

Transition and What It Means for Retailers

On 19 March 2018, the EU and UK published the terms of the transition arrangements for when the UK formally leaves the EU. Here are the essential details for retailers.

The period of transition will commence from the moment that the UK formally leaves the EU (11 p.m. on 29 March 2019) and will terminate on 31 December 2020. In the intervening period, both parties will endeavour to work together to have in place a formal “partnership agreement” to regulate future trade in goods and services from 1 January 2021 onwards.

Terms of Transition Agreement

Broadly speaking, during the transition period, all EU law will continue to apply to the UK as it does at present. For retailers trading goods with the EU, this means current arrangements will continue to apply, goods will be in free circulation and they will be free of tariffs and customs checks. The same is true for goods coming into the UK from the EU 27.

Is It Certain That This Transition Agreement Will Apply?

No. As it currently stands, both sides have only agreed around two-thirds of the draft transition agreement. There remain a number of tricky issues on which no consensus has been reached, which will have to be resolved before the draft withdrawal agreement comes into force. The agreement to apply a transition period will also be incorporated into the final agreement on the terms of the UK’s withdrawal from the EU, and the arrangements (if any) for the UK’s future trading relationship with the EU post-transition. In other words, nothing is agreed until everything is agreed.

Nevertheless, there is recognition from both the UK and the EU that a period of transition will support a manageable Brexit – rather than a cliff edge exit – to enable businesses to adapt their supply chains and business models and for governments to put in place the necessary regulatory infrastructure that Brexit will require.

Timeline



May/June 2018

UK Parliament enacts the European Union (Withdrawal) Bill

Spring 2018

Time to evaluate – scenario planning needs to commence:

- Where are negotiations now?
- What positions are being taken in the UK Parliament?
- Remote risk of cliff edge on 29 March 2019 – substantial risk of cliff edge in December 2020
- Continually update contingency plan
- Reflect on likely scenarios



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What Changes?

Although citizens and businesses should notice little change in day-to-day dealings with the EU, there will be significant changes for the UK government, officials and politicians. In particular, the UK will lose its 73 Members of the European Parliament, and the seats will be redistributed amongst the remaining member states. The UK will also lose its Commissioner and all representation in EU institutions and committees. It will have no role in the decision making of the EU during this period, although the transition arrangements are likely to allow UK experts to attend meetings in an advisory capacity, in strictly defined circumstances. During the transitional period, the European Court of Justice will retain jurisdictional competence to decide matters relating to the application of EU law within the UK.

Implications for Trading With the Rest of the World

Transition arrangements explicitly allow the UK to negotiate, sign and ratify new trade deals with other third countries. However, any deal cannot be implemented until after the transition period has expired, unless authorised to do so by the EU.

During the transition period, the UK will remain part of the EU customs union and, therefore, will be required to apply EU tariff rates to **imports** from other countries. Where applicable, this means: (1) applying the EU's Most Favoured Nation (MFN) rates; (2) preferential tariff rates for imports from developing countries; and (3) preferential tariff rates resulting from bilateral trade agreements between the EU and other countries. This will provide certainty and continuity for importers.

For UK **exporters** (including cross-border e-commerce), slightly different rules apply. When the UK formally leaves the EU on 29 March 2019, it will no longer be party to the EU's bilateral free trade and association agreements (FTAs) with third countries. This would mean that the countries included in those FTAs would not necessarily be obliged to apply preferential treatment to their imports from the UK. So far, conversations to this effect have been inconclusive at best. In fact, World Trade Organization (WTO) rules permit these countries to apply their standard (MFN) tariff rates to imports from the UK unless another arrangement is specifically agreed.

To avoid this outcome, the transition agreement says, "The Union will notify the other parties to these agreements that during the transition period, the United Kingdom is to be treated as a Member State for the purposes of these agreements." It remains to be seen whether this approach will succeed, as initial indications from all countries concerned have been mixed. The express consent of the third country in question would be required to permit such treatment to UK-made products.

People Matter

During the transition period, the rights of EU nationals will be protected and the free movement of workers will be allowed to continue. EU nationals arriving in the UK during the transition period will be able to use that time to count towards settled status (five years) and will have six months from the end of the transition period to apply for the relevant residence documentation.

