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SPECTARIS e.V.

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Future partnership between the United Kingdom and the European Union - requirements of the SPECTARIS industries

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Brexit became a reality on 31 January 2020. Since 1 February 2020, the United Kingdom is no longer a member of the European Union (EU). There will be an initial transition period, which will last until at least the end of 2020, and during which both EU law and the case law of the European Court of Justice will continue to be binding for the United Kingdom.

Summary

As an industry association with members involved in an above-average level of export, SPECTARIS is committed to a relationship that is as close and as trouble-free as possible after the transition period. From SPECTARIS's viewpoint, the key element of the future relationship must be a free trade agreement which ensures that trade between the European Union and the United Kingdom is both duty free and free of charges. In order to avoid long and costly border controls, customs clearance should take place solely electronically, and pre-departure declaration should be instituted for all goods (pre-arrival processing). SMEs in particular should be able to benefit from simplified customs procedures and a single point of contact for the movement of goods. With this in mind, both the European Union and the United Kingdom should press ahead with their efforts to create a "single window" for the movement of goods.

In order that the benefits of the future free trade agreement can be enjoyed by many traders on both sides of the channel, the rules of origin for making use of preferences should be as uncomplicated as possible. The Registered Exporter (REX) database tool offers this facility and should be an integral part of the future free trade agreement. At the same time, it would also be desirable for the United Kingdom to join the Pan-European-Mediterranean cumulation system. Unlike the agreement between the EU and Japan, under the future free trade agreement between the EU and the United Kingdom inspection and verification of the originating status should not be carried out by the importer or by customs upon import into the respective destination country, but instead, as with a free trade agreement in the classic sense, be the responsibility of the customs authority in the country of origin.



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In addition, the regulations for market entry - especially for medical and laboratory products - should be harmonised. This also involves regulating the recognition of CE marking and certification in the new agreement. Deviations, such as registration requirements, should be kept to the minimum.

After Brexit, the United Kingdom will continue to maintain a close relationship with the EU, and to liaise in many ways in diverse projects. For this reason close collaboration and, as far as possible, harmonisation of data traffic and of the national implementation of international export control standards are essential. The United Kingdom should apply for associated membership in EU programmes, in order to avoid jeopardising long-standing cooperation in EU programmes such as Horizon Europe.

SPECTARIS requirements

Despite the corona pandemic, the countdown to Brexit continues for members of SPECTARIS. For SPECTARIS industries (optics, photonics, analytical, bioanalytical and laboratory technology, and medical technology) the United Kingdom is one of the most important markets, and is one of the top six target countries for exports from Germany.

In a survey of its members carried out by SPECTARIS, the majority of those questioned stated that a no-deal Brexit would have a major impact on their procurement and supply chains. Some of the companies surveyed anticipate a drop in sales of between two and five percent if no agreement over future relationships, or more specifically no free trade agreement, is concluded.

Even after the United Kingdom's withdrawal from the EU, economic ties are and will remain close. Thus the SPECTARIS sectors place the following key demands on shaping future relationships between the European Union and the United Kingdom.

■ Extend the transition period

Even before the corona pandemic the negotiating mandate and the schedule were extremely loose. A "hard Brexit 2.0" poses a further risk that is difficult to calculate, even for businesses on the other side of the English Channel.

In the interests of both sides future relationships should be regulated not as piecemeal but comprehensively and finally; for this reason SPECTARIS calls for an extension of the transition period beyond 31.12.2020 if it should become clear by autumn that no agreement will be reached.



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■ **Level playing field: Close relationships with no new tariff or non-tariff barriers to trade, and harmonised working and environmental standards**

The shaping of new relationships with the United Kingdom must be based on the rules of free and fair competition. Thus close consultation, cooperation and conformity with European law should be maintained, especially with regards to market access, competition, regulation, standards, taxes, the environment, and data protection.

The member companies of SPECTARIS are in favour of the closest possible relationship between the United Kingdom and the European Union, on a level footing, with no customs duties or other non-tariff trade barriers. In addition, the members of SPECTARIS support mutual, harmonised market access, in particular for medical products and for analytical, bioanalytical and laboratory products.

