

# **Brexit: The EU-UK Trade and Cooperation Agreement of 24<sup>th</sup> December 2020. Implementation in Spain: Royal Decree Law 38/2020 of 29<sup>th</sup> December**

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*Introduction to the key aspects of the EU-UK Trade and Cooperation Agreement of 24 December 2020 and the corresponding Spanish Royal Decree Law 38/2020 of 29 December.*

*Following much tension and expectation, on 24 December 2020, the UK and the EU reached a milestone agreement: The EU-UK Trade and Cooperation Agreement (the “TCA”), on the legal relationship to apply between them following the UK’s departure from the EU on 31<sup>st</sup> January 2020, and when EU law ceased to apply to the UK on 31<sup>st</sup> December 2020.*

*The TCA was approved by the UK parliament on 30<sup>th</sup> December 2020. Because of the inevitable time pressures however, the European Parliament was not able formally to approve the text before the year end. As a result, the European Commission, as an exceptional measure, indicated that the TCA should be of application on a provisional basis from 1<sup>st</sup> January 2021 until 28<sup>th</sup> February 2021 pending the European Parliament’s scrutiny and foreseeable approval within the timescale allowed.*

*The TCA followed in the footsteps of the EU-UK Withdrawal Agreement previously signed on 24<sup>th</sup> January 2020 with its attendant Political Declaration (<https://www.ga-p.com/publicaciones/the-draft-brexit-withdrawal-agreement-of-14th-november-2018/>). Prior to that, as regards Spain,*

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*the earlier Spanish Royal Decree Law 5/2019 of 1st March (<https://www.ga-p.com/publicaciones/spanish-royal-decree-law-5-2019-of-1-march-in-the-event-of-a-no-deal-brexite/>) had been passed by the Spanish legislature as a safeguard, to put in place contingency arrangements in the event that the parties failed to reach a withdrawal agreement. In the end, the 2019 Spanish Royal Decree Law was not needed, but it nevertheless provided invaluable support and confidence at a time of considerable political uncertainty. Furthermore, it demonstrated the constructive commitment of the Spanish and British governments to ensure as smooth a transition as possible into the post-Brexit era.*

*The changes brought about by the TCA are fundamental to the way the UK, its citizens and businesses interact with the EU and its members states. With effect from 1<sup>st</sup> January 2021, the UK is treated as being a “third country” with respect to the EU and the new relationship between the UK and the EU is governed by principles of international – as opposed to European - law including the General Agreement on Trade and Tariffs (GATT) and the General Agreement on Trade in Services (GATS). Enforcement and resolution of disputes relating to the TCA is subject to specific dispute resolution regimes - as opposed to the CJEU - depending on the subject matter.*

*Apart from the supplementing agreements on issues such as nuclear cooperation, the joint political declarations and security procedures on exchanging and protecting classified information, which are dealt with separately, the TCA is divided into six main areas, dealing with:*

- 1. Institutional provisions.*
- 2. Trade, transport, fisheries and other arrangements.*
- 3. Law enforcement and judicial cooperation in criminal matters.*
- 4. Cooperation on health and cybersecurity.*
- 5. Participation in EU programmes and financial provisions, and*
- 6. Dispute settlement procedures.*

*Of particular relevance is the importance of the following concepts which will foreseeably have a considerable impact on the developing relationship between the EU and the UK, post-Brexit:*

- a) No Tariff, No Quota regime, which will apply to imports and exports between the UK and the EU, provided inter alia, that the goods satisfy the applicable Rules of Origin. Notably, the no tariff no quota regime is also made subject to compliance with the other provisions of the TCA as well as the obligations arising from WTO rules on matters such as product dumping.*

