND IF THE PREFERENTIAL ORIGIN IS NOT APPLICABLE .....***



**...OR A SUSPENSION IN SOME CASES...**

# IN CASE OF RETURNS: A SPECIAL PROCEDURE PROVIDED...



« Simple » flow

- ✓ **The RETURNED GOODS RELIEF** allows the reimportation of goods, whose characteristics have not been modified, with an exemption from duties and taxes:
  - ✓ The goods must be in the same condition as at the time of export
  - ✓ Re-importation must take place within 3 years
  - ✓ TRACEABILITY (EX ideally)



# IN CASE OF STORAGE OR TRANSFORMATION, TO AVOID DOUBLE TAXATION...

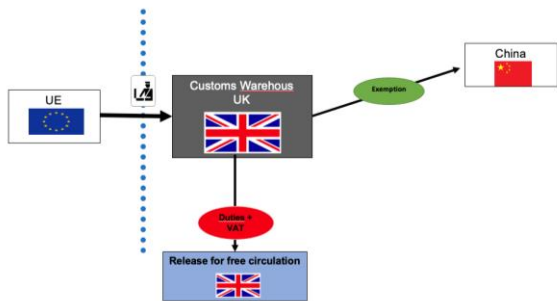


« Specific » flows

Without OP, risk of taxation...  
SO TWO POSSIBLE SOLUTIONS

The customs **warehouse procedure** allows goods to be **stored** for an unlimited period under **suspension of duties and taxes**

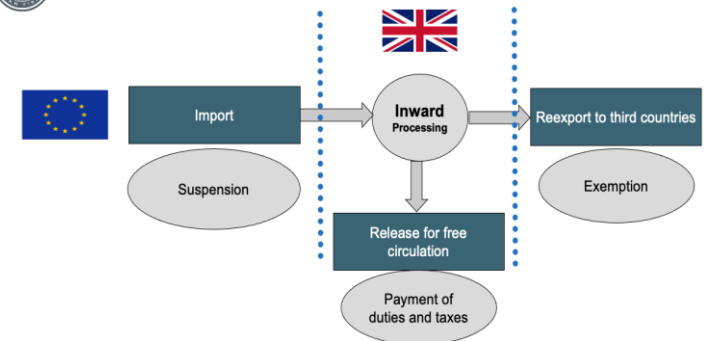
CUSTOMS WAREHOUSE



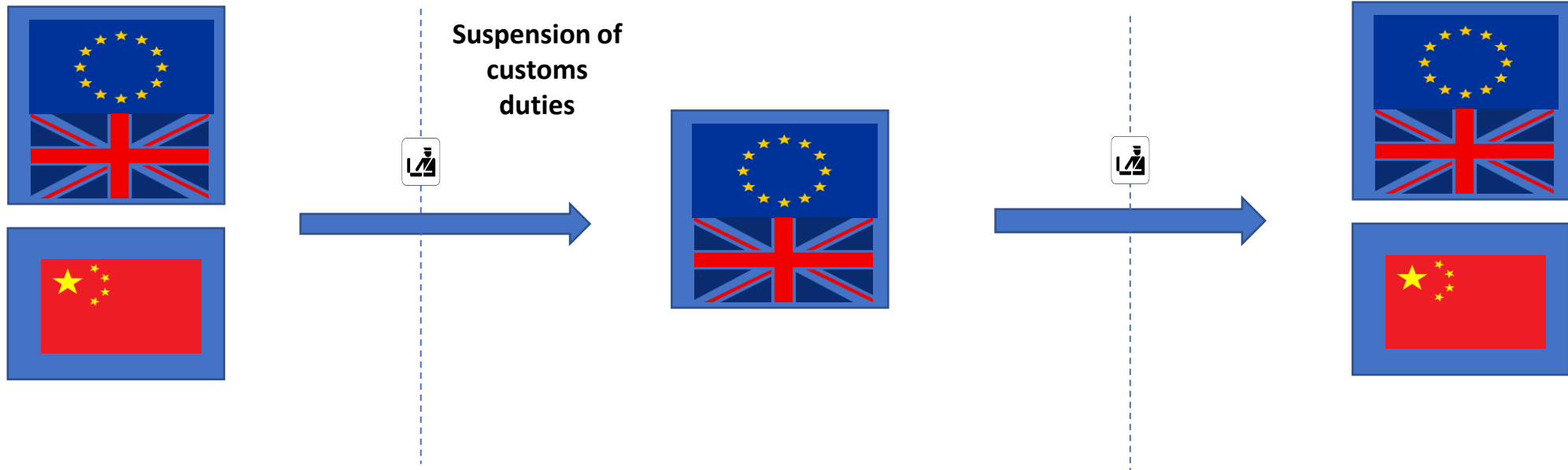
The regime of the Inward Processing relief procedure allows to transform, under certain conditions, goods in suspension of duties and taxes



