



# **Customs and Indirect tax matters on the withdrawal of the United Kingdom from the European Union**

Seminar Industry and Trade  
Prague, 17 December 2018

# Taskforce on Article 50 negotiations with the United Kingdom

- ❑ *In charge of **preparing and conducting the negotiations with the UK**, taking into account the **framework of its future relationship** with the European Union and ensure an orderly withdrawal*
- ❑ ***Coordinating the European Commission's work** on all strategic, operational, legal and financial issues related to negotiations with the United Kingdom*



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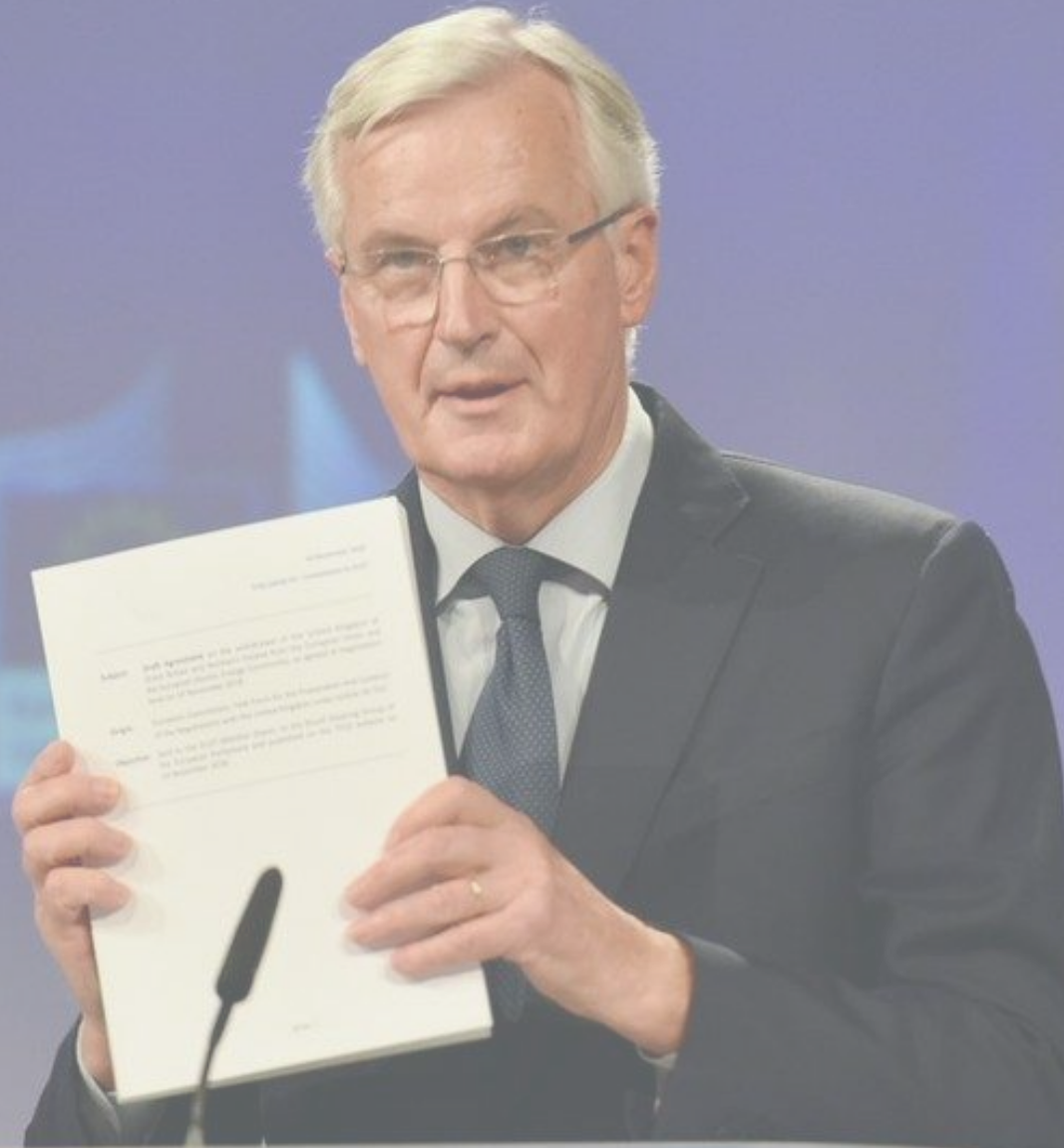
We have negotiated with the UK,  
never against the UK.