- b) *Rules of Origin.* These are the subject of complex definitions and in turn depend on a number of factors such as the product specific type, sector, source, component proportion and manufacturing/production of the goods involved. The rules are stated to offer “full bilateral cumulation” as between the UK and the EU, but do not extend to other third party free trade arrangements to which the parties are members; the so-called “diagonal cumulation”, that UK negotiators had initially sought to achieve. In order to streamline importation procedures, a system of self-certification will be applicable.
- c) *Self-Certification* allows importers to rely on an exporter’s statement of origin as defined in the TCA, albeit subject to checks and controls.
- d) *Conformity Declarations* are required in the context of regulatory checks as well as controls for product safety, labelling and conformity to standards etc. Nevertheless, imports are potentially subject to inspection and control at all border control posts. Of special importance to trade between Spain and the UK, food/agribusiness goods are subject to sanitary and phytosanitary control including possible inspection at border control posts.

### **Spanish Legislation**

#### **Royal Decree Law 38/2020 of 29th December**

Given the urgency, key aspects of the TCA were swiftly implemented in Spain by means of the Spanish Royal Decree Law 38/2020 of 29 December, emphasising key aspects of the bilateral relationship.

- *How has Spain implemented the TCA into Spanish law?*
- *And how does this compare with the previous regime envisaged in the 2019 Royal Decree Law which the new Royal Decree Law 38/2020 of 30 December now definitively repeals?*

It is true to say that many of the aspects of the continuing relationship between the UK and the EU have areas which remain undefined - such as those affecting financial and other services, and non-criminal judicial cooperation – or have been subject to a limited moratorium – such as the EU’s pending determination on whether the UK has “adequate” data protection safeguards. Nevertheless, the TCA, at over 1200 pages, is voluminous and affects a panoply of sectors and activities. Many of the provisions are broadly in line with the earlier 2019 Royal Decree Law such as the citizens’ rights of residence and work. The following are the areas specifically covered in the new Spanish Royal Decree Law:

- *Professional Titles and Practice.*
- *Research and Development.*

- *Employment rights and Social Security and Unemployment entitlements* (<https://www.ga-p.com/publicaciones/brexit-laboral-y-de-seguridad-social-provisional/>).
- *Healthcare entitlements.*
- *University and Educational access.*
- *Contractual continuity for financial services.*
- *Public Procurement.*
- *Driving Licences.*
- *Defence trade and licensing for arms, explosives etc, and*
- *Waste Transport Licensing*

*Like the earlier 2019 Royal Decree Law, implementation of many of the provisions of the 2020 Royal Decree Law is made dependent on reciprocal provisions being enacted by the UK.*

*The UK and EU's announcements in respect of the TCA have been forward-looking and positive. Similarly, the UK-Spain bilateral relationship – reflected in the new Spanish Royal Decree Law, as well as the recent agreement on the status of Gibraltar post-Brexit – is keen to stress the mutual aim of continuity of operations and relations as far as is possible during the transition. It is important to bear in mind that both Spain and the UK are heavily dependent on each other as political, economic and cultural partners. In 2020, the UK was the second greatest contributor nation for foreign direct investment in Spain in 2020, after Switzerland, according to the British Chamber of Commerce and Analistas Financieros Internacionales (AFI)'s VI Barometer on UK Investment in Spain. Likewise, Spain remains a leading investor and contributor to the UK economy, and social and cultural links though tourism, arts and beyond are deeply embedded within both nations' psyches.*

*All parties remain of the view that although the Brexit negotiations have been - and no doubt will continue to be – strenuous and robustly defended by both parties, a time has now been reached to move forward to ensure maximum social, political and economic prosperity for all affected stakeholders in the future.*

*Gómez-Acebo & Pombo will be analysing the subject matters that have been dealt with in the TCA and the new Spanish Royal Decree Law, and shall be issuing guidance notes on the key areas in separate editions, such as the Analysis of Brexit: Employment and Social Security <https://www.ga-p.com/publicaciones/brexit-laboral-y-de-seguridad-social-provisional/> and analysing the relevant points of interest as they develop in the coming months.*