INWARD PROCESSING



# ANOTHER ALTERNATIVE: TEMPORARY ADMISSION

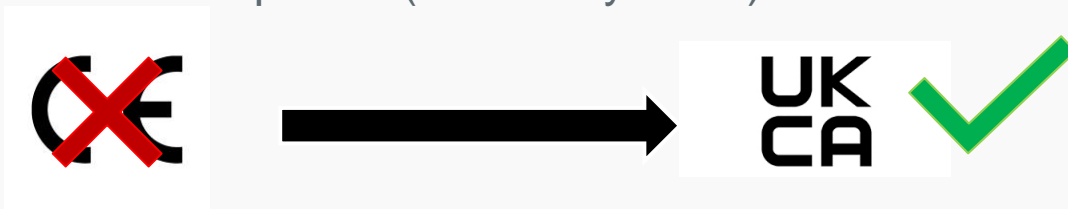


- ✓ **Temporary** import of goods for certain uses (exhibitions, trials, showrooms, private sales...)
- ✓ **Suspension** of duties and taxes if the goods are of EU / UK status
- ✓ IF all **goods are identifiable and not transformed** (identical except for normal depreciation)
- ✓ **The intention to re-export** the goods must be proven
  
- ✓ **Useful in cases where the PO is not acquired and when the returned goods relief is not applicable (status)**



# FOCUS ON SPECIFIC REGULATIONS

- **Low value consignments imported into the UK:** Goods of value < £135
- **Dual Use Goods:** UK added to list of states eligible to issue EUR001 license
  - Import/export certificates issued by the UK as an EU Member State are no longer valid and transfer licences (intra-EU flows) will be transformed into export licences
- **Excise:** Disconnection of the UK from the EU EMCS Alternative DAE system
  - Traditional customs formalities (import/export) + expiry of UK registrations and approvals = potential customs duties (in addition of excises duties)
  - VI1 forms will not be required for wine UK imports
- **Standards:** UKCA and tolerance period (1 January 2023)







# TAX ASPECTS



# SUMMARY

1. Import VAT in the UK, and in France
2. Permanent establishment
3. EU simplification opportunities
4. Export VAT exemption



# 1 - CONCEPT OF *IMPORTER* IN THE **UK**

- Only the importer can recover the VAT paid at importation.
  
- HMRC: the importer must be the owner of the goods at the time of importation (i.e., the title owner):
  - The goods owner appears as the consignee (box 8) on the import declaration.
  - DDU/DAP sales: who is the importer?
    - ✓ If it's the UK customer: import VAT recovery problem
    - ✓ If it's the French vendor: VAT identification in UK? Invoicing of subsequent sales with local VAT?
  
- Warning: the 'owner' according to the VAT rule is the party who has the right to dispose of the goods as an owner, provided that it obtains the ownership to the goods thank to the transaction at stake
  - If there is no transfer of ownership, e.g. leasing, the VAT can only be recovered by the supplier who will have to register for VAT in the UK.



