

CLIENT ALERT

International Trade Implications of Brexit – What Companies Should Do Now

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The ramifications of the United Kingdom's decision to leave the European Union will be significant, but as of today nothing has changed in practical terms. What does this mean for trade – imports, exports, sanctions, antidumping, and other daily trade issues for global business? Not very much immediately, but now is time to plan and develop a strategy for the weeks and months ahead. Isolate your U.K. operations in the supply chain, gather data, and identify options. You will then be ready to act when the time comes.

Legal Background

The U.K. remains a member of the EU, at least for now. The European Communities Act 1972 remains in force throughout the U.K., and the U.K. remains subject to its obligations under the EU Treaties. Article 50 of the Treaty on European Union provides a two-year period from a Member State notifying its intention to leave the EU to that state's withdrawal, although this period can be extended by agreement with the European Council. It is not currently clear when the U.K. will formally submit its notification under Article 50. Until a clear picture of the post-Brexit world emerges, there may only be limited change to contend with in the short term. However, even at this early stage one thing is for sure: the consequences of the Brexit vote will be wide-reaching, and cannot be ignored by those doing business in or with the U.K.

Trade Background

Over the years, the EU has come to assume exclusive competence over international trade in a broad sense, including the promotion of trade liberalization and the negotiation of trade agreements, the establishment of tariff rates and the imposition of trade remedies, as well as aspects of export policy and foreign direct investment. As a Member State, the U.K. has thus ceded much of its competence to the EU in the negotiation and implementation of international trade rules. Upon the U.K.'s departure from the EU, it will regain exclusive competence in the areas enumerated above. However, much will ultimately depend on the trade arrangement the U.K. will be able to agree to with the EU.

Import Duties

Absent a customs union between the parties once the U.K. leaves the EU, the U.K. will have to issue its own tariff schedule to remain a Member of the World Trade Organization. All other WTO Members will have to approve this schedule, which could lead to the burdensome renegotiation of tariff commitments between the U.K. and key trading partners.

In the European context, not much is likely to change regarding trade between the U.K. and the EU if the U.K. obtains preferential access to the EU market equivalent to that enjoyed by Norway and Switzerland. However, a number of restrictions on trade could still apply with respect to rules of origin, trade remedies, and trade in services. Short of a preferential access

arrangement, the parties may otherwise negotiate a trading arrangement based on the principle of Most-Favored Nation (MFN), the implications of which would vary much more considerably by sector.

Therefore, companies will have to follow closely and analyze carefully the negotiation of the new EU-U.K. trade arrangement and related developments at the multilateral level. The effects of the resulting changes may have a significant impact on companies' duty planning and supply chain management activities, including the location of new production facilities or the relocation of existing ones.

Trade Agreements

As a result of leaving the EU, the U.K. will no longer be a party to the trade agreements between the EU and third countries. It will also forego the considerable weight of the EU in trade negotiations. Although it may thus enjoy greater autonomy in setting its negotiating objectives and positions (*e.g.*, with respect to market access in services), the U.K. may be forced to make greater concessions to trading partners enjoying equal or greater bargaining power over it alone.

In practice, the U.K. may also be required to agree to terms fairly similar to those between a particular trading partner and the EU, as countries may seek to achieve a degree of uniformity across multiple trade agreements. Therefore, the likelihood U.K. independence over its trade policy would lead to more favorable outcomes for the U.K. in its negotiation of trade agreements with third countries is unclear.

Special Measures

The EU and U.K. could initiate trade defense proceedings and impose additional duties against unfairly traded imports from one another once the U.K. leaves the EU, whether their trade relations are governed by a preferential access or MFN-based arrangement. Although the EU currently has the administrative capability to conduct trade defense investigations, the U.K. does not. Thus, it will have to develop such a capability and related rules to conduct independent trade defense investigations to protect British domestic industries from unfair foreign competition in the future.

As these industries are currently protected by EU trade defense orders imposed on the basis of EU-wide conditions and analyses, the U.K. cannot automatically maintain these measures once it leaves the EU without exposing itself to significant challenge under the WTO rules by the trading partners whose industries are affected. Considerable time and effort will be required for the U.K. to afford WTO-consistent protection to the full range of its industries affected by unfairly traded imports.

By virtue of limiting its analyses to its own territory in this context, the U.K. might be able to more easily impose trade defense measures in certain cases. However, in others, in which its domestic industry may currently be enjoying protection as part of the EU-wide affected industry, it may be difficult for the U.K. to find injury within its own territory and impose measures. The ultimate outcome will thus once again be mixed.

