

Brexit Readiness: Spotlight on International Trade Law

With approximately 30 working days left until the end of the transition period, Cooley has put together the following Q&As to help companies prepare for the international trade law underpinnings of Brexit.

Cooley lawyers stand ready to address the implications of the post-transition period with clients in all sectors. Please reach out if you have any questions.

1. What kind of deal is the UK negotiating with the EU?

The UK and the EU are negotiating a trade agreement which will govern the bilateral relationship after the end of the transition period on 31 December 2020. The form of this agreement could be like other free trade agreements (FTAs) that the EU has signed with Canada or Ukraine.

FTAs are international treaties between countries or blocs of countries with the aim of liberalizing trade in goods and services and imposing regulatory requirements upon the parties. The UK and the EU tentatively agreed to negotiate such an agreement before the end of the transition period, but there is some uncertainty whether this goal will be accomplished.

2. What are the possible outcomes of the negotiation?

There are three possible outcomes for the ongoing negotiations.

- Concluding an FTA, which could take various forms, including:
 - a comprehensive FTA covering areas such as those treaties signed by the EU with Canada or Ukraine; or
 - a limited FTA comprising the most essential and uncontroversial topics, and leaving room to discuss other topics in the future.
- Requesting an extension of the transition period: If there is no agreement, the UK could request an extension of the transition period to continue negotiating the FTA. However, given the stage of negotiations, this option does not seem likely.
- 'No-deal' Brexit: If the parties are unable to reach an agreement, World Trade Organisation (WTO) rules will govern the bilateral economic relationship.

3. What are the differences between the EU Single Market and Customs Union and an FTA?

Right now, the UK is part of the European Single Market and Customs Union. If an FTA is successfully concluded between the parties, the FTA will rule the economic integration between the blocs as of 1 January 2021. The following table captures the main differences between these two economic integration approaches.

	EU Single Market and Customs Union	Free trade agreement (FTA)
Scope	Freedoms of goods, services, capital and persons	No general freedom. There will be limited opening, which will vary according to the area being negotiated (goods, ecommerce, services, etc.).
Integration method	Principle of free movement and no tariffs	Targeted removal of barriers to trade and tariffs cut
Regulatory approach	Regulatory harmonisation (a single regulatory sphere) <ul style="list-style-type: none"> • Prohibition of regulatory restrictions • Harmonisation of rules • Mutual recognition of technical rules and regulations 	Regulatory autonomy (two separate regulatory spheres) <ul style="list-style-type: none"> • Access to market (requires full compliance with host State rules) • Regulatory cooperation, not harmonisation
Effect of EU law	Primary and direct effect of EU law	FTA is ruled by international law; EU law will have no effect.
Supervision and enforcement	<ul style="list-style-type: none"> • EU Commission, EU regulatory agencies, member state supervisory authorities • CJEU, member state courts 	<ul style="list-style-type: none"> • Joint Committee established by the FTA (if any) • State-to-State dispute settlement (usually by State-to-State arbitration)

4. What are the consequences of Brexit for the trade in goods between the UK and the EU?

Whether there is a deal or not, the UK will leave the European Customs Union by the end of the transition period. Customs will be re-introduced between both blocs, as will import and export licences, where applicable. Customs authorities will undertake risk-based control systems for the imported goods, which will likely increase administrative burdens for companies.

Also, from 1 January 2021, companies importing and exporting between the blocs will need new EU and Great Britain (GB) Economic Operators Registration and Identification (EORI) numbers. UK-issued EORIs will no longer be valid in the EU, and EU-issued EORIs will no longer be valid in the UK.

If a UK-based company already has a GB EORI number, it will not need to re-apply for a new number to export goods. But, if the UK-based company will export goods to one EU-based subsidiary who will be making customs declarations or interacting with customs in the EU, the UK company’s EU-based subsidiary will need to apply for a new EU EORI number.

Finally, after the transition period ends, Authorised Economic Operator authorisations or other authorisations issued by the UK will cease to be valid in the EU and vice versa.

5. Will companies need to pay tariffs to import goods between the EU and the UK after the end of the transition period?

If the EU and the UK sign an FTA with a free trade area, there will be no import tariffs, but the originating status of the goods will need to be demonstrated as covered by the UK FTA agreement. Goods not meeting rules of origin requirements will be liable for customs duties.

If there is no deal, goods will pay most-favoured nation WTO tariffs. This means that all [UK-applicable tariffs](#) or [EU-applicable tariffs](#) will apply to goods from third countries with which no FTAs are in place.

6. What are trade remedies and what are the effects of Brexit on them?

Trade remedies are measures that States can take to protect their domestic industries against unfairly imported goods.

There are three types of trade remedies:

- Anti-dumping remedies address imported goods being sold within the UK at prices which are below the normal value in the country they are being exported from
- Counter-veiling remedies address imported goods which are being subsidised by foreign governments
- Safeguard remedies protect domestic industries against an unforeseen surge of imports

Up to 31 December 2020 (currently the end of the transition period), the EU will investigate and dictate trade remedies. From 1 January 2021 onwards, the UK will undertake its own trade remedies' investigations through its newly created Trade Remedies Investigations Directorate (TRID).

