

## Impact of Historic “Brexit” Vote on International Trade

On June 23, 2016, the citizens of the United Kingdom (“UK”) voted to leave the European Union (“EU”). This unprecedented decision will have significant implications for everyone and is likely to raise complicated and novel legal issues. Its impact on international trade, in general, and the free movement of goods and services, in particular, is the subject of this Legal Update.

While the economic effects of Britain’s decision to exit the EU (“Brexit”) are already being witnessed, the legal consequences are, for the most part, likely to develop and materialize over a longer period of time. Indeed, although Article 50 of the Treaty on the European Union provides for the possibility of a member state leaving the EU, this provision has never been used before, so its actual application raises many questions.

What is sure, however, is that the rights and duties incurred by the UK as a member state of the EU will not vanish overnight, as emphasized by the Joint Statement on the outcome of the UK referendum by Donald Tusk, president of the European Council; Martin Schulz, president of the European Parliament; Mark Rutte, holder of the rotating Presidency of the Council of the EU; and Jean-Claude Juncker, president of the European Commission.

Although the rights and obligations of the UK are likely to be phased out over a transition period, the UK will continue to benefit from the free trade provisions of the EU until it is officially no longer a member state.

Intense negotiations are expected to begin shortly between the EU and the UK, and the outcome of such negotiations will define the future of the EU-UK relationship. It will also shed light on the actual trade impact of Brexit.

### Will there be a re-negotiation of WTO concessions and commitments?

Although not definitive yet, WTO Director General Roberto Azevêdo has hinted that the UK would likely need to undergo the negotiations process with all WTO members again in order to adjust its schedule of concessions and commitments and thereby benefit from the trade provisions and guarantees of the multilateral institution. Regardless of how this process plays itself out, it is almost certain that the UK will remain a Member of the WTO and, as such, remain subject to WTO commitments and obligations.

### What scenarios can be foreseen regarding the EU-UK trade relationship following Brexit?

*The UK withdraws from the EU but maintains its membership in the European Economic Area (“EEA”) between the EU, Norway, Liechtenstein and Iceland.*

From a customs point of view, by participating in the EEA, the UK would remain competent to establish its own, independent customs provisions, including its own external customs tariff, valuation and preferential origin rules, which may differ from that of other EEA members. It would also be able to maintain its own trade defense legislation and would be allowed to apply anti-dumping and anti-subsidy measures against other EEA members.

Goods customs cleared in the UK will not benefit automatically from free movement within the EU. Similarly, goods from the EU that are customs cleared in the UK would only be imported free of any duty or other measures that may apply if they satisfy the preferential rules of origin set forth in the EEA Agreement.

EEA members have access to the Single Market, to the extent that they have incorporated into their domestic law the relevant *acquis communautaire*. Consequently, from a regulatory standpoint, the UK, by participating

in the EEA, would be required to implement the relevant EU provisions and standards pertaining to the Single Market in order to participate in the Single Market. Hence, regulatory harmonization would be more significant under this scenario.

The UK would be able to benefit from the free-trade agreements (“FTAs”) concluded by the EEA Members, although it would need to abide by the rules set forth therein, notably on preferential origin of goods and services.

*The UK becomes a member of the European Free Trade Agreement (“EFTA”) with Norway, Liechtenstein, Iceland and Switzerland.*

There are two major differences between the UK becoming a member of the EFTA and the UK’s participation in the EEA. First, re-joining the EFTA would permit the UK to ensure duty-free access for goods between the EU and the UK, although the freedom of movement of people and free trade in services would not be covered. Second, the UK would not be compelled to adopt the *acquis communautaire*, which may lead to greater regulatory divergence, thus creating greater risks of additional non-tariff barriers to trade.

*The EU and the UK negotiate a customs union, similar to that with Turkey.*

Another possibility would see the UK negotiate a customs union with the EU, similar to the one enjoyed by Turkey. This would lead to a convergence of customs provisions with the UK applying the EU’s Common Customs Tariff and the EU’s tariff nomenclature and also generally most, if not all, of the customs legislation of the EU.

Goods would benefit from circulation between the EU and Turkey, once customs cleared in one of the two countries. Regulatory requirements of the EU would likely need to be implemented into the UK. The UK would, however, remain free to adopt its own trade defense measures, including against the EU. Moreover, the UK would be competent to enter into FTAs with third countries independently but would not benefit from those concluded by the EU. This, however, may create additional complications.

*The UK negotiates a FTA with the EU, similar to that with South Korea or Canada.*

A fourth possibility is that the UK negotiates a FTA with the EU, similar to the ones the EU has with South Korea and Canada. Depending on the scope of the negotiations, the situation would be similar to that of being part of the EEA or EFTA.

In general, however, the UK would maintain its independence in terms of customs provisions. The free circulation of goods between the EU and the UK would only be granted to goods benefiting from preferential origin under the provisions of the FTA. The UK would thus, here also, be able to adopt its own trade defense measures and also to conclude its own FTAs.

In terms of regulatory convergence, the extent to which the UK would adopt the EU’s standards would depend largely on the content of the negotiations and cannot be foreseen at the present stage.

*The UK withdraws from the EU without any specific trade agreement with the EU.*

Finally, the UK may withdraw from the EU without any specific trade agreement or relationship with the EU. In such a scenario the UK would regain an absolute customs sovereignty, meaning that goods would be customs cleared in the UK based on their own external tariff, classification, valuation and other customs rules. Moreover, the UK would be able to adopt anti-dumping or anti-subsidy measures against imports from the EU, and vice-versa. However, there would be no free circulation into the EU of goods customs cleared in the UK, and UK goods would be subject, upon importation into the EU, to the external tariff of the EU. Similarly, the UK would no longer be able to benefit from the provisions of the free trade agreements concluded by the EU and would have to negotiate new agreements on its own.

From a regulatory point of view, the EU’s decisions, directives and regulations would no longer apply in the UK, provided that they are not previously incorporated into national legislation.

If the UK remains a member of the WTO, the sole provisions governing trade between the EU and the UK would, under this scenario, be those of the WTO agreements.

For sector-specific information on the potential impact of the Brexit, please consult our [pages](#) dedicated to the topic.

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