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BREXIT AND TRADE AND COMMERCE

# What you need to know

# Brexit and trade and commerce: what you need to know

The current date for the UK to leave the EU remains 31 October 2019, though it is still unclear whether this will be on the basis of securing a deal. or not. Leaving with a deal should give the UK some breathing space to put things in order during a transition period, so the focus has been, understandably, on how to prepare ourselves in the event of no deal.

We set out below the main considerations for organisations whose business models involve cross-border trade in goods, or which rely on cross-border supply chains and logistics. This guidance note provides a high-level overview of key considerations to ensure continuity of trading in the event of a no-deal Brexit.

WTO Rules and international trade in goods



Other key issues in trading with the EU 27 after no-deal Brexit



Other potential legal issues for Supply Contracts



No-deal Brexit – action plan



# WTO Rules and international trade in goods

In a no-deal scenario, the General Agreement on Tariffs and Trade (GATT) will form the basis of the UK's trading relationship in goods with:

- the EU, until such time as a preferential trade agreement is concluded between the UK and the EU; and
- other countries with whom the UK does not currently have a preferential trade agreement in place (including those that currently have an agreement with the EU from which the UK currently benefits but which the UK is not a party to in its own right and has not been replicated by the UK (see further below).

## What tariffs will apply?

As a member of the EU, the UK shares (and is bound by) the common EU goods schedule. The UK (and all other EU member states) apply the EU Common Custom Tariff to all imports into the EU from third countries (and all EU member states trade among themselves on a tariff-free basis).

Following Brexit, the UK will only be a standalone member of WTO and will have to submit its own goods schedule, which will need to be accepted by all other WTO members (including the EU). A draft

goods schedule was submitted by the UK in 2018 but was met with objections from a number of WTO members. The goods schedule still needs to be negotiated and agreed – a process that can take years. Until it is finalised, it is possible for the UK to trade with WTO members on the terms of the draft schedule.

Importers and exporters between the UK and the remaining EU countries will need to identify the correct classification of their goods to determine the applicable tariff (which in most cases may still be 0%). This task requires knowledge of the item itself, what it is made of, its place of origin and what it will be used for.

## What is the WTO's 'most-favoured-nation' principle?

Unless trade between the UK and another WTO member (or group of WTO members) is covered by a preferential trade agreement, the UK must apply the same tariffs to all WTO members equally. This is the WTO's most-favoured-nation principle.

