

# Brexit – trade and customs arrangements

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## Brexit timeline – where are we now?

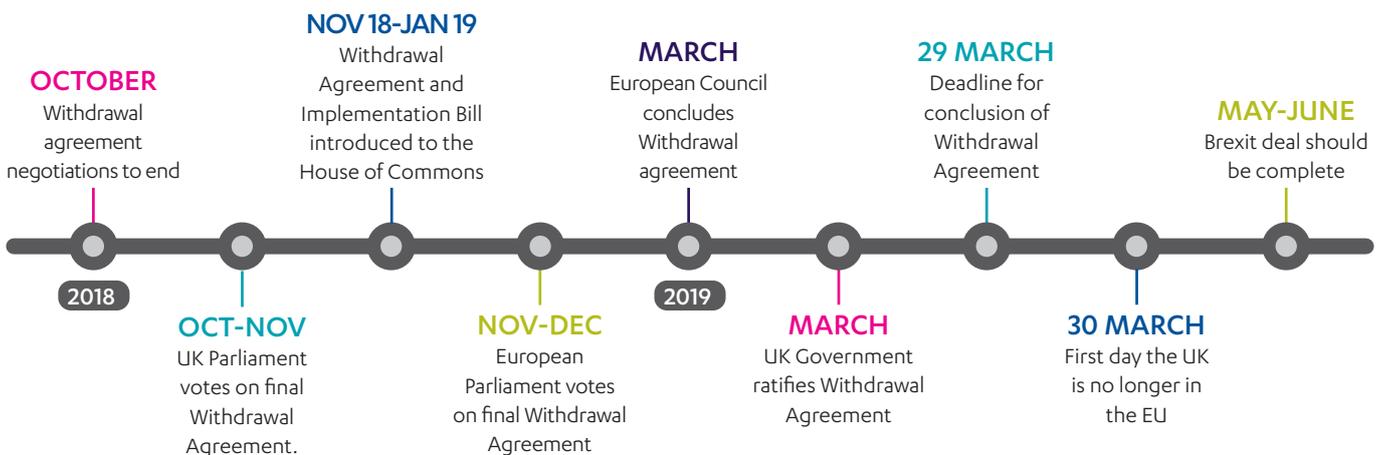
Following our Brexit Bulletin of December 2017, we thought it would be useful to summarise what has been achieved in the last six months and outline the next steps moving forward.

A draft Withdrawal Agreement has been prepared. The Withdrawal Agreement is a treaty between the EU, the European Atomic Energy Committee and the UK which deals with the framework for the future relationship, including citizens’ rights, separation provisions, transitions and financial provisions. The UK and the EU are aiming to finalise and agree the Withdrawal Agreement by October 2018.

After many months of uncertainty, as part of the draft Withdrawal Agreement, a transitional period from 29 March 2019 to December 2020 was announced. This transitional period is contingent on the finalisation of the Withdrawal Agreement. The purpose of the transitional period is to ensure that when the UK leaves the EU on 30 March 2019, the UK’s access to the Customs Union and Single Market does not simply come to an end. The transitional period gives the UK time to negotiate trade deals to allow it to operate outside of the Customs Union and the Single Market, but no such deals can be entered during this time.

Once the Withdrawal Agreement has been finalised, the Withdrawal Agreement and Implementation Bill will be brought forward by the Government. The Bill will confirm the major policies set out in the Withdrawal Agreement and will be directly implemented into domestic law by primary legislation.

