

BREXIT Briefing

International Trade & Litigation Practice Group

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Brexit Trade Audit: A Five-Step Guide to Help Determine the Way Forward

Companies doing business in the UK or from the UK should be looking to “future-proof” their operations following the UK’s recent vote to leave the European Union. A Brexit audit is one way of determining the possible impact of Brexit. Companies should look for an engagement plan for interacting on regulatory and trade-related matters with the new UK government as well as a reformed EU. We have identified five key suggestions that should guide each company/industry in developing its position relating to the many questions raised by the Brexit vote.

1. Identify the key elements that are essential in terms of having access to the UK and EU markets

Once companies identify those key elements, they can focus on developing a strategy that ensures that these aspects are maintained. Import tariffs are probably not the biggest problem. Key issues could be regulatory marketing approval, conformity assessment, trade-related services market access for distribution, etc. Companies may want to prepare a step-by-step overview of their supply chains where the UK is involved and identify where Brexit could change the current flow of goods and services affecting their business. Companies need to protect their existing rights and look for new opportunities in terms of doing business with the EU.

2. Identify the key elements of the EU legal and regulatory regime that were particularly important for the way they do business

Companies can then start to develop an engagement strategy that focuses on ensuring that these elements are maintained in the UK following departure from the EU or, crucially, that an efficient transition should be in place. Regulations for which companies have built up substantial compliance mechanisms, or around which companies have structured supply chains, should be reviewed. But there may also be costly regulations applicable to EU goods and services that may be made more efficient or effective in a UK outside the EU. Any such reforms will need to take account of issues around retaining access to the EU market for UK products and services.

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3. Clarify the existing situation for their UK operations from a WTO perspective

Third, given that the rules of the World Trade Organization (WTO) are the baseline for the UK's trade arrangements with 162 WTO Member countries once the UK leaves the EU, companies should seek to clarify the situation for their UK operations under the WTO rules. In the event that there is no arrangement between the EU and the UK the WTO rules will also govern all trade in goods and services between them. In particular, companies should assist the UK government in ensuring that the discussion that will inevitably need to take place as the UK regains its voice at the WTO, on WTO tariffs and services schedules, as well as on government procurement, quotas, subsidies and perhaps even trade remedies does not negatively affect their previously held position or even provides an opportunity to improve on what they have under EU commitments. The WTO is the baseline from which the new UK trade regime can be built.

4. Review their position in the world and identify the key countries from a market access perspective

Brexit will create opportunities as the UK government starts trade negotiations with non-EU jurisdictions. These could be either countries with which the EU negotiations have not been concluded or have been stalled, such as the United States, Japan, Brazil/Mercosur, GCC/Saudi Arabia, etc., or countries that the EU has not actively engaged with beyond initial talks like China or Australia. Similarly, companies may want to re-assess the key wins and losses that are reflected in the trade deals the EU concluded recently with countries such as Colombia, Korea, Canada, Vietnam, etc. with a view to developing a position for the UK government on which to base its negotiations with these countries. Based on this review, companies need to take an active part in a new UK trade agenda.

5. UK-based companies should seek to identify problematic UK laws and regulations that were imposed as a result of EU regulatory developments but which are adversely affecting their operations

There may be a political willingness to review some of these laws and regulations as the country moves away from EU mechanisms. Relatedly, EU-based companies may want to identify highly contested EU regulations that have complicated business life for companies active in the EU market, such as REACH, pesticide regulation, GMO approvals, etc. and seek a review of these EU laws and regulations as part of the EU reform agenda. Brexit has clearly got people thinking about the way things are done at the EU level as well.

These five suggestions should ensure that the new trade and regulatory agenda of the UK government, as well as that of the reformed EU, takes into account the relevant business interests and follows a direction that is reasonable, forward looking and ultimately beneficial for businesses.

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