

A GUIDE TO FUTURE UK TRADE NEGOTIATIONS

FOR MID-SIZED BUSINESSES AND SMES



A guide to future UK trade negotiations for mid-sized businesses and SMEs

The UK's vote to leave the EU means that business faces a prolonged period of uncertainty. This quick reference guide sets out the facts and chronology of upcoming trade negotiations and provides simple tips with insights to help businesses effectively plan and manage risks and opportunities over the next 2-3 years.

BREXIT... what next?

The referendum result of 23 June 2016 ushered in an uncertain future, triggering an untested process for leaving the European Union. Over the next few years the UK government will undertake negotiations which will redefine our economic relationship with the European Union, and with the rest of the world.

The highest priority will be ensuring the UK remains open to the world, with firms able to trade and invest easily with international markets, and remaining an attractive destination for international investment. The UK's future as a trading nation now depends on business and government working together to answer some of the tough questions about how best to reimagine, rebuild, and deepen its relationships around the globe.



Phases of negotiation

Over the next few years, the process for setting a new economic relationship with the European Union and plans for potential future trading models with the rest of the world will become clear. This will include a succession of interconnecting negotiations with the UK's trading partners; potentially running in parallel, and for an unfixed period of time in many cases.

“The UK’s formal exit of the EU will bring about policy, legislative and regulatory changes in the UK, and potentially also in the EU. The ultimate shape that Brexit will take is far from certain and it will be some time before the terms of the UK’s future relationship with the EU are known. These terms will also determine which changes will be made to UK policy, legislation and regulation.”

General Electric (GE) position on the UK’s exit from the European Union



What business can expect from the negotiations

Short term:

Preparing to negotiate

Formally starting the negotiations to leave the EU via the Article 50 procedure will be preceded by a period of preparation by the UK government. The EU has had full competence for scoping, negotiating, implementing and monitoring almost all elements of trade policy for many decades. Therefore, the UK Civil Service will need time to:

- Assemble a negotiation team
- Consult business
- Assess potential options and trade-offs

Ahead of triggering Article 50, the UK government will be formulating policy objectives on its desired future trading relationship with the EU including on tariffs and non-tariff barriers, services, subsidies, customs procedures, regulatory equivalence, and the role of migration in facilitating trade. There are a number of different 'off-the-shelf' models for trading with the EU through existing trade blocs, such as the relationship Norway has via membership of the European Economic Area (EEA) or Switzerland via the European Free Trade Association (EFTA), but the government has been clear that the UK will be seeking to negotiate a bespoke arrangement.

An insider's view:

Richard Eglin, senior trade policy analyst in the Geneva office of White and Case LLP and formerly a director in the WTO Secretariat

How trade negotiations work

Negotiations to establish preferential trade arrangements take longest when the starting positions of the parties are furthest apart in terms of differences in their market access restrictions and in their regulations and regulatory systems. The UK and the EU will start from very similar positions so from a technical point of view it might be possible to conclude a new preferential UK/EU arrangement quite quickly if there is goodwill on both sides.

Just how far UK trade negotiators will be able to retain some degree of preferential market access to the EU after Brexit, from full-blown Single Market access to a partial free trade agreement, will depend on the flexibility of the UK Government and the negotiating stance of Brussels.

New free trade agreements with new partners will probably take longer, depending on how ambitious they are and how flexible each partner's negotiating position is. This process will probably not be linear. Formally, the UK cannot conclude new trade agreements until it leaves the EU, but it should be possible for the UK to make progress informally with its trading partners in mapping out the likely contours of new preferential trade arrangements while the Brexit negotiations with the EU are underway.

What should business board rooms be thinking about?

Business should aim to inject its views and interests into the negotiation process as early as possible and the UK Government should provide plenty of opportunity for consultation with business to ensure that its views are taken into account.