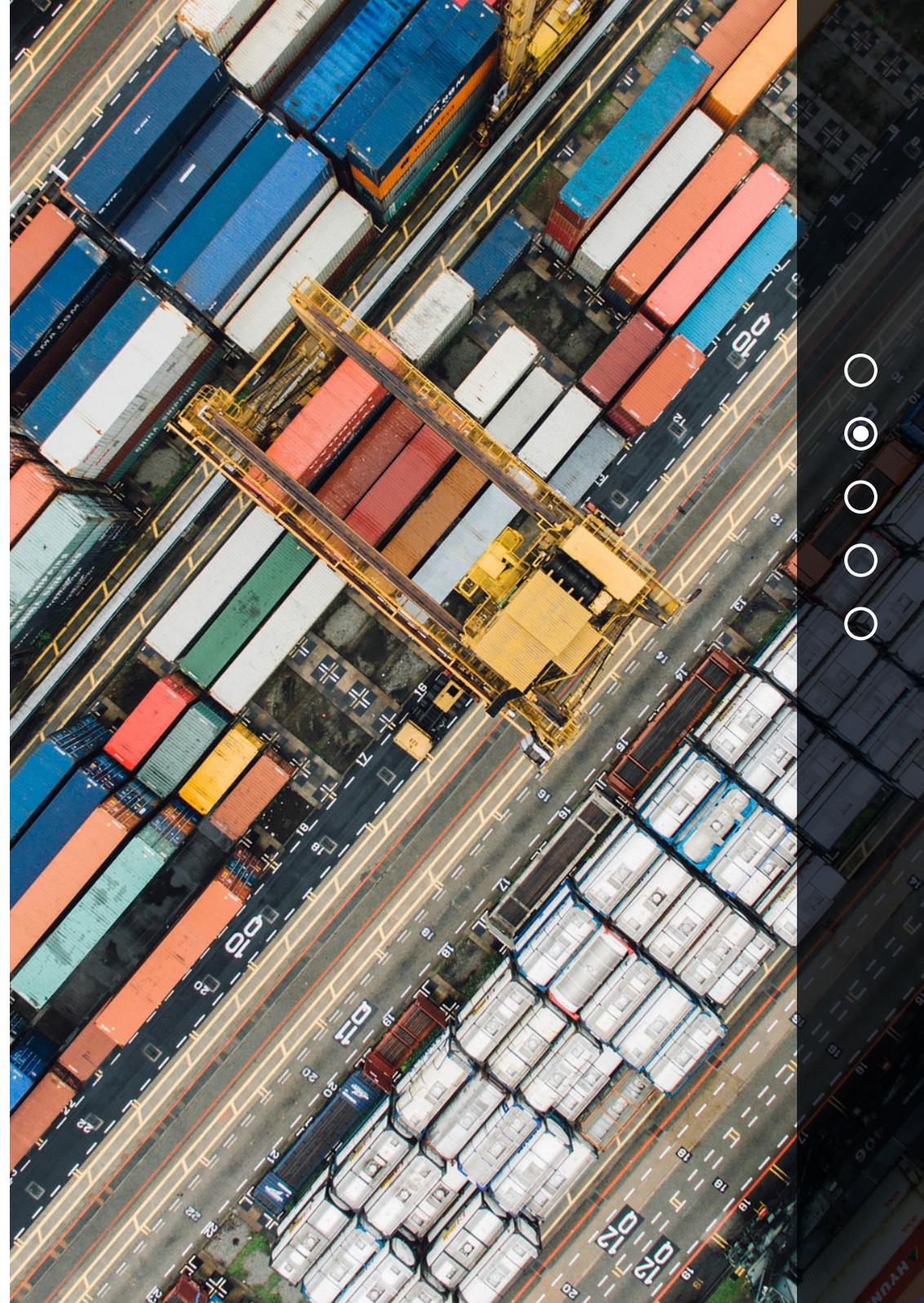


The practical implications of this principle on a no-deal Brexit are that:

- the remaining EU members states will charge tariffs as set out in the Common Custom Tariff on the import of goods from the UK into the EU (previously such imports would be tariff-free);
- the UK will charge tariffs on imports into the UK from the remaining EU members states at the rates deemed appropriate by the UK: the current draft tariff schedule sets tariffs for most goods at 0%, although 12% of goods imported into the UK would still have tariffs applied;
- other non-EU 27 countries will charge their standard tariff on imports from the UK: the UK will no longer benefit from preferential customs rates that currently apply under any preferential trade agreements that the EU has in place with third countries; and
- the UK will charge tariffs on imports into the UK from non-EU 27 countries at the rates set out in its draft schedule.

## Are there any preferential trade agreements in place?

On exit day, the UK will also cease to be party to preferential trade agreements concluded by the EU with third countries. There are around 40 preferential trade agreements, covering around 70 countries, between the EU and third countries that the UK currently trades under by virtue of its membership of the EU. In preparation for Brexit, the UK Government has been seeking to replicate (or 'roll over') the EU's trade agreements as far as possible. So far, the UK has signed 15 agreements (with a further agreement agreed in principle), which will take effect when the UK leaves the EU. These cover a number of non-EU countries, including Norway, Iceland, Switzerland and the countries of Central America and the Eastern and Southern Africa (ESA) region. Traders who do business with countries that are currently covered by an EU preferential trade agreement should confirm whether the UK has rolled this over into a new trade agreement directly with the UK, or if no replacement agreement will take effect on exit day (and therefore trade with that country will be on WTO terms following a no-deal Brexit).



