



Brexit: UK Trade Policy Trade Technical Update

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There are ongoing developments as to the UK's trade policy and its position with regards to trade with non EU countries after Brexit. The bulk of this has focused on the UK's trade regime in the event of a no-deal Brexit, and the measures that will be in force from 11pm on 29th March 2019; should the UK leave the EU without a deal. But also under scrutiny is the status of the UK in existing EU trade agreements.

Continuity of Existing EU Trade Agreements - What has happened?

There are a significant number of existing EU trade and trade-related agreements from which the UK currently benefits, and which need to be replicated by the UK to ensure that trade is able to continue on the same favourable terms with those countries after Brexit. This is referred to as 'continuity' or 'roll over'.

On 21st February 2019, the UK Government submitted a written ministerial statement updating the UK Parliament on the status of the Government's efforts to ensure the continuity of the trading conditions UK companies currently benefit from as a result of existing EU trade agreements post-Brexit. To date, just six of the 40 plus roll over agreements have been signed. The full update can be found [here](#).

These EU agreements are important to the UK – they are estimated to cover £117bn of UK exports every year. They range from full comprehensive Free Trade Agreements (e.g. Canada or Japan) to agreements covering much more specific arrangements (e.g. the UK-Australia Wine Agreement, which covers labelling requirements and recognition of winemaking techniques) and Mutual Recognition Agreements (which cover conformity assessments conducted on products to ensure that they meet the necessary safety standards).

- **If the UK leaves the EU without a deal**, then agreements which have not been rolled-over will cease to apply to the UK from the date of the UK's exit. UK traders will likely lose access to the preferential tariffs offered by the agreements, as well as other mechanisms designed to reduce trade barriers and ease trade.
- **If the UK leaves under the terms of the Withdrawal Agreement**, then the UK would have to continue to offer the same terms to third countries as it does currently as a member of the EU. Conversely, the EU would request that those third countries continue to treat Britain as though it were a member of the EU - but neither the UK nor EU could compel them to do so, risking creating a 'one way street'. In any case after the transition period ends the UK would need to have new bilateral arrangements in place.

Agreements where roll-over has been agreed so far are: UK-Chile, UK-Switzerland, UK-Faroe Islands, UK-Israel, UK-Palestinian Authority and UK-Eastern and Southern Africa (Madagascar, Mauritius, Seychelles and Zimbabwe).

Some countries, like Turkey due to its Customs Union with the European Union, will only be able to ensure continuity of existing trading arrangements once the UK has an agreement with the EU. The situation is similar for the agreement with Andorra and San Marino. For others, it is being reported that they are using the opportunity to request additional trade concessions from the UK. The agreements with Japan and Algeria will not be in place by the 29th March 2019.

Immediate concerns for business

One of the immediate concerns from UK companies has been on looking at whether their exports can continue to benefit directly from the **reduced tariffs** and whether their products remain eligible for preferential treatment under the "Rules of Origin" as set out in each agreement.

Rules of Origin are designed to stop goods being artificially routed through countries with favourable trade agreements to access beneficial terms that wouldn't otherwise apply.

Imagine, hypothetically, that a UK business wishes to sell product to the US, and that the tariff rate in the US for that product is 25%. However, the UK has a trade agreement with Ruritania that sets the tariffs at 0%, and the US has a trade agreement with Ruritania that sets the tariff at 5%. What would stop the UK business shipping its product to the US via Ruritania, and reducing the tariff charge by 20%?

The answer is Rules of Origin. Broadly, they require that a minimum amount of additional work has been undertaken in each country whose trade agreements are intended to apply. The rules that determine whether sufficient work has been undertaken vary from treaty to treaty and from product to product. Common methods include a determination of where the components that make up a product come from, an assessment of the value added to the end product in each country, or whether the additional work in each country has caused the product concerned to change its customs commodity code.

Businesses fear that products whose supply chain involves both the UK and EU27 may not be able to benefit from the preferential tariff treatment under the UK's new agreements because they no longer meet the Rules of Origin requirement. This is a particular concern for industries with complex supply chains, like automotive, and high tariff rates, such as agri-food. Car manufacturers worry that they won't be able to demonstrate that a car originates in either the UK **or** the EU27 post Brexit because although huge value is added in each, neither will have added 65% value (as is commonly required in free trade agreements).