To do this, firms have to plan around these three scenarios until there is greater clarity about the likely future basis for UK/EU trade in goods and services:

- An EEA-style arrangement providing continued close integration with the EU
- An arms-length free trade agreement
- No preferential trade arrangement with the EU (WTO rules).

Businesses have to review and understand how each scenario would affect their operations (contracts, regulations, employment), their supplier network and their customer base.

The last piece is working out how flexibly a firm could adjust to a new business model, and what steps could be taken to facilitate that adjustment.

Medium term: Redefining the UK-EU trading relationship

Article 50 negotiations

Article 50 of the Lisbon Treaty (which forms the constitutional basis of the European Union) sets out the process for a Member State to leave the European Union, and allows for a set two year period for formal negotiations. The Prime Minister has indicated that she intends to trigger Article 50 by the end of March 2017. After this trigger, the European Council, working with the European Commission, will take forward the negotiations on behalf of the EU.

The Article 50 negotiations with the EU will likely be focused on the UK's withdrawal rather than its future trading arrangement with the EU, as this is not explicitly covered by Article 50. At the end of the set two year negotiating period, it is possible to gain an extension to talks but only if the Council unanimously agrees to do so. If no extension is granted – and no new trade deal has been agreed – the UK and EU trading relationship will be governed exclusively by World Trade Organisation (WTO) rules. This would result in the UK receiving the same treatment as all other WTO member countries that do not have a bespoke trade deal (such as China, the US, or Brazil).

Article 218 negotiations

Article 218 of the Lisbon Treaty provides for the EU to negotiate trade agreements with third countries. Under the terms of the Lisbon Treaty, the UK is not allowed to negotiate with third countries while it remains an EU member. It is therefore likely that the future UK-EU trade relationship will be negotiated separately, in parallel and possibly beyond the withdrawal negotiations. Having said this, use of the Article 50 process is unprecedented so the exact phasing of both the withdrawal negotiations and trade negotiations will need to be agreed by the UK and EU.

These negotiations will determine whether the UK remains a part of the European Economic Area, the customs union, or finds a more bespoke trading relationship. All future UK-third country trading relationships will depend on the legal arrangement and precedent set with the EU, therefore the upcoming EU negotiations should be the UK government's top priority.

As there is no set timeframe for these negotiations, businesses across the UK and the EU are already calling on both parties to ensure transitional arrangements are in place to avoid sudden changes to trade relations.

“Amid all of the current uncertainty, UK businesses are best advised to inform themselves of the details of the various negotiating options available to the UK government, as well as the legal realities and nuances of the international rules that bind the UK and affect UK business.”

James Bacchus

Chair, Global Practice, Greenberg Traurig; Chair, Trade and Investment Commission, ICC;
former Chief Judge, WTO

Long term: UK trade after Brexit

World Trade Organisation status

Britain has been a member of the World Trade Organisation since the organization's inception (and of the General Agreement on Trade in Tariffs beforehand) and it will remain so regardless of the outcome in its negotiations with the European Union.

In addition to its membership in the EU's Single Market, Britain currently benefits – through its EU membership – from preferential access to many other countries and territories. The status of Britain's trading arrangements with these countries will also have to be negotiated, and Britain cannot formally negotiate with non-EU trading partners until it has left the Union.

With regards those WTO members that do not have preferential trade agreements with the EU, British exporters will receive the same market access as they enjoy today under WTO terms. British obligations to WTO

Members – also known as the country's Schedule of Commitments – are currently spelled out as part of the existing EU's schedule. As part of the preparations for the UK's exit from the European Union, the UK and the EU will need to present their own schedules in the WTO, setting out their respective commitments. Some aspects of agriculture, services and government procurement in particular may be complicated and involve negotiations with other WTO members. When approved, the commitments made through the UK schedules will be the basis for Britain's trade with the rest of the world.

Negotiating Free Trade Agreements

Maintaining as much preferential market access to global markets as possible will also be critical to the UK's future success in exporting and attracting investment.