## Other key issues in trading with the EU 27 after no-deal Brexit

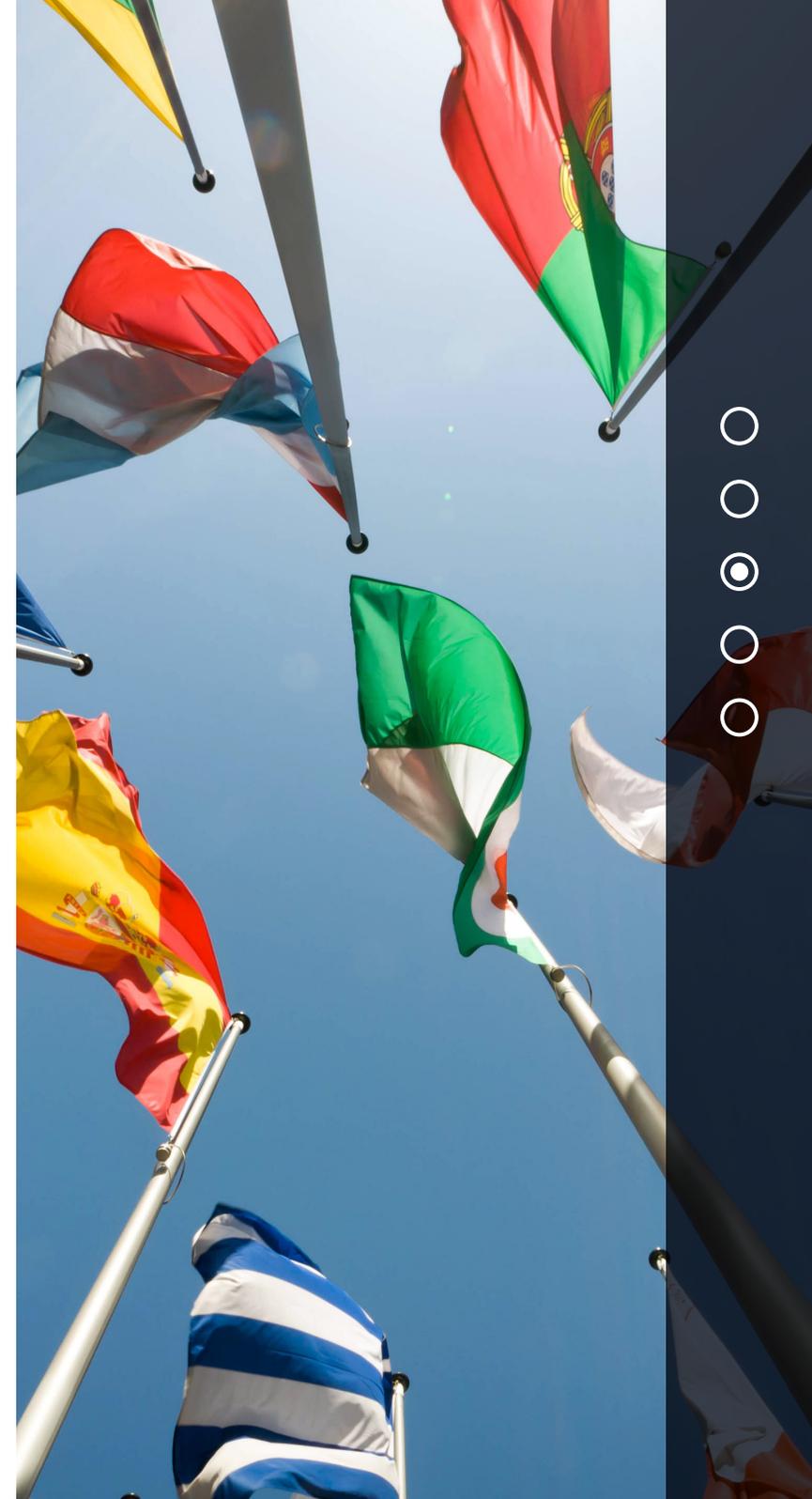
Tariffs are only a small part of the picture, as cross-border trade between the UK and EU will also be heavily impacted by non-tariff barriers, such as health and safety regulations and other regulatory standards and customs controls. For example, while simplified procedures for pre-clearance exist, certain controlled goods will be subject to further tests that are not currently required. Food and drink and cosmetics, for example, will not be able to be exported to the EU, save through legal entities established in the EU, and with the product labelled accordingly.

### Will EU regulatory standards continue to apply to UK traders after no-deal Brexit?

Post-Brexit, the EU regulatory standards that apply to UK traders will continue by virtue of the Withdrawal Act. There will therefore be no immediate Brexit impact. However, standards will diverge where either the UK or EU starts to make changes to its own regime, and UK businesses that sell goods in both the UK and EU markets will need to remain vigilant of the changes and developments in each jurisdiction to ensure that their goods satisfy the requirements of both markets.

### Will EU consumer law continue to apply to UK traders after a no-deal Brexit?

The position on consumer law is the same as noted in regulatory standards above. However, it is important to note that the EU is currently undertaking a project for the harmonisation of consumer law across member states and therefore it is likely that divergence between the UK and EU regimes will appear more quickly than in other areas. It is also important to note that if a UK trader currently makes use of, or relies upon, the EU's shared network of agencies, mechanisms and infrastructure that underpin the consumer rights regime across the EU, access to these will disappear on exit day.