This deal is a necessary step to build  
trust between the UK and the EU. We  
need to build, in the next phase, an  
unprecedented and ambitious  
partnership.

The UK will remain our friend, our  
partner and our ally.

”

*Michel Barnier, the European  
Commission's Chief Negotiator,  
at the Special Meeting of the European  
Council (Article 50), 25 November 2018*



Commission européenne  
European Commission

# WHAT IS THE WITHDRAWAL AGREEMENT?

The UK will leave the EU at midnight on 29 March 2019.

The Withdrawal Agreement ensures that this will happen in an **orderly manner**.



## Article 50.2 of the Treaty on European Union:

"A Member State which decides to withdraw shall notify the European Council of its intention.

In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude **an agreement** with that State, setting out the arrangements for its withdrawal, taking account of the **framework for its future relationship** with the Union. [...]"

## MAIN AREAS COVERED BY THE WITHDRAWAL AGREEMENT (1/2)



### Common provisions (Part I)

- ▶ Setting out cross-cutting clauses for the proper understanding and operation of the Withdrawal Agreement.



### Separation issues (Part III)

- ▶ Ensuring an orderly withdrawal, notably through a smooth winding-down of ongoing procedures and arrangements applicable at the end of the transition period.



### Financial settlement (Part V)

- ▶ Ensuring that the UK and the EU honour all financial obligations undertaken jointly while the UK was a Member State.



### Citizens' rights (Part II)

- ▶ Protecting the life choices of over 3 million EU citizens in the UK, and over 1 million UK nationals in EU countries, safeguarding their right to live, work or study in their host country.



### Transition (Part IV)

- ▶ Providing for a transition period, until the end of 2020, which can be extended once, by up to one or two years.
- ▶ Ensuring continued application of EU law in and to the UK during that period (but without UK participation in EU institutions and governance structures)
- ▶ Providing more time for administrations, businesses and citizens to adapt.

## MAIN AREAS COVERED BY THE WITHDRAWAL AGREEMENT (2/2)



### Governance (Part VI)

- ▶ Ensuring the effective management, implementation and enforcement of the agreement, including an effective dispute settlement mechanism.



### Protocol on the Sovereign Base Areas (SBAs) in Cyprus

- ▶ Protecting the interests of Cypriots who live and work in the Sovereign Base Areas.



### Protocol on Ireland and Northern Ireland

- ▶ No hard border between Ireland and Northern Ireland.
- ▶ No diminution of rights set out in the Good Friday (Belfast) Agreement 1998. North-South cooperation protected.
- ▶ Continuation of the Common Travel Area arrangements between Ireland and the UK, and preservation of the Single Electricity Market



### Protocol on Gibraltar

- ▶ Providing for administrative cooperation between Spain and the UK in respect of Gibraltar in a number of policy areas during the transition period and on the implementation of the citizens' rights part of the Withdrawal Agreement.

# The Withdrawal Agreement

## Separation issues

- **Customs: Articles 47-50 (Title II of Part III)**
- **Value Added Tax and Excise: Articles 51-53 (Title III of Part III)**

Basic principle:

'grandfathering' of EU rules for ongoing procedures and movements at the end of the transition period

# The Withdrawal Agreement

## Separation issues

Customs: Articles 47-50 (Title II of Part III)

### *Article 47*

- Customs procedures started before the end of the transition period can be finalised after withdrawal on the basis of the rules and requirements applied before
- Pre-conditions: status of the goods (Union or non-Union) is to be demonstrated & that transport of a movement has started before the end of the transition period



