



TRADING AFTER BREXIT: NAVIGATING WTO RULES

If the UK formally exits the EU at the end of the Article 50 process without a free trade agreement with the EU in place, trade between the UK and the EU will have to rely on WTO rules. This article provides an introduction to those rules for exporters and importers of goods and services, and clarifies what Brexit might actually mean for them, including the possibility of increased tariffs, increased customs formalities and other challenges.

Once the UK has formally left the EU at the end of the Article 50 process there are a number of possibilities as to the framework for trade in goods and services between the UK and the EU. One possibility is that trade between the UK and the EU will be pursuant to WTO rules, at least until a comprehensive free trade agreement is in place.

Absent a concluded agreement between the UK and the EU, which could include an interim agreement, it will not be possible to maintain the *status quo* of tariff free trade in goods and freedom of establishment within the single market. This is because the EU, its Member States and the UK¹ will all be subject to WTO rules post-Brexit.

A key feature of WTO rules is the most favoured nation (MFN) principle. MFN treatment means, generally, that one WTO Member cannot offer treatment to another WTO Member which is more preferential than the treatment it offers to other WTO Members, unless it has entered into a preferential trade agreement with that WTO Member. Therefore, if either the UK or the EU wished to preserve tariff free trade in goods or freedom of establishment with the other for an interim period post-Brexit with no formal interim agreement in place, then the EU and UK would also have to offer tariff free trade and freedom of establishment to every other WTO Member.

An understanding of WTO rules may therefore be very important for all companies importing and exporting goods and services between the UK and the EU.

The WTO was formed in 1995 as a successor to the General Agreement on Trade and Tariffs (GATT), which still forms part of WTO rules. Nearly every State in the world is a Member of the WTO; there are currently 164 Members, with Iran being a notable exception.

¹ The UK is a WTO Member in its own right, albeit its membership is currently exercised by the EU.



WTO rules aim at facilitating international trade through common standards and limiting protectionism. WTO rules are set out in the Agreement Establishing the World Trade Organization (WTO Agreement), and the issue-specific Agreements which form Annexes to the WTO Agreement. Such Agreements may be multilateral (applying to all WTO Members) or plurilateral (applying to the WTO Members which have chosen to apply them).

The current WTO Agreements cover a wide range of issues including tariffs; trade in services; intellectual property; technical barriers to trade, investment; rules of origin, and trade defence mechanisms, for example anti-dumping duties.

In addition, 'Understandings' which provide clarification on certain WTO rules are also annexed to the WTO Agreement. An example of an 'Understanding' is the Understanding on the Rules and Procedures Governing the Settlement of Disputes. WTO rules also cover the 'Trade Policy Review Mechanism'. This mechanism provides for the surveillance of WTO Members' trade policies, and encourages transparency.

WTO rules are enforced through litigation in the WTO's Dispute Settlement Body (DSB). Litigation takes place on an inter-governmental basis, so unlike under a typical Bilateral Investment Treaty, there is no scope for individuals or companies to sue a government directly on the basis that there has been a breach of WTO rules in the DSB.

If trade between the UK and the EU takes place according to WTO rules, then companies involved in the trade of goods between the UK and the EU could face, amongst other things:

■ **Increased tariffs.** It is worth noting that this may also be a consideration for UK importers and exporters generally if the UK loses the benefit of the EU's preferential trade agreements with third countries.

■ **Increased customs formalities, which may lead to delay and increased costs.** Again all UK importers and exporters, especially those that rely on 'just in time' deliveries, should be aware of this as trade between the UK and non-EU countries that involves transshipment of goods through a European hub port may become more difficult and time-consuming.

■ **Increased difficulties in establishing the origin of products.** For example, a product may currently be made from materials produced in a number of EU Member States and assembled in the UK. The origin of the product would currently be the EU, but following Brexit it might not be clear whether the origin of the product is the UK or the EU, which could affect how it would be treated when exported.