## Customs

In preparation for a no-deal Brexit, traders who import goods from, or export to, the EU will need to:

- register for a UK Economic Operator Registration and Identification (EORI) number if they don't already have one;
- consider who will be responsible for submitting customs declarations: will they appoint a freight forwarder or a customs broker to do this, or make the submissions themselves (which will require relevant software and authorisation from HMRC)? In either case, there will be an additional cost to the trader;
- confirm whether an import or export licence will be required, and if it is, apply for the relevant licence; and
- check existing terms and conditions with customers/suppliers to determine who will bear the responsibility for paying import duties; or otherwise reach agreement on who will bear this responsibility.

The government will introduce a “transitional simplified procedure” for those with an EORI number importing goods from the EU. This procedure will be available from exit day and will allow traders who have registered to defer making full import declarations and paying duty.

## Logistics

Traders will also need to ensure their logistics partners are prepared for a no-deal Brexit and remain in a position to physically take the goods to the EU. They will need to meet additional requirements beyond those currently imposed by the EU. For example, UK haulage companies will be required to have an international road transport permit before they can carry goods from the UK to the EU. Traders should consider their logistics arrangements and seek appropriate assurances from their logistics partners to ensure they are able to transport goods to the EU in the event of a no-deal Brexit.

## VAT

There may also be VAT implications for traders following a no-deal Brexit. For example, UK traders who are VAT-registered will still benefit from zero-rate sales of goods to EU business, but will not be required to complete EC sales lists. Instead, the zero rating of the exports will need to be supported by evidence of export in the same manner as is required for the export of goods to non-EU countries. Traders may wish to consider whether this poses any additional risk for them, particularly where they are not currently responsible for carriage of the goods from the UK to the EU (for example, where they currently trade largely on an Ex-Works Incoterms® 2010/2020 basis).

Traders should also check import VAT rules with individual member states to which they export.



## Currency risk

There are also risks that relate to currency volatility. Although this is already an issue, the increased risk that is likely to present itself in the event of a no-deal Brexit should not be ignored. Traders should consider speaking to their banks about hedging against currency fluctuations.



## Other potential legal issues for Supply Contracts

**Most supply contracts are silent on any Brexit provisions. If an agreement has been put in place in the past three years, it may contain helpful clauses, though the impact may not be as envisaged.**

Traders should consider what might happen if their supplies, inward or outward, are delayed, prevented, or late. For example, whether any remedies are specified in their supply contract or in law.

A common question is whether a no-deal Brexit would constitute an event of force majeure, which may provide relief. Whether particular circumstances arising from a no-deal Brexit will constitute a force majeure will largely depend on the drafting of the contract. Typically, an increased cost or more onerous performance will not be considered force majeure if it is still physically and legally possible to perform the obligation. As such, force majeure provisions are likely to be of little assistance to traders who find themselves defaulting under their supply contracts.

Material breach claims may arise, but customers faced with disrupted supply may be no better off with another provider, so price negotiations may be necessary.

Increased tariffs and production/transport costs will put pressure on factory gate pricing and on customers, all of which may be hard to recover under existing contractual frameworks. Some contracts will have key performance indicators (KPIs) with potential for deductions.



# No-deal Brexit – action plan



Map your trade flows and make sure you understand where your products are being exported to and where you import products from so that you understand what terms will be applicable to trade between the UK and those countries (e.g. will it be on WTO terms or is there a preferential trade agreement in place?).

If applicable, register for the transitional simplified procedures to import goods in the event of a no-deal Brexit.

Register for an EORI number via the government website: [www.gov.uk/eori](http://www.gov.uk/eori)

Determine the correct tariff code for goods moving between the UK and countries where there will be no preferential trade agreement in place on exit day (including EU-27 countries).

Review key supply contracts (import and export) and liability for delay/short supply/damages. Consider price adjustments, e.g. for raw materials/tariff increases.

Review your logistics arrangements and understand where additional risks may arise as a result of a no-deal Brexit, seeking appropriate assurances from logistics partners where relevant.

Consider the VAT implications of your continued trade with the EU following a no-deal Brexit (including whether your current terms of business are appropriate).



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Note: While the foregoing summary is given in good faith, it is not exhaustive and is liable to change in light of political, economic and legal developments. Specific advice should be taken before initiating or taking any course of action.