# The Withdrawal Agreement

## Separation issues

Customs: Articles 47-50 (Title II of Part III)

### *Article 48 – § 1*

- Waiving the need for a **pre-arrival** entry summary declaration (ENS) in case this has been lodged before the end of the transition period



European  
Commission

Date of  
withdrawal



Goods loaded  
in 3rd country

Submit ENS to  
UK customs  
authorities

First port of  
entry in EU27

~~Submit ENS to  
EU customs  
authorities~~

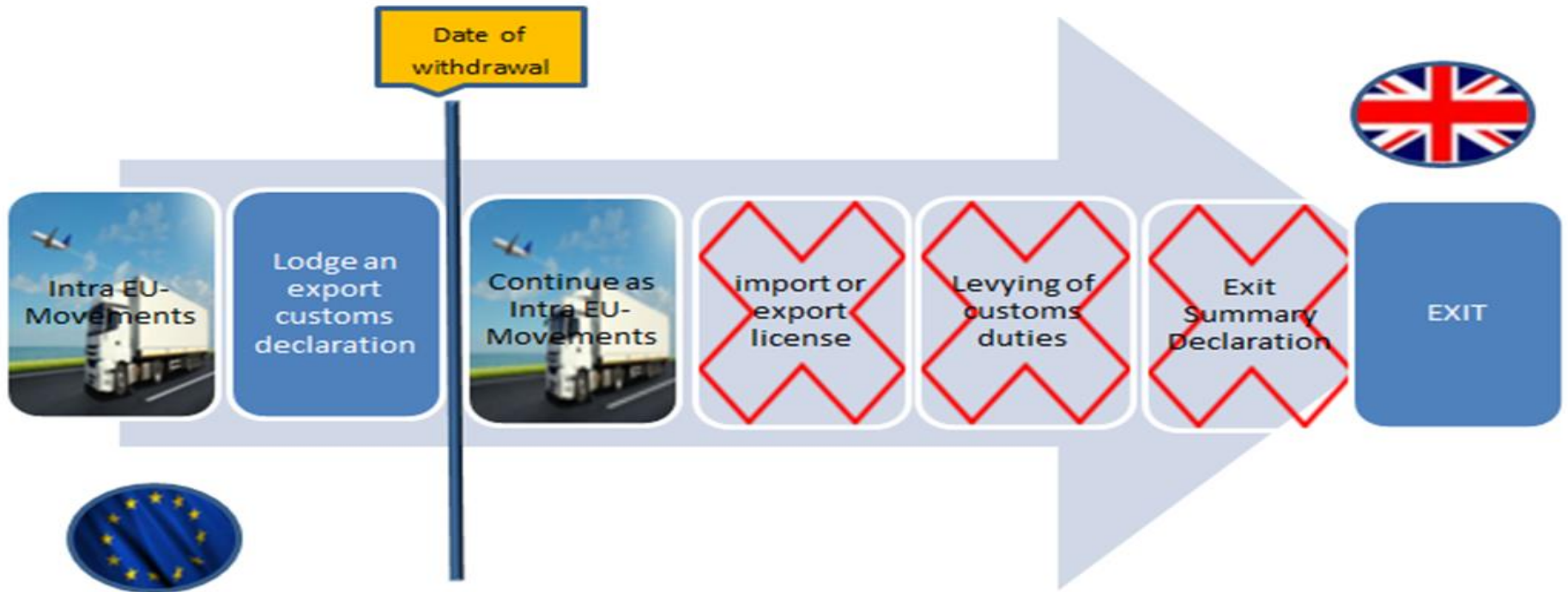
# The Withdrawal Agreement

## Separation issues

Customs: Articles 47-50 (Title II of Part III)

### *Article 48 – § 2*

- Waiving the need for a **pre-departure** declaration (EXS) in case this has been lodged before the end of the transition period



# The Withdrawal Agreement

## Separation issues

Customs: Articles 47-50 (Title II of Part III)