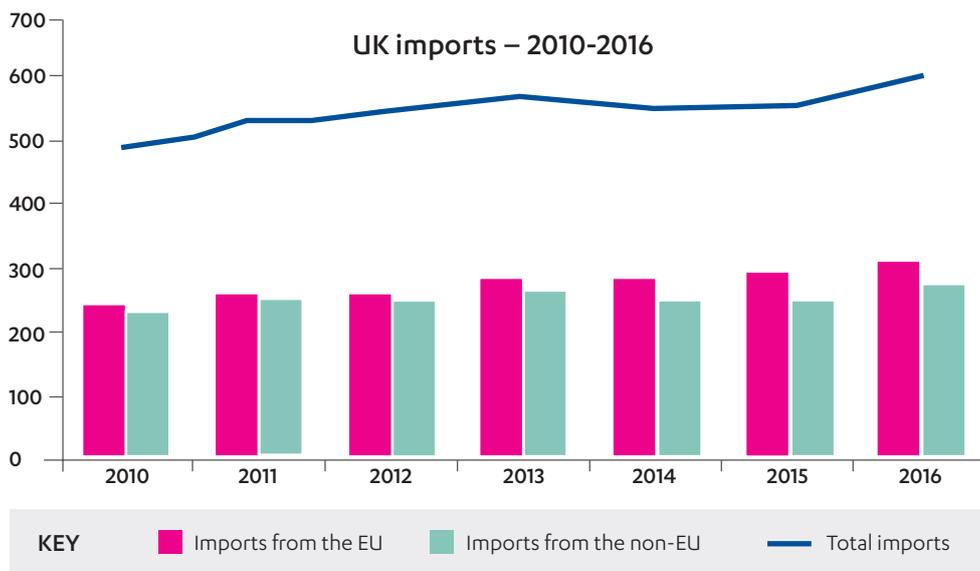
A summary of the timeline is below:



## Trade post Brexit

Global trade has always been an important part of the UK economy. Excluding major shocks such as the Great Depression and two World Wars, exports and imports have each generally been equivalent to over 20% of UK GDP for the last 160 years.

The EU is the UK’s largest trading partner. The graphs below indicate how close the trading relationship between the UK and EU is.



A post-Brexit outcome which reduces trade and increases the costs of trade between the UK and EU will be damaging for both the UK and EU.

## Brexit scenarios

There are two Brexit scenarios – a “hard” or a “soft” Brexit.

### 1. A hard Brexit

A hard Brexit scenario will see the UK leaving both the Single Market and the Customs Union. In the event of a hard Brexit without a reciprocal free trade agreement, UK exports to the EU would become subject, as they crossed from the UK to the EU, to the rates of duty set out in the Common Customs Tariff. Further, goods entering the UK from the EU will also be subject to customs tariffs. If there is no trade agreement with the EU, the WTO rules will apply. The WTO rules incorporate the ‘most favoured nation’ (MFN) principle, which means that countries cannot discriminate between their trading partners. Owing to the MFN principle, the UK will be obliged to impose the same tariffs on imports from the EU as it applies to those from all other WTO members.

In addition, there will also be higher non-tariff barriers. As the EU is the UK’s largest trade partner, a hard Brexit will double the amount of export declarations currently completed, which means significant additional costs will be incurred by businesses completing such declarations. Businesses will have to update their IT systems and procedures to cope with these changes.

### 2. A soft Brexit

A soft Brexit would theoretically see the UK staying in the Customs Union, which would guarantee the free movement of goods (with no tariff barriers) with the EU and common external tariffs for goods entering both the UK and the EU from third countries. The UK would, however, not be able to negotiate its own new trade deals with third countries.

### UK Government’s Brexit intentions

On 15 August 2017, the Government issued a “Future Customs Arrangements” paper and on 9 October 2017, the Government issued a White Paper in relation to the UK’s future trade policy following the UK’s withdrawal from the EU. In these papers, the Government noted its intention to leave the Customs Union. The Government’s first option is to seek a highly streamlined customs arrangement, leaving as few additional requirements on EU trade as possible, implementing technology-based solutions and a trusted trader scheme to make it easier to comply with customs procedures (the Maximum Facilitation Option). The second option is to seek a new customs partnership with the EU that removes the need for a UK-EU customs border. The UK would collect tariffs set by the EU customs union on goods coming into the UK and if those goods did not leave the UK and UK tariffs on them were lower, companies could claim back the difference (the Customs Partnership Option). Both options will allow the UK to forge new trade agreements across the world.

However, despite the Government issuing these papers regarding their negotiating intentions, there continues to be significant political uncertainty in relation to what customs relationship the Government is seeking with the EU.