As we approach the 29th March 2019, this uncertainty will only grow as UK businesses exporting their products, sometimes over long distances to countries in South America and East Asia, where the EU has a trade agreement in place – do not know how their products will be treated by those countries' respective customs agencies when they arrive. Travel time by ship to Peru typically takes four weeks, similar to that for South Africa, while a ship to Korea can take up to six weeks. UK shipments to Korea left home waters last week ignorant of the trade terms they face when they dock.

Services businesses have their own concerns

Businesses should also look to see whether they rely on the preferential market access for trade in services as well as whether they benefit from protection from discrimination in public procurement opportunities as there are also key concerns which could be impacted as a result of these agreements lapsing.

UK Tariffs on Day One of a No-Deal Brexit

The Government is also preparing to publish what tariffs would be on Day One of a no-deal scenario for imports into the UK.

The default option for those tariffs would be to replicate the existing tariffs which are set out in the EU Common External Tariff. These bound tariffs would apply to all goods coming into the UK (absent preferential tariff arrangements like an FTA). But this would mean that goods that had previously entered the UK from the EU tariff-free would face potentially significant tariffs, especially in the case of agricultural products.

Accordingly, the Government is considering whether to agree lower tariffs, either on a temporary or a permanent basis.

The UK could not unilaterally lower tariffs for just products being imported from the EU as this would breach WTO rules. Instead, the FT and other press outlets are reporting that intense discussions are taking place between government departments over which tariffs to lower and by how much. There is a profound tension between a desire to protect UK consumers on the one hand, and UK producers

on the other, particularly in more sensitive sectors such as agriculture, steel and ceramics. A decision is expected to be made in the coming weeks.

This announcement on Day One tariffs in a no-deal scenario, should be looked at in conjunction with recent HMRC announcements on what customs documentation will be required to import goods into the UK, for example the recent news that HMRC is suspending the introduction of Entry Summary Declarations on EU imports for six months in order to give companies more time to prepare as well as a Simplified Import Procedures. While such initiatives are welcome, there has been less news from the EU side on what measures will be taken to mitigate against the possible disruption caused by a no-deal Brexit.

Developing countries

One area where there is a welcome degree of certainty is around tariffs for imports from developing countries. The UK government has committed to continuing the EU's preferential tariffs schemes for products coming in under the Generalised System of Preferences and the EU's 'Everything But Arms' Initiative. This was set out in the Cross-Border Trade Act 2018 which was the framework legislation which allowing the UK to set out a separate VAT and customs duty regime after Brexit. We expect additional secondary legislation to be tabled in due course to set out further details of the schemes.

What can be done to prepare?

Even with the ongoing levels of uncertainty and though time is now short, there are things that businesses reliant upon these third country trade agreements can do:

1. Conduct a **trade continuity review** looking at:

- Understanding your exposure to such third trade country deals. Do you or your principal suppliers currently trade under these existing EU trade agreements?
- Review your contractual arrangements, including which incoterms, you have with your principal suppliers to understand upon which party is responsible for the additional tariff burden.
- What would the impact of losing beneficial trade terms be? In many cases the most immediate effect will loss of preferential tariffs and most-favoured nation status, and WTO tariffs applied to UK exports - but it is also likely that other measures to smooth trade (like mutual recognition of product standards) will cease to apply.
- Are you ready to complete and submit the necessary customs declaration procedures and forms? Have you put your mitigation plan to the test? Conduct Brexit no-deal scenario planning to test if those draft mitigation actions are appropriate for Day One.
- Do your products continue to meet the new arrangements under each agreement which is rolled-over for Rules of Origin in order to continue to benefit from the preferential tariffs?
- UK services companies and those bidding for government procurement contracts in those countries should also examine whether they utilise the preferential access provided by the agreements.

2. Build your **organisational and operational response capability**:

- Have you started to consider your preparedness to manage disruption dynamically as and when it occurs? Including through the possible use of alternative suppliers.
- Have you rehearsed potential Brexit scenarios to build your 'operational capability' ahead of time?

3. Continue to **monitor developments**:

- Ensure that you are aware of any new developments regarding government announcements regarding Day One tariffs in a no-deal scenario as well as any additional trade agreements being rolled over.
- Actively engage with the export-destination's Customs Authorities for the most current information.



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