■ **Coordinated collaboration in multilateral organisations and close consultation in international control bodies**

In the light of the global increase in protectionism and trade conflicts, and the weakening of multilateral organisations, SPECTARIS is in favour of concerted and coordinated collaboration when working out and implementing the recommendations of multilateral organisations. Because of the geographical proximity, common security interests and the continuation of shared projects in industry and research, the application and implementation of existing agreements and rules need to be harmonised. Planned national changes to regulations should be communicated in advance and the other party should be granted the opportunity to comment before these changes are adopted.

From SPECTARIS's point of view, close consultation and collaboration are desirable, in particular in international control bodies, in imposing (economic) sanctions, in promoting disarmament and curbing the proliferation of weapons of mass destruction, in implementing controls on the export of armaments, and in export controls for dual-use goods.

■ **Free trade agreement**

Both the United Kingdom and the European Union agree that they want their goods to have duty-free access to each other's markets. The United Kingdom has already rejected a customs union, which leaves a free trade agreement as the only option.

From SPECTARIS's perspective, the free trade agreement should be as extensive as possible and, since the negotiating period is so short, it should be heavily based on the free trade agreements negotiated by the EU over the last few years, such as the Comprehensive Economic Trade Agreement (CETA) with Canada and the Economic Partnership Agreement (JEFTA) between the European Union and Japan. Unlike the



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agreement between the EU and Japan, however, the future free trade agreement between the EU and the United Kingdom should not contain a requirement for the customs authority to verify preferential origin upon import into the respective destination country.

Key elements of the free trade agreement should be exemption from duty, the smoothest possible movement of goods, and a ban on any further trade restrictions that are not justified by specific rules and exceptions provided for in the agreement. In addition, a close regulatory link and collaboration between the EU and the United Kingdom should be a part of the future agreement. Other important elements of a free trade agreement include taking into consideration the particular concerns of SMEs, and straightforward procedures for customs and the movement of goods.

■ Movement of goods and customs formalities

Existing EU free trade agreements such as CETA include a separate section on customs and trade facilitation, which optimises the processes involved in the import, export and transit of goods. Another core area of a future free trade agreement with the United Kingdom should be trade without customs duties or equivalent charges or restrictions on quantity. Nor should border controls, which the United Kingdom has already announce its intention of introducing, create new obstacles for economic operators.¹ In particular, goods transported through the United Kingdom to the Irish Republic must be guaranteed trouble-free passage.

The Commission's proposal provides, similar to CETA, for a risk-based approach to the inspection of deliveries² and the option of pre-arrival processing of goods. The Commission's draft also favours exclusively electronic handling of customs clearance.

For this purpose the European Union should intensify its efforts to create a "single window". A single window allows those parties involved in the international movement of goods to submit standardised information and documents to a single point of contact so as to fulfil all legal obligations relating to import, export and transit. In its turn, the United Kingdom should also have a single window for customs matters.

Under the Union Customs Code, simplified customs procedures already exist for Authorised Economic Operators (AEOs). AEOs have special status. Because of their reliability and trustworthiness, they can enjoy special concessions in customs clearance. Mutual recognition of AEO status should be maintained by both sides, to allow companies that already hold AEO status to benefit from fewer customs controls. It should,

¹ Press release from 10 February 2020: "Government confirms plans to introduce import controls: <https://www.gov.uk/government/news/government-confirms-plans-to-introduce-import-controls>.

² See article CUSTMS.8: Post-clearance audit.



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however, be noted that AEO status is not exploited by many companies, and acquisition of AEO status is subject to many conditions, which is why this can only be a partial solution.

For this reason, customs declarations should in general be designed to be as simple as possible, to apply to all goods without exception, and to take into account the interests of SMEs which never traded with partners outside the European Union before Brexit.

Finally, in order that economic operators may avoid allocating additional costs and resources for new product classifications, the United Kingdom should retain the Harmonised System for Classification of Goods based on the Integrated Tariff of the European Communities (TARIC code).

It is important to ensure that goods move smoothly without congestion at the borders between the United Kingdom and the European Union, even after Brexit. Exemption from duty, a risk-based approach to customs inspections, simplified - and preferably electronic - customs clearance, and the option of pre-arrival processing for all goods are to be welcomed by SPECTARIS. In addition, the United Kingdom should take advantage of the EU transit programme, in order to ensure, for example, that inspections are not carried out twice if goods are carried from the Republic of Ireland to the EU through the United Kingdom.