### Costs of the Government's Brexit intentions

In relation to the Maximum Facilitation Option, on 23 May 2018, HM Revenue and Customs advised the Treasury Select Committee that it could cost businesses up to £20 billion a year through the costs of extra customs declarations and compliance costs. HMRC estimated the costs to businesses of the Customs Partnership Option to be £3.4 billion per year as there will be fewer customs declarations and less administrative expenses. HMRC also estimated that the costs to them to implement the Maximum Facilitation Option would be around £250 million per year and the Customs Partnership would cost less than £180 million per year, after setup costs of £700 million.

### Northern Ireland issue

In addition, there remains significant uncertainty regarding the border between the Republic of Ireland and Northern Ireland. Both the UK and the EU has stated they do not want a hard border, however, how that would work in practice needs to be resolved as the EU will want to ensure compliance with tariffs, rules of origin and other EU standards for goods.

A broad agreement on the border was reached with the EU in December 2017 with three possible options. Option A would deal with the border as part of the overall EU-UK agreement on future relations. Option B would be Ireland specific solutions based on advanced technology to check vehicles crossing, and if neither of these options proved viable, under Option C, there would be full alignment with EU rules required to support the Good Friday agreement and the north-south co-operation.

The issue was reopened after the EU published the draft Withdrawal Agreement that suggested that Northern Ireland would effectively remain in the Customs Union and Single Market. This has been rejected by the UK as interference in the UK's internal affairs. The Government considers that the Maximum Facilitation Option using technology and trusted trader status for border crossings is the best way forward. This will be the best option for businesses in terms of frictionless trade, however, the EU has said that it does not consider it provides them with necessary controls to ensure customs compliance. This issue remains as one of the most vexing Brexit issues.

## What steps trading businesses can take to prepare for Brexit

The current uncertainty around the shape of customs legislation following Brexit does make it extremely difficult for businesses to plan ahead. Whilst it is hoped that there will remain frictionless free-trade between the EU and the UK, businesses that import and export need to prepare for the eventuality that this does not occur. At this stage, it seems almost unavoidable that the rules will change and will become less favourable for both the UK and the EU.

As a starting point, it is extremely important that businesses know their supply chains. The biggest supply chain challenges will be delays at the border, the capability of the physical movement of goods and increased duty costs and associated costs such as freight forwarder and IT systems costs.

Whilst it remains difficult to predict the UK future trade relationships with the EU and the rest of the world, businesses should start planning and considering the below:



**Map full end-to-end supply chains**

Businesses do not need to immediately carry out a complete overhaul of their supply chains, however, it would be prudent to map full end-to-end supply chains and model the impact of the Brexit scenarios. The model should consider how your business buys and sells products and services from around the world, how these are distributed, the product flows, and tariffs which your business is currently exposed to and how these may change depending upon the final Brexit deal.

**Know where your goods are coming from**

Understand the sensitivities of the supply chain and where delays could significantly impact your business.

**Lead times**

Work out the impact on planning and margins. Lead times may be increased due to border issues which could affect service levels and margins, especially where goods have a short shelf life. Consider how stock management and warehousing is affected and whether there is a need to contract with new UK based suppliers. Consider creating a model which will calculate the knock on effects of delivery depending upon the length of the delays. This will assist in identifying trigger points and the mitigation required.

**Customs and tariffs**

Prepare for potential new duties on imports and consider how easily additional costs can be absorbed. It is possible that different cross-border movement of goods will incur different transactional costs. Anticipate where costs can be reduced and consider how any additional costs can be met.

**Costs**

Consider whether increased costs will be passed on to the customer and whether market prominence allows for this. Look for opportunities where market growth can be achieved.

**Supply chain hubs**

Assess how supply chain hubs affect pan-European business in terms of whether deliveries can be quicker depending upon which borders need to be crossed and the associated costs with this. Consider whether you are able to service both the EU and the UK quickly. This is a good opportunity for market strategy to focus on differentiation to increase market prevalence and synergise business operations.