■ **A potential need to comply with two different sets of regulatory standards in the UK and the EU.** This may not be that significant an issue in respect of most products, where both the UK and EU are likely to follow established international standards, but the interpretation of standards by local authorities could prove problematic.

In addition, a key consideration for companies in the financial services and insurance sectors is that they would no longer be able to rely on passporting rights when providing cross-border services between the UK and the EU.



Nearly every State in the world is a Member of the WTO, there are currently 164 Members, with Iran being a notable exception.

JEREMY KELLY, ASSOCIATE

Whilst the above is a worst case scenario, and it is possible that a post-Brexit interim agreement and/or sector specific single market access arrangements will be put in place until a comprehensive EU-UK preferential trade agreement enters into force, it is advisable that companies that are involved in cross-border trade between the EU and the UK consider their options and make contingency plans so that they are not unduly affected if the worst-case scenario happens.



For more information, please contact the authors of this briefing:

Anthony Woolich

Partner, London
T: +44 (0)20 7264 8033
E: anthony.woulich@hfw.com

Daniel Martin

Partner, London
T: +44 (0)20 7264 8189
E: daniel.martin@hfw.com

Jeremy Kelly

Associate, London/Brussels
T: +44 (0)20 7264 8798/
+32 2 643 3400
E: jeremy.kelly@hfw.com

HFW has over 450 lawyers working in offices across Australia, Asia, the Middle East, Europe and South America. For further information about international trade regulation issues in other jurisdictions, please contact:

Robert Follie

Partner, Paris
T: +33 1 44 94 40 50
E: robert.follie@hfw.com

Wissam Hachem

Partner, Riyadh
T: +966 11 276 7372
E: wissam.hachem@hfw.com

Henry Fung

Partner, Shanghai
T: +86 21 5888 7711
E: henry.fung@hfw.com

Pierre Frühling

Partner, Brussels
T: +32 (0) 2643 3406
E: pierre.fruhling@hfw.com

Rula Dajani Abuljebain

Partner, Kuwait
T: +965 9733 7400
E: rula.dajaniabuljebain@hfw.com

Gavin Valley

Partner, Melbourne
T: +61 (0)3 8601 4523
E: gavin.valley@hfw.com

Jeremy Davies

Partner, Geneva
T: +41 (0)22 322 4810
E: jeremy.davies@hfw.com

Yaman Al Hawamdeh

Partner, Dubai
T: +971 4 423 0531
E: yaman.alhawamdeh@hfw.com

Stephen Thompson

Partner, Sydney
T: +61 (0)2 9320 4646
E: stephen.thompson@hfw.com

Dimitri Vassos

Partner, Piraeus
T: +30 210 429 3978
E: dimitri.vassos@hfw.com

Mert Hifzi

Partner, Singapore
T: +65 6411 5303
E: mert.hifzi@hfw.com

Simon Adams

Partner, Perth
T: +61 (0)8 9422 4715
E: simon.adams@hfw.com

Ziad El-Khoury

Partner, Beirut
T: +961 3 030 390
E: ziad.elkhoury@hfw.com

Guy Hardaker

Partner, Hong Kong
T: +852 3983 7644
E: guy.hardaker@hfw.com

Jeremy Shebson

Partner, São Paulo
T: +55 (11) 3179 2903
E: jeremy.shebson@hfw.com

Lawyers for international commerce

hfw.com

© 2016 Holman Fenwick Willan LLP. All rights reserved

Whilst every care has been taken to ensure the accuracy of this information at the time of publication, the information is intended as guidance only. It should not be considered as legal advice.

Holman Fenwick Willan LLP is the Data Controller for any data that it holds about you. To correct your personal details or change your mailing preferences please contact Craig Martin on +44 (0)20 7264 8109 or email craig.martin@hfw.com

São Paulo London Paris Brussels Geneva Piraeus Beirut Riyadh Kuwait Dubai Singapore
Hong Kong Shanghai Perth Melbourne Sydney