All current anti-dumping, anti-subsidy and safeguard measures in place by the EU once the transition period ends (currently 31 December 2020) will be reviewed by the TRID. The TRID will then determine if the measure in question needs to be maintained, varied or terminated. It is very important that companies wishing to maintain any trade remedy contact the TRID.

7. What is the impact of Brexit on trade in services between the EU and the UK?

The freedom of establishment and the freedom to provide services of UK service companies in the EU and EU service companies in the UK will end after the transition period ends (31 December 2020). This, of course, is subject to the specific rules agreed in the FTA (if there is any) between both blocs.

Service sectors will be affected dissimilarly as a result of the end of the transition period. If you have any questions on the effect of Brexit in a particular service sector, please reach out to any of our lawyers.

8. What is the impact of Brexit on cross-border flow of data between the EU and the UK?

After the end of the transition period (currently 31 December 2020), the transmission of data from the EU to the UK will be considered a “transfer” under [Chapter V of the GDPR](#).

Personal data will continue to be freely transferred from the EU to the UK after the end of the transition period if the EU has completed its adequacy decision of the UK under Chapter V of the GDPR.

However, if there is no adequacy decision as of 1 January 2021, businesses will need to introduce alternative transfer mechanisms, such as Standard Contractual Clauses (SCCs) to make sure that data can continue to be legally transferred. For more information on this, [please see the ICO guidance](#).

Also, article 71(1) of the [EU-UK Withdrawal Agreement](#), the personal data of subjects outside the UK will continue to be processed in accordance with the GDPR if:

- The data was transmitted to the UK or processed in the UK before the end of the transition period; or
- The data was transmitted to the UK or processed in the UK after the end of the transition period on the basis of the Withdrawal Agreement.

Finally, the transfer of data from the UK to the EU will not be altered as a consequence of the end of the transition period. Nevertheless, companies should continue to comply with all UK data transfer regulations.

9. What is the impact of Brexit on ecommerce?

In the EU, electronic commerce is ruled by Directive 2000/31/EC (Directive on Electronic Commerce), which applies to all providers of information society services. The UE Directive 2015/1535 defines information society services as “any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services”.

After the end of the transition period, the EU Electronic Commerce Directive will cease to apply to the UK. This means that providers of information society services established in the UK (and with no presence in the EU) will no longer be able to take advantage of the EU Directive’s provisions. Two of the most salient of these provisions relate to:

- The country-of-origin principle which determines that the provider is only subject to the laws of the EU member State where it is established and not to the laws of all of the EU States where it operates
- The limited liability of intermediary service providers

9. Will UK companies lose their .eu domain name after Brexit?

Under EU regulations, only EU citizens, or undertakings and organisations that are established in the EU are eligible to register .eu domain names.

Therefore, at the end of the transition period, UK-based undertakings and organisations that are not established in the EU will not be able to register or renew .eu domain names. Moreover, any UK-based company's registered .eu domain name will be revoked unless it can establish an EU subsidiary and transfer the domain name to its EU subsidiary.

10. Will treaties and FTAs signed by the EU continue to apply to the UK after the end of the transition period?

No. As of 1 January 2021, the UK will not be covered by any international agreement that the EU has signed. UK nationals and companies will not be able to have access to the benefits of free trade agreements, mutual recognition agreements, veterinary agreements or bilateral agreements signed by the EU.

The UK will need to accede to all of the agreements of its own right after the end of the transition period. So far, the UK has concluded various continuation agreements with EU-free trade partners that will apply as of 1 January 2021. For more information on these, please see next question.

11. What other international trade negotiations is the UK pursuing?

The UK has already started negotiating and signing free trade agreements with other countries.

- The UK has already signed trade agreements with the Andean countries, CARIFORUM, Central America, Chile, Côte d'Ivoire, Eastern and Southern Africa (ESA) trade bloc, Faroe Islands, Georgia, Iceland and Norway, Israel, Jordan, Kenya (agreement in principle), Kosovo, Lebanon, Liechtenstein, Morocco, Pacific states, Palestinian Authority, South Korea, Southern Africa Customs Union and Mozambique (SACUM) trade bloc, Switzerland, Tunisia and Ukraine. This will take into effect at the end of the transition period.
- The UK has also signed a Comprehensive Economic Partnership Agreement with Japan (CEPA).

- There are other trade agreements under negotiation with Albania, Algeria, Bosnia and Herzegovina, Cameroon, Canada, Egypt, Ghana, Mexico, Moldova, Montenegro, North Macedonia, Serbia, Singapore, Turkey and Vietnam.
- Finally, the UK has signed mutual recognition agreements (agreements whereby countries recognise the results of conformity assessment – testing, inspection and certification of products) with Australia, New Zealand and the United States of America.

Note that not every one of these international trade agreements has the same level of protection or liberalization. For more information on how these agreements may affect you and your company, please reach out to Cooley lawyers.