**Supply contracts**

Consider whether supply contracts provide the service levels required and look for opportunities to de-risk and reduce suppliers to just those key suppliers required for the business operation. Also assess legal impact on both existing and future contracts. Consider whether renegotiation is permitted and the safeguards which need to be built into new and existing contracts.

**Trusted trader accreditation**

Consider applying for Authorised Economic Operator (AEO) status. AEO accreditation can enable businesses to benefit from faster customs clearances and gives assurance to HMRC and revenue authorities that the business operates a secure and trustworthy import and/or export practice, allowing swifter approval of special procedures.

**VAT**

Prepare for extra costs and administration. When the UK is no longer part of the EU, imports and exports will incur VAT liability and there may need to be local VAT registrations.

**IT Systems**

Utilise existing data and align systems with up-to-date information such as customs and VAT numbers, tax coding frequency and data point changes. Aim to create greater capability, flexibility and agility and review products and services to map out lead times. Consider how new required data for import and export declarations will be captured and how this will be made available at physical dispatch and receipt of goods.

**Employees**

Reassure employees of “business as usual” and build cross-functional teams to monitor the situation. Consider reviewing customs capability and knowledge with respect of your workforce by analysing supplier base and high risk areas. Ascertain which service providers are priorities and how you can collaborate with them to ensure a smooth supply chain.

**Engage with the Government**

There will be significant changes which will allow the Government to explore alternatives and seek the views of businesses. Consider how your business may benefit from Government initiatives such as grants and incentives and how these can be achieved.

## Our team



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Adam is a Partner at RPC and head of the Tax Disputes team. Formerly of HMRC's Solicitor's Office, Adam is an accredited mediator with more than 25 years' experience in direct and indirect tax dispute resolution. He has particular expertise in tax enquiries and criminal tax investigations, EU law and business tax.

He has advised clients in a large number of high profile cases and has extensive experience of conducting litigation before the Tax Tribunals through to the Supreme Court and the Court of Justice of the European Union. Adam writes and lectures widely on tax matters and is the co-author of A Practical Guide to Tax Appeals. He has also written a number of guidance notes for Tolley's Online Guidance and PLC and edits various chapters in Whiteman & Sherry on Income Tax and Capital Gains Tax.



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Michelle is a Senior Associate at RPC who specialises in taxation, with expertise in both direct and indirect contentious and non-contentious tax matters. She is a dual qualified lawyer in New Zealand and England and Wales.

Michelle has particular expertise in relation to customs and excise advisory matters and assisting clients with HMRC enquiries and customs and excise duty disputes. She has in-depth experience of high value appeals at all levels including before the Tax Tribunals, Court of Appeal, Supreme Court and Court of Justice of the European Union. Her expertise includes Judicial Review proceedings scrutinising HMRC's conduct. She also advises those facing HMRC criminal investigations/prosecutions, allegations of duty fraud and participating in missing trader intra-community (MTIC) fraud. Michelle also assists clients in managing HMRC "dawn raids".

Michelle is Honorary Legal Advisor to the UK Bonded Warehousekeepers Association, which is a specialist trade body to those involved in the alcohol industry trading in excise goods. Michelle is secretary to the Customs Practitioners Group (CPG), a trade association representing commercial importers and exporters. Michelle regularly responds to HMRC consultations on customs matters for the CPG and writes articles for trade magazines on customs and excise duty issues.



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Robert is a Legal Director at RPC with extensive experience in direct tax and VAT dispute resolution. Formerly of HMRC's Solicitor's Office, Robert has been involved in some of the most complex and significant tax disputes of recent time. He has particular experience in relation to group association and group litigation matters, acting for both corporate and private clients. Robert's practice areas include all aspects of corporate and personal taxation including the taxation of pensions and VAT, with particular emphasis on claims and disputes involving matters of public (Judicial Review) and EU law.

He has practised at all levels of the UK courts and Tax Tribunals as well as the Court of Justice of the European Union.

Robert has a significant presence in the industry and regularly writes and speaks at industry events.

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