Free Trade Agreements (FTAs) exist to lower the cost of importing and exporting between two or more WTO members by improving market access through the

removal of tariffs and non-tariff barriers (red tape), and cooperation on trade rules.

Where these deals are thorough, detailed and cross-sectoral, they can deliver benefits that increase over the longer term, and keep costs down by delivering cheaper products and services for consumers.

As the UK currently benefits from many existing EU trade deals, part of the UK Government's preparations for the forthcoming EU

negotiations will be planning how it may be able to access similar terms for key markets, either by using existing EU terms as a blueprint for future negotiations or by seeking to join existing and ongoing EU-negotiated deals (e.g. with the US) as a third party.

Although it will be possible for the UK government to conduct scoping discussions on possible future FTAs with third countries in parallel with EU trade negotiations, the UK cannot conclude any deals before formally exiting the EU. As the UK's autonomy to trade will depend on the future relationship it has with the EU (as well as its establishment of autonomy to trade within the WTO), many other countries have already expressed a preference to wait for the outcome of EU-UK negotiations before launching formal discussions on trade with the UK.

“It is very difficult to predict the impact of the outcome of the British referendum on future business strategies. However, the overarching general trend towards regulatory convergence at international level will continue, and the EU will remain the first most important market place for UK and French businesses of all sizes.”

MEDEF (Mouvement des Entreprises de France),
largest employer federation in France

Checklist

With a number of uncertainties and a long road ahead for the UK's trading future, firms need to be considering the impacts as early as possible. Some key considerations to be assessing about your business are:

☐ **Trading until the UK leaves the EU**

Your trading arrangements will remain unchanged until the UK formally leaves the EU. Are you capitalising on the opportunities available to you under the current regime?

☐ **Chronology of negotiations**

Risks and opportunities will change depending on what stage of negotiations the UK is in. Have you mapped your company risk and opportunities across this timeline?

☐ **Communication**

Customers, employees, suppliers and investors may all be receiving different and patchy information, particularly if they are overseas. Have you reviewed your communication strategy to help keep everyone informed?

☐ **Market fluctuations**

The UK could be facing a prolonged period of uncertainty. Have you taken adequate advice on how to protect your company against any sudden volatility in the market (e.g. currency movements)?

☐ **Skills**

Understanding international trade rules and agreements is likely to become a more important skill for businesses when the UK leaves the EU. Have you assessed whether your business has the right skills for the future?

☐ **Business relationships**

Keeping up to date with trustworthy information and staying close to the dialogue with government will be important in helping to understand the opportunities and manage the risks. Have you mapped your business relationships and assessed if any new relationships are needed?

☐ **Regulation**

Regulatory compliance is likely to feature as a significant consideration in both the negotiations with the EU and future negotiations with non-EU countries interested in liberalising trade. Have you assessed where your business is currently exposed to compliance procedures and how this might change with different regulators?

☐ **Supply Chain**

Changes to the trading relationship between the UK and the EU and the rest of the world will likely alter the application of tariffs, customs procedures and regulation to products and services in your supply chain. Have you considered the origin and transit routes of your supply chain and how your partners might adapt to these changes?

National and international support:

- Access support through our offices in the regions and nations, our policy team in London, as well as our teams in Brussels, India, China and the US.
- Gain insight by receiving the most up-to-date intelligence, through roundtables, webinars and newsletters.
- Influence the CBI agenda by working closely with our dedicated EU negotiations team.



ICC is the world's largest business organisation with a network of over 6.5 million members in 130 countries. ICC has three central roles:

- Champion free trade
- Provide the rules and standards that govern international business
- Provide world class dispute resolution services

Useful contacts

ICC United Kingdom

E: info@iccwbo.uk

T: +44 (0) 20 7838 9363

@iccwboUK

www.iccwbo.org

CBI

E: euref@cbi.org.uk

T: +44 (0) 20 7379 8204

@CBItweets

www.cbi.org.uk