### *Article 49*

- **Goods placed under a customs procedure before the withdrawal date will continue under that procedure under the same rules and conditions of the Union Customs Code as they were applicable in the UK and EU before the date of withdrawal**
  - Non-Union goods placed under transit procedure in UK before withdrawal date
  - Reaching destination and ending transit in Prague after the withdrawal date
  - Continue to apply EU customs rules when ending the ongoing customs procedure
- **Time limits in Annex III**

# The Withdrawal Agreement

## Separation issues

Customs: Articles 47-50 (Title II of Part III)

### *Article 50*

- **UK authorities have continued access to relevant networks, information systems and databases**
- **Listing in Annex IV**

# The Withdrawal Agreement

## Separation issues

Indirect tax: Articles 51-53 (Title II of Part III)

### *Article 51 (VAT) - § 1*

- **To avoid a double taxation ground (e.g. import and intra-EU acquisition)**
- **Example:** B2B supply of goods from UK to CZ. Transport starts 30.12.2020 - goods arrive in Prague 1.1.2021.
- When it is proven to customs that transport started before the withdrawal, no import VAT is due and the transaction will be treated as an intra-EU supply and acquisition.

# The Withdrawal Agreement

## Separation issues

Indirect tax: Articles 51-53 (Title II of Part III)

### *Article 51 (VAT) – § 2*

- **Taxable person's rights and obligations**
- Transaction with a 'cross-border element'
- No listing of specific rights and obligations, it is better to use a general and broad description.



# The Withdrawal Agreement

## Separation issues

Indirect tax: Articles 51-53 (Title II of Part III)

### *Article 51 (VAT) – § 3*

- **Refund applications**
- At the latest by 31.3.2021
- Limit the 'post-transition' effects of the withdrawal agreement

# The Withdrawal Agreement

## Separation issues

Indirect tax: Articles 51-53 (Title II of Part III)

### *Article 51 (VAT) – § 4*

- **Amendments to returns related to services: telecommunications, broadcasting and electronic services**
- At the latest by 31.12.2021
- Limit the 'post-transition' effects of the withdrawal agreement

# The Withdrawal Agreement

## Separation issues

Indirect tax: Articles 51-53 (Title II of Part III)

### *Article 52 (Excise)*

- **Movements starting before the end of the transition period and ending thereafter to be treated as intra-EU excise movement**
- **150 days:** cover maximum guarantee lifetime
- **Example: Duty Suspension - EMCS**

Allowed: actions that do not create or modify an e-AD

=> report of receipt | export, cancellation, etc.

=> no new e-AD, no Split or Change of Destination

Fallback documents allowed

# The Withdrawal Agreement

## Separation issues

Indirect tax: Articles 51-53 (Title II of Part III)

### *Article 53 (VAT & Excise)*

- **UK authorities continue access to relevant networks, information systems and databases**
- **Listing in Annex IV**

## What happens during the transition period – until the end of 2020?

### **EU law continues to apply**

to and in the UK as if it were a Member State

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### **UK remains in the EU Customs Union and the Single Market**

with all four freedoms, and all EU policies.

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### **UK remains bound by obligations stemming from all EU international agreements.**

In the area of trade, this means that third countries keep the same level of access to the UK market. The UK cannot apply new agreements in areas of EU exclusive competence, unless authorised to do so by the EU.

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### **UK is no longer represented in EU institutions, agencies and bodies**

# Preparedness

- **No Withdrawal Agreement:**  
**NO TRANSITION PERIOD**
- **Seven things businesses in the EU27 need to know:**  
[https://ec.europa.eu/info/sites/info/files/factsheet-preparing-withdrawal-brexit-preparedness-web\\_en.pdf](https://ec.europa.eu/info/sites/info/files/factsheet-preparing-withdrawal-brexit-preparedness-web_en.pdf)
- **Brexit checklist for traders (soon)**
- **TAXUD webpage:**  
[https://ec.europa.eu/taxation\\_customs/uk\\_withdrawal\\_en](https://ec.europa.eu/taxation_customs/uk_withdrawal_en)