■ Preferential rates of duty and rules of origin

One benefit of a free trade agreement is preferential rates of duty. When drawing up the agreement on the future relationship, the rules of origin should be simply designed, and the required proof of preferential origin should be as unbureaucratic and easy to manage as possible, in order that a wide range of businesses, in particular SMEs, may benefit from them. At the same time, it must be ensured that companies from third countries do not divert their trade to EU territory or to the United Kingdom in order to wrongly take advantage of preferences.

Simple design of the rules of origin and adoption of REX:

Whether companies take advantage of preferences governed by a free trade agreement depends on the complexity of the rules of origin and the administrative burden associated with their use. This should be taken into account when designing the rules of preferential origin in the agreement. Thus it would be important to consider alternative methods of verification to paper verification, and to the Approved Exporter (AE), during negotiations. For example the principle of "self-certification" by companies can be enhanced and introduced as an alternative to certification of individual export consignments by customs authorities (e.g. EUR.1) or exporters (AE). There should be as simple a procedure as possible to enable all exporters, regardless of the value of the goods consignment, to register to take advantage of preferential rates of duty and subsequently to submit their own declarations of origin in their commercial documents. The Registered Exporter (REX) database tool offers this option. REX is already incorporated into the agreements with Canada and Japan,



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and within the GSP. Incorporating this simplified method of verification as an optional alternative would make the use of preferential rates of duty considerably simpler. The agreement on the future relationship between the United Kingdom and the EU should, therefore, contain rules on proof of origin that have already proved effective in existing agreements. The Registered Exporter system (REX) should be included in future free trade agreements so as to simplify certification of the origin of goods.

Elimination of checks on origin of products and/or other conditions imposed by the customs authorities in the country of destination

Under the EU-Japan agreement, the importer carries out the checks as to whether an originating product exists and/or the other conditions are fulfilled. In addition, the customs authorities in the country of destination are permitted to request certain information from the importer. The importer is obliged to comply with the request for information.³

This information is often not available to the importer in the country of destination, thus the cumbersome process of requesting it from the foreign producer must be entered into. In addition to information on the origin criteria applied, manufacturers may have to disclose other information, such as a description of the manufacturing process, the materials used, and the value of all materials used with or without origin criteria. Since this information is often confidential the respective exporters are reluctant to provide it, and to send it to authorities in foreign countries, even if the foreign authority is obliged to treat the data as confidential.

For this reason, and in order to save time, under the future free trade agreement between the EU and the United Kingdom, as with classic free trade agreements, the checks and verifications into the originating status should be carried out exclusively by the customs authorities in the exporting country or more specifically on the exporter's premises.

Accession of the United Kingdom to the PEM Convention

Due to the closely interlinked supply chains within the Pan-Euro-Mediterranean zone, it would be desirable for the United Kingdom to join the Pan-Euro-Mediterranean cumulation system and to ratify the Regional Convention on Pan-Euro-Mediterranean preferential rules of origin (PEM Convention). Diagonal cumulation of origin within the Pan-Euro-Mediterranean zone is used by companies from both the EU and from Britain, and often contributes towards arriving at a preferential rate of duty.

³ cf. Generalzollverwaltung, Merkblatt (Board of Customs data sheet) EU-Japan EPA, Version 6 February 2020; https://www.zoll.de/DE/Fachthemen/Warenursprung-Praeferenzen/WuP_Meldungen/2019/wup_freihandelsabkommen_eu_japan.html.



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If the United Kingdom declines accession to the Pan-Euro-Mediterranean zone, the agreement should contain provisions which allow the option of a cumulation of origin with the EFTA countries, the West Balkan states and the participants in the Barcelona Process.

■ Relationships with third countries

Negotiations with the United Kingdom must not be allowed to jeopardise existing contractual relationships between the EU and third countries. In some cases the United Kingdom has already succeeded in transferring some of the bilateral agreements to the EU.⁴ By transferring EU bilateral trade agreements to the United Kingdom, the impact of Brexit on international supply chains may in some cases be reduced. In many cases, however, the relationship with third countries is dependent upon what the United Kingdom's priorities are in its future internal and foreign trade policy. A close dialogue between the European Union and the United Kingdom over this would be desirable.