Export Controls

The U.K. itself is currently a member of all the relevant international agreements in the context of export controls (*i.e.*, the Wassenaar Arrangement, the Missile Technology Control Regime, the Nuclear Suppliers Group, and the Australia Group). These memberships are not contingent on the U.K.'s EU membership and the U.K. Secretary of State has the statutory power to

elaborate and impose export controls under domestic U.K. legislation. Therefore, the U.K. will most certainly maintain its own export control regime upon leaving the EU and there will likely be little change in the manner in which the U.K. will continue issuing licenses for exports to third countries.

A rare strong proponent and enforcer of export controls within the EU, the U.K. after its departure from the EU will no longer participate in EU-wide efforts to ensure greater harmonization in the interpretation and application of export control rules by EU Member States' authorities. This will constitute a loss to the EU and may lead allies like the U.S. to view the EU export control regime to be weaker than when it included the U.K. The grant of authorizations to EU Member States remaining within the EU may thus be affected.

The extent to which U.K. export control authorities may continue to coordinate with certain of their counterparts remaining in the EU will also have to be monitored closely. The U.K. will likely provide for preferential treatment of exports to more trusted Member States with a view to preserving existing collaboration with those Member States' authorities. However, given persistent concerns regarding the integrity and uniformity of export control enforcement in certain other Member States, the U.K. will likely impose stricter controls over exports to such Member States. Upon the U.K.'s departure from the EU, transfers of dual-use items from the U.K. to the remaining 27 EU Member States will officially become exports the licensing of which will have to be reviewed carefully for compliance purposes.

Economic Sanctions

Similar to the other areas of international trade compliance, the U.K.'s departure from the EU will lead to an increasingly complicated economic sanctions compliance landscape. It may take years for all of the effects to be understood fully, but the following represent a few initial thoughts.

Nothing will change immediately. The U.K. will continue to implement all United Nations (as a permanent member on the United Nations Security Council), EU, and national sanctions until Brexit is fully implemented. Yet, even if these negotiations take months or years, the referendum outcome will have an impact, not least in the marginalized influence of the U.K. in ongoing EU discussions. For example, the EU's sectoral sanctions against Russia may be the first victim. Despite strong pressure from Russia and substantial question from Eastern European countries, the EU was successfully able to extend its sectoral sanctions for six months last week, in part as a result of strong U.K. advocacy. Without the U.K., will the EU have the political will to overcome the internal and external opposition to extend them? If it does not, it will create a transatlantic regulatory divide with which compliance officials will need to grapple.

These impacts will only grow more acute once the Article 50 process has been completed. Yet, even then the impacts will be difficult to determine. Given the U.K.'s strong support for economic sanctions, as well as its role (at least currently) as the global center of international finance, it seems likely that the U.K. will continue to rely heavily upon economic sanctions as a tool of foreign policy. Without the limitations imposed by a 28-country consensus-based negotiation, the U.K. will be free to pursue the strong sanctions for which it often advocates. While it will likely, for pragmatic reasons, closely follow EU sanctions, it will now be free to react more quickly, and more aggressively, if it chooses.

This could include closer alignment with the U.S., a path that may be facilitated by the U.K.'s recent creation of an Office of Financial Sanctions Implementation (OFSI) modeled, in part, on the U.S.'s Office of Foreign Assets Control (OFAC). Nevertheless, despite the easy impulse to assume stronger U.K.-U.S. alignment, their approaches to certain foreign policy matters remain

fundamentally divergent. For example, the U.K. has been actively encouraging its businesses to pursue business in Iran, while the U.S. has retained virtually all current primary sanctions on Iran, pursuant to the recent Joint Comprehensive Plan of Action (JCPOA).

From the perspective of economic sanctions, the real victim of Brexit may be the global centrality of the EU's sanctions regime. To date, the U.K. has been one of the strongest proponents of economic sanctions within the trading bloc. With its departure, it remains to be seen whether the other Member States will have the political will, or interest, to enact strong economic sanctions that will, inevitably, impose disproportionate costs on at least one of the EU's Member States. France remains a permanent member of the UN Security Council and Germany a strong proponent of tailored sanctions, but it only takes one EU Member State's disagreement to disrupt consensus and bring down an entire regime.

Compliance Management Challenges Ahead

Until the U.K. officially exits the EU, current laws remain applicable without any gaps. Nonetheless, the Brexit vote and the ongoing negotiations will no doubt have an impact on Commission decisions implementing EU trade laws in many ways. For example, how will decisions on trade defense cases be affected? Might the maintenance of sanctions against Russia or the implementation of sanctions relief for Iran be altered? These questions form only the beginning of what will no doubt be a new art form: predicting the extent and nature of the gap between London and Brussels as the daily work of government collides with the Article 50 negotiations.

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