# 1 - GENERALIZATION OF THE REVERSE CHARGE **IN France (and similar mechanism in the UK)**

- Generalization of the VAT reverse charge mechanism to all businesses as of January 1, 2022. (obligation)
  - Import VAT is declared and reverse-chargeable in the monthly VAT return (CA3).  
=> All importers must be VAT registered in France
  
- Transitional period up until June 30, 2022 (Attention, tolerance not yet official) for non-established importers :
  - French VAT registration process initiated before March 1, 22.
  - Payment of Import VAT made through the customs declarations.
  - Recovery of VAT on CA-3 after registration (i.e. cash flow effect)
  
- After June 30, 2022: failure to identify the importer for import VAT self-assessment = declarative irregularity with potential penalties



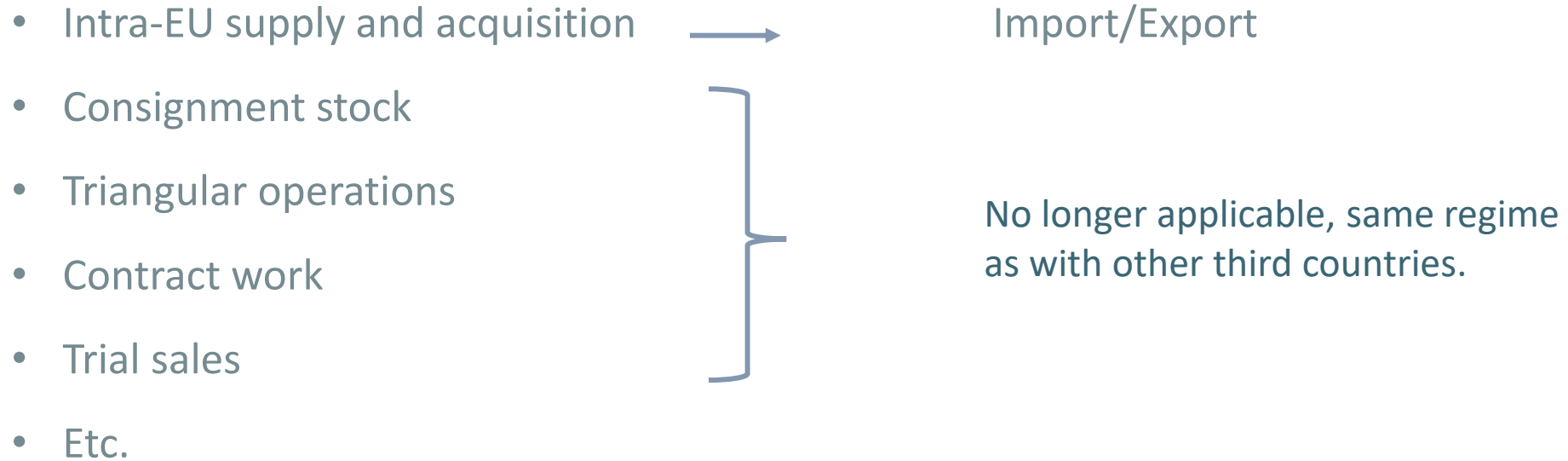
## 2 - PERMANENT ESTABLISHMENT

- Non-UK based companies and importers in the UK:
  - Liable for local import VAT
  - VAT identification - *Tax* representative
  - Filing of local returns
  - Invoicing of operations with local VAT?
  - Appointment of a local *customs* representative
  - Management of a stock / warehouse locally
  - ➔ Permanent establishment in the UK for the foreign importer? Chain of evidence and factors...
  
