

# BREXIT Briefing

International Trade & Litigation Practice Group

June 29, 2016

## **Five Questions—and Answers—on the Brexit and Trade with the European Union and the United Kingdom**

On June 23, 2016, 51.9% of UK voters chose to leave the EU. The result amounts to a political instruction to UK authorities to withdraw the UK from the EU. With no precedent, the withdrawal of the UK from the EU introduces considerable uncertainty into the business environment in Europe that will only be addressed when the UK negotiates the terms of its withdrawal from the EU and its future trading relationships with the EU and with World Trade Organization (WTO) Members.

### **How, when and on what terms will the UK withdraw from the EU?**

On the day following the Brexit referendum, the European Commission indicated that proceedings under Article 50 of the Treaty on European Union will have to be launched. Article 50 gives each EU Member State the right to withdraw from the EU. After the UK notifies the European Council of its decision to withdraw, the UK and the remaining 27 Member States will have a period of up to two years to negotiate a withdrawal agreement.

The majority of EU leaders and the European Parliament have indicated that they want the negotiations on the UK withdrawal to be initiated as soon as possible to minimize uncertainty. Article 50 is likely to be invoked only after September 2016 and the replacement of the current UK Government. This implies that the UK will not withdraw from the EU before autumn 2018 at the earliest. EU Member States may decide to extend the 2-year deadline, a decision that must be taken unanimously.

If no extension is granted, the UK will exit the EU at the end of the 2-year period at the latest, even if a withdrawal agreement has not been concluded. Unless there is an agreement in place at that time all trade between the EU and the UK will be subject to normal trade laws applicable between WTO Members, including customs compliance, licensing obligations and payment of any applicable tariffs.

For more information, contact:

**Iain MacVay**  
+44 7551 2127  
imacvay@kslaw.com

**Jasper M. Wauters**  
+41 22 591 0803  
jwauters@kslaw.com

**Charles Julien**  
+41 22 591 0804  
cjulien@kslaw.com

**King & Spalding**  
*London*  
125 Old Broad St  
London EC2N  
UK

*Geneva*  
Rue du Rhône 14  
1204 Geneva  
Switzerland

[www.kslaw.com](http://www.kslaw.com)

## **What happens until the UK withdraws from the EU?**

The UK will remain a member of the EU until withdrawal is concluded. Until that date, the UK is bound by EU law and the international trade agreements to which the EU is a party. There will, accordingly, be no changes to the legal structures for companies doing business in or with the EU and UK. However, the UK is unlikely to continue to be involved in the shaping of new EU policies and may have already effectively vacated its place at the negotiation table and its ability to influence policy development. UK companies may also have some difficulty making their voices heard in the EU institutions.

## **What rules will govern EU-UK trade after the UK withdrawal?**

The UK, as an EU Member State, benefits from the provisions of the EU treaties establishing and protecting the Single Market, in which the free circulation of persons, goods, services and capital is ensured. Presumably, the negotiation of the 'EU-UK future relationship' will be conducted in parallel with the Article 50 withdrawal negotiation, but there is no fixed time limit or other framework for these negotiations. The EU and the UK would likely consider the following existing options:

- The UK could join the European Economic Area (EEA) comprising of Iceland, Lichtenstein and Norway as well as the EU, which would guarantee the UK access to the Single Market. This option would require the UK to adopt EU law relating to the Single Market (with some exceptions) but without any influence on new laws;
- A second option would be for the UK to enter into a free trade agreement (FTA) with the EU, similar to EU agreements with Switzerland or Canada. There may be more creative options available, depending on the good will of the UK's trading partners, such as permitting the UK to be a new party to the Trans-Atlantic Trade and Investment Partnership, which is currently being negotiated between the EU and the United States. An FTA would generally maintain tariff-free trade between the UK and the EU, free trade in services including some movement of persons, and some form of regulatory convergence or harmonization but without the full access to the EU single market; or
- A third option would be for the EU and the UK to negotiate a customs union, drawing on the terms of the customs union between the EU and Turkey. A customs union would result in the free movement of goods between the EU and the UK and the adoption of a common external tariff without all the normal customs formalities as well as extensive regulatory convergence. Services trade would need to be negotiated based on FTA models as customs unions don't necessarily include services.