■ Non-tariff and technical trade barriers

The United Kingdom and the European Union are interlinked through close reciprocal supply chains. The future agreement should therefore be based on the World Trade Organisation's Agreement on Technical Barriers to Trade (TBT Agreement), and be in line with the EU's agreements with, for example, Canada and Japan, that have now been renegotiated.

The agreement on the future relationship between the United Kingdom and the European Union should not lead to creating new, discriminatory barriers to trade. It should, instead, encourage good regulatory practice in technical regulation and not be any more restrictive than necessary.

■ Mutual recognition and regulatory cooperation

A close regulatory link and collaboration between the EU and the United Kingdom should be a part of the future agreement. The members of SPECTARIS support mutual, harmonised market access, in particular for medical devices and laboratory products. This assumes that the rules for placing products on the respective markets are aligned as closely as possible. It also involves regulating the recognition of CE marking and certification as simply as possible in the new agreement. There should be no obligation to submit complete technical documents, and recognition of the quality standards and requirements for products bearing the CE marking should be sought. In particular, since manufacturers of medical devices, including in the United Kingdom, have made every effort to implement the European Medical Devices Directive, deviations, for instance relating to registration requirements, should be kept to the minimum.

⁴ UK trade agreements with non-EU-countries in a no-deal Brexit; <https://www.gov.uk/guidance/uk-trade-agreements-with-non-eu-countries-in-a-no-deal-brexite>.



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■ Government procurement and public tenders

The option to participate in public tenders is essential for many companies of the SPECTARIS industries. Third countries are generally excluded from participating in tenders issued by EU institutions unless there is an agreement that they may participate. The agreement must therefore enable access to government and other public tenders in each other's markets to be kept barrier-free for European and British companies, even after the end of the transition phase.

Aligned with this, it would be important to create transparent selection procedures and to recognise European test results in tenders. A sectoral approach is also beneficial to both sides: From SPECTARIS's viewpoint, the public health sector should, therefore, also be taken into consideration so as to ensure market access for procurement procedures by, for example, universities, hospitals and research centres for European suppliers of medical devices and related services (maintenance agreements etc.) and vice versa.

For existing contracts arising from earlier tenders, it is essential to agree an exemption for ongoing supply (e.g. with respect to personnel issues, residence regulations and free movement of goods) in order to provide legal certainty for the companies concerned.

■ Dispute resolution mechanism

One of the main points of disagreement in negotiating the future relationship is the regulations on future disputes. The United Kingdom refuses to accept the jurisdiction of the European Court of Justice and the application of Council Regulation (EC) No. 44/2001 in these cases. An agreement on jurisdiction and the implementation of a dispute resolution mechanism are paramount to the legally secure clarification of jurisdiction under civil and commercial law, and to enabling the recognition and enforcement of judgements.

SPECTARIS would therefore welcome the United Kingdom's first steps towards acceding to the Lugano Convention.

■ Data traffic and exchange of personal data

The United Kingdom's withdrawal from the European Union must not result in a situation where data transmissions into the United Kingdom are only possible under difficult circumstances or, in a worst-case scenario, they must basically cease. With the United Kingdom's withdrawal from the European Union, the former will become a third country within the meaning of the General Data Protection Regulation. Data transmission is an essential element in enabling groups of companies to carry out cross-border activities. Extensive regulations on data transmission should therefore be an integral part of the agreement on the future relationship.



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■ Participation by the United Kingdom in EU programmes

The member companies of the SPECTARIS industries work successfully together in a variety of EU programmes. As part of the future relationship, it must be ensured that the United Kingdom is able to continue participation in EU programmes such as Horizon Europe. The framework conditions of Horizon Europe make provision for participation by non-EU member states, for example as “Associated Countries”.

The United Kingdom should apply for associated membership in selected EU programmes, in order to avoid jeopardising long-standing cooperation in these programmes.

SPECTARIS is the German Industry Association for optics, photonics and analytical and laboratory technology, and is based in Berlin. The association represents 400 German companies, consisting predominantly of medium-sized companies. The sectors represented by SPECTARIS achieved total revenues of over 73 billion euros in 2019, and employ around 328,000 people. With an average export quota of over 60 per cent, SPECTARIS companies stand out particularly for their export strength.