- Permanent establishment :
  - A fixed place of business in the UK through which the company conducts all or part of its business
  - An agent acting on behalf of the company who has and habitually exercises in the UK the power to do business on behalf of the foreign company
  - ➔ Taxation (Corporate Income Tax) of the foreign company's income / profits in the UK
  
- Beware of the possible role played by the local UK subsidiary... additional factor



### 3 - EU SIMPLIFICATION

➤ The VAT simplification schemes that apply at EU level no longer apply in the UK since BREXIT:





## 4. EXPORT RISK FOCUS: JUSTIFYING VAT EXEMPTION

- ECS (Export Control System) and GVMS = dematerialize/anticipate export formalities and clear declarations at the actual office of exit
- In practice, the goods move (between the "pre-declaration" deposit and the office of exit) with an accompanying document on which appears a tracking number and a barcode
- Once the goods arrive at the office of exit, the accompanying document must be scanned, and the declaration is automatically "traced" in ECS / GVMS and then switched to "Exit" mode to confirm that the goods are actually leaving the territory
- Only the declaration in "Exit" mode proves that the goods have actually left the territory...this is the Exit Tax Receipt (confirming the invoice without VAT)

=> In other words, without this formality, the export declaration is not discharged and the tax receipts of exit of the goods out of the territory are not available

- Exposure = VAT exemption on export from France potentially denied



***Exposure : 20% (non-recoverable VAT) + late penalties***



## 4. EXPORT RISK FOCUS: RECOMMENDATIONS

Non-discharge of exports:

- 90% of non-discharged declarations are due to non-matching
- But also because of system failures...
- And when the exporter has no control over customs clearance up to the customs office of exit
- Not to mention consolidation...

➔ Recommendations :

- Use the tools proposed for pairing, use the logistics envelope
- Establish alternative proof files
- Review the contractual relations with the customs representative + Incoterms
- Indicate in CASE 29 the offices of exit attached to the smart border
- Ensure regular monitoring (ECS / GVMS controls)

Latest news : **On the French side (Note from the Customs Authorities on March '22): Alternative exit proofs**

As an exception, the customs offices of export will appreciate all the documents allowing to justify the effective exit of your goods from the TDU during the year 2021 (almost 100 000 declarations without proof of exit have been identified).





# WARNINGS 2022



# JULY 1, 2022 - ENTRY INTO FORCE OF ALL FORMALITIES

- Integration of the UK Import Entry Summary Declaration (ENS) into the GVMS process
- **Reinstatement of sanitary formalities** for all SPS goods and sanitary controls for SPS goods imported into the UK
- **Reinstatement of safety and security formalities** on import to the UK
- **RETURN OF CUSTOMS CONTROLS ON JULY 1, 2022 !!!**



# FOCUS ON CUSTOMS CONTROLS

**Observation:** 30% of the drivers have presented themselves without having anticipated any formalities or presenting complete formalities.

Approximately 15% of the trucks are **directed in orange line...for the moment (without controls!)...RISKS of supply chain stop!**

## Customs risks :

- **Additional duties and taxes**
- **Interest on late payments**
- **Penalties**

## Recommendations :

- ✓ **Risk management / Audit**
- ✓ **Structuring**
- ✓ **Contractual relations**





# PRACTICAL TOOLS

ACCESS2MARKETS : <https://trade.ec.europa.eu/access-to-markets/en/home>

TARIC : [https://ec.europa.eu/taxation\\_customs/dds2/taric/taric\\_consultation.jsp?Lang=en](https://ec.europa.eu/taxation_customs/dds2/taric/taric_consultation.jsp?Lang=en)


TARIFF UK : [https://www.trade-tariff.service.gov.uk/find\\_commodity](https://www.trade-tariff.service.gov.uk/find_commodity)

➔ LHLF





# OUR RECOMMENDATIONS - SUMMARY

- Anticipate the formalities: use a customs representative, apply for an EORI number, etc.
- Anticipating price "increases" + price revision clauses linked to possible taxation;
- Anticipating customs controls (risk analysis)
- Simplified customs clearance procedures to gain in fluidity;
- Approved/registered exporter status to benefit from Preferential Origin (no customs duties in case of Free Trade Agreement); 
- Management of import/export licenses (REACH, waste, CITES, BDU etc);
- Authorized Economic Operator (AEO) status to benefit from the "green line";
- Customs warehouse or inward processing to avoid **double taxation**.





AND THE MOST IMPORTANT... => *GOD SAVE THE QUEEN !*







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