If the EU and the UK are unable to reach a preferential trade agreement, the rules of the WTO will apply because the EU and the UK are members of the WTO in their own right. Trade in goods and services between the EU and the UK would then be covered by the disciplines applicable to WTO Members, including the payment of duties on imports, subject to UK adoption, or renegotiation of the EU schedules currently setting tariffs, services commitments, government procurement and other aspects of WTO commitments.

While the EU and the UK would be expected to reach a bilateral agreement because of the interdependencies of the two economies, at this stage, it is anyone's guess as to the form and content of such an agreement.

## **Will the UK withdrawal change the EU preferential trade agreements with third countries?**

Under the EU common commercial policy, the UK and all Member States apply a single external tariff and export measures, including anti-dumping and anti-subsidy measures. The Member States are also bound by the international trade agreements concluded by the EU. The EU preferential trade agreements with third parties are likely to remain largely unchanged after the UK withdrawal. After a withdrawal from the EU, the UK would no longer be party to the international agreements unless the third countries apply the agreements concerned to the UK.

The UK could attempt to negotiate its accession to the European Free Trade Association (EFTA), which includes Iceland, Liechtenstein, Norway and Switzerland. The UK was a founding member of the EFTA, until 1973 when it left to join the European Communities. If it was to re-join the EFTA, the UK would secure access to the markets of the EFTA members and could also have access to the existing network of trade agreements with third countries negotiated by EFTA subject to negotiation with those countries.

The EU and the UK will remain WTO Members after the withdrawal of the UK but, depending on positions taken by the UK, some elements of the UK's WTO membership may need to be renegotiated because specific UK commitments are covered by schedules applicable to the EU. If the UK and WTO Members agree to maintain the current EU tariff, services and government procurement schedules for the UK, only the allocation of agricultural support may need to be addressed. All other WTO rules, rights and obligations would remain in force for the UK in any case. The UK will need to engage with WTO Members on these issues in the very near future to establish some degree of certainty in the application of WTO rules.

## **Will access to the EU and UK markets for goods from third countries be different after the UK withdrawal?**

The importation of goods into the UK and other EU Member States is currently governed by the Union Customs Code (UCC) that ensures harmonized application of import tariffs and customs rules. After a withdrawal from the EU, if the UK wants to modify its customs rules, it would need to develop its own national tariff structure and customs rules, which would be a significant task unless closely based on the UCC. Customs procedures in the other Member States will remain unchanged after the UK withdrawal.

## **Conclusions**

Companies engaged in trade with the EU or the UK, including those with supply chains drawing on products in both jurisdictions, will need to plan carefully their ongoing trade structures to take account of the changes to trade rules that Brexit will entail both for EU-UK trade and for UK trade with non-EU countries. Companies must engage actively with both the UK, EU, and Member State authorities to ensure that governments understand the implications of their decision on trade and investment rules for specific sectors.

## *About BREXIT Briefing*

*King & Spalding is distributing a periodic BREXIT Briefing to provide analysis of the latest developments regarding the UK's referendum vote to withdraw from the EU. These briefings are intended to provide companies, associations, governments, and other organizations with information and analysis relevant to legal, policy, and commercial implications of the Brexit vote.*

*Celebrating more than 130 years of service, King & Spalding is an international law firm that represents a broad array of clients, including half of the Fortune Global 100, with 900 lawyers in 18 offices in the United States, Europe, the Middle East and Asia. The firm also represents hundreds of clients with new ventures and mid-sized companies in emerging industries. The firm has handled matters in over 160 countries on six continents and is consistently recognized for the results it obtains, its uncompromising commitment to quality and its dedication to understanding the business and culture of its clients. More information is available at [www.kslaw.com](http://www.kslaw.com).*

*This Brexit Briefing provides a general summary of recent legal developments regarding the withdrawal of the United Kingdom from the European Union. It is not intended to be and should not be relied upon as legal advice. In some jurisdictions, this may be considered "Attorney Advertising".*