**Brexit preparedness notices:** [https://ec.europa.eu/info/brexit/brexit-preparedness/preparedness-notices\\_en#tradetaxud](https://ec.europa.eu/info/brexit/brexit-preparedness/preparedness-notices_en#tradetaxud)

**Notice to stakeholders – customs and indirect taxation  
30.01.2018**  
[https://ec.europa.eu/info/sites/info/files/file\\_import/customs\\_and\\_indirect\\_taxation\\_en.pdf](https://ec.europa.eu/info/sites/info/files/file_import/customs_and_indirect_taxation_en.pdf)

**Notice to stakeholders – import and export licenses  
25.01.2018**  
[https://ec.europa.eu/info/sites/info/files/file\\_import/import\\_and\\_export\\_licences\\_en.pdf](https://ec.europa.eu/info/sites/info/files/file_import/import_and_export_licences_en.pdf)

**Notice to stakeholders – Preferential rules of origin  
4.06.20**  
[https://ec.europa.eu/info/sites/info/files/file\\_import/preferential\\_rules\\_of\\_origin\\_en.pdf](https://ec.europa.eu/info/sites/info/files/file_import/preferential_rules_of_origin_en.pdf)

# The Future Relationship





# What does the Withdrawal Agreement say on the future relationship negotiations?

The EU and the UK will use their best endeavours to negotiate the agreements on the future relationship expeditiously.

They both commit to act in good faith.

The common goal is to make sure that such agreements apply from the end of the transition period to the extent possible.

The use of the best endeavours must fully respect the legal orders of the EU and the UK.

This means that negotiations will only start once the UK will have left the EU.

Frictionless trade



### Customs Union

- a trade bloc
- a single customs territory
- no tariff barriers between members
- common external tariff
- common external trade policy



### Single Market

- removes regulatory barriers between Member States





European Commission

- Veterinarian and Phyto sanitarian authorities (SPS – BIP)
- Security authorities

## Customs in cooperation with

- Market Surveillance Authorities

### Security & Safety controls AT THE BORDER

- Pre-arrival declarations security controls ('bomb in the box')
- Live animals
- Products of animal origin
- Animal by-products not intended for human consumption
- Personal consignments of products of animal origin
- Plastic kitchenware from China and Hong Kong
- Fresh fruit and vegetables
- High risk food and feed of non-animal origin
- Okra, curry leaves from India
- Unauthorised GM rice in rice products from China
- Food and feed from Fukushima
- Guar gum from India
- Plant health
- Pelts of certain animal species originating from countries using leghold traps
- Invasive alien species

### Financial Controls At customs office of import

- Risk based controls on the basis of customs declarations for all goods placed under a customs procedure (Union Customs Code)
- Classification of goods
- ~~Origin/Proof of status free circulation~~
- Customs value
- ~~Customs duties~~
- VAT
- Excise

### Market Surveillance At customs office of import

- For industrial products
- Checks based on risk assessment, suspension of release for free circulation, decision by market surveillance authorities, refusal, or authorisation to release
- Ensure that only compliant products are placed on the Union market (Regulation (EC) no 765/2008)
- 68 legal instruments harmonising EU rules on non-food products (e.g. type-approval of motor vehicles, safety of toys, ozone layer depleting substances, CE-marking, EU Ecolabel, pyrotechnic articles, explosives for civil uses, personal protective equipment)
- Specific rules for medicinal products for human and veterinary use

Customs Union

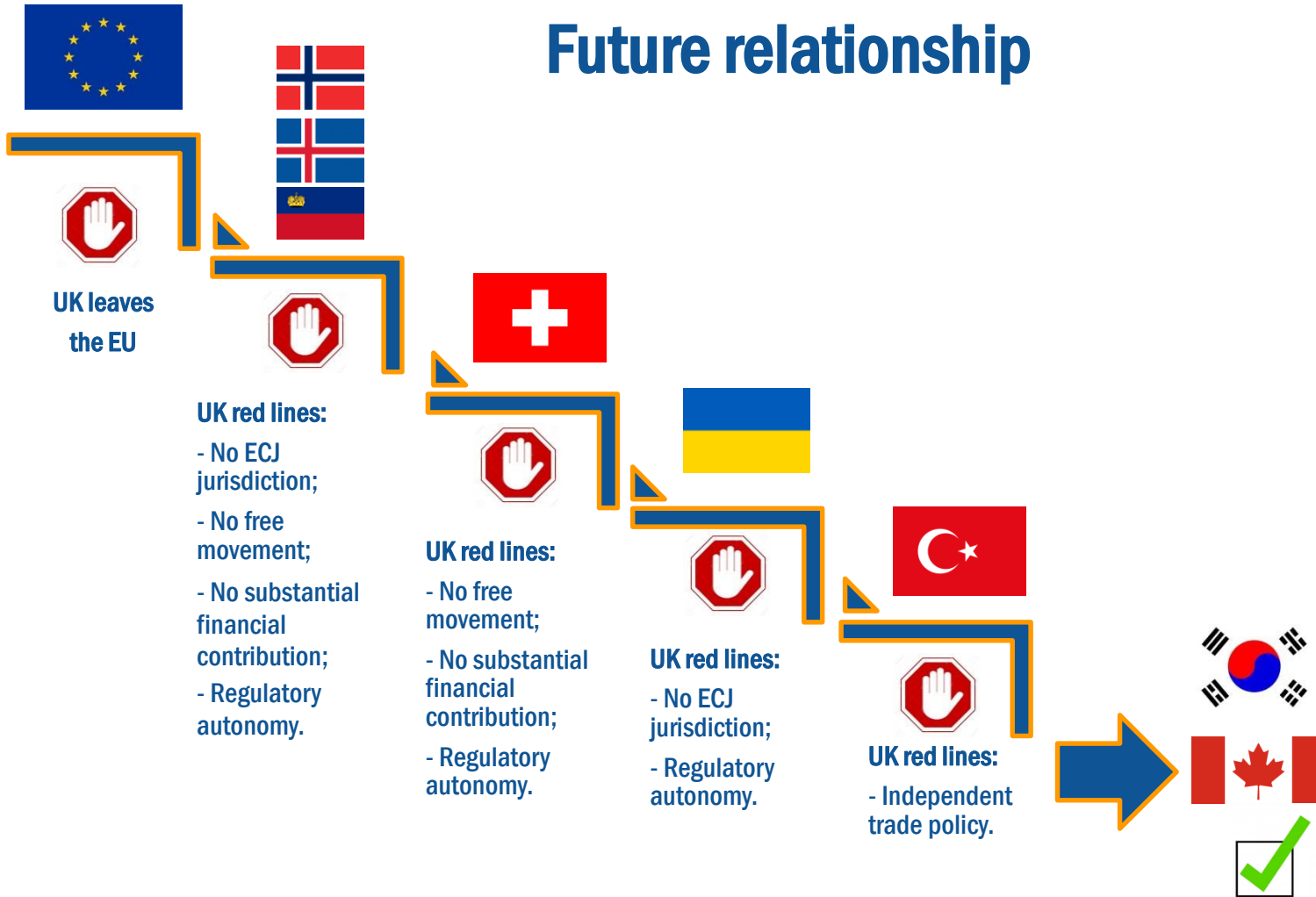
## ***EU Customs Union***

- Borderless internal market through EU customs union and internal market
- Mission of EU customs: supervision of international trade **and** implementation of external aspects of internal market
- Union Customs Code
  - Common customs procedures
  - Common Risk Management Framework
  - Trade facilitating measures, e.g. simplified procedures and authorised economic operators
- Union IT systems and databases

## ***Third country/FTA***

- Customs border: customs controls and procedures apply
- Customs Cooperation to mitigate burden of customs controls and procedures
  - Mutual recognition of authorised trader programmes (Japan, USA)
  - Mutually agreed customs security measures (Switzerland, Norway)
  - Mutual recognition of risk management techniques (USA)
  - Establish channels of communication for exchange of information (China) between customs authorities

# Future relationship



**No deal**

