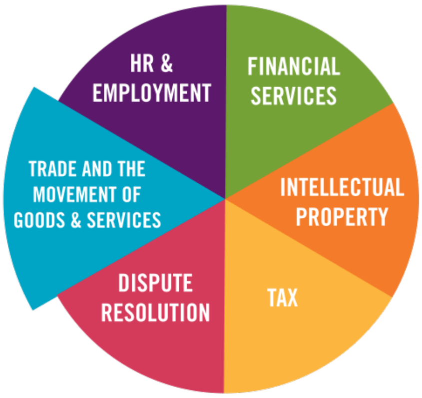
20 MAY 2016

Author:

Ignasi Guardans
+32.(0)2.336.1949
Ignasi.Guardans@klgates.com

Alessandro Di Mario
+32.(0)2.336.1938
Alessandro.DiMario@klgates.com

K&L Gates Brexit Task Force
Clients can contact the firm with questions about the consequences of Brexit by email at brexit@klgates.com



BREXIT - Trade

Should the UK leave the European Union (EU), there would be an impact on its trading of goods and services, both with the EU and with the rest of the world. Such an impact would substantially differ depending on the level of integration that the UK would be able to maintain with the Union.

In the case of a BREXIT, it is necessary to make an important distinction between trade with the EU and trade with other countries (trade with "third countries").

As regards the trade relations with the EU, a BREXIT would impact the free movement under which goods circulate without any barriers within the EU Single Market. The Withdrawal Agreement (the agreement organizing the new UK-EU relationship on all different matters) would need to include the terms according to which the UK would eventually keep all or most of the trade benefits it currently enjoys as part of the EU Single Market (and indeed, vice-versa: the obligations for the UK regarding products and services from other EU countries). This also includes benefits such as the non-discrimination principle between EU companies related to services and public procurement.

As a way to preserve the *status quo* in terms of market access to and from other EU Member States, the UK would have the option of joining the European Economic Area (EEA) effectively at the very same moment that it formally leaves the EU. This, in practical terms, would be tantamount to remaining a part of the Single Market (as it is the case with Norway). But whilst this would protect access for goods and services, the essential difference would be that the UK would be subject to EU law and regulation (on standards and all sort of requirements) without being able to influence its drafting. For instance, the need of the UK to secure access to the EU market for its cars or food will make it necessary still to comply with the European security and quality regulations in those sectors, but not be part of any related negotiations on such regulation.

Alternatively, the UK could include in the Withdrawal Agreement a bilateral arrangement with the EU to reach a status more or less similar to the one that the EU has with Switzerland (which is not a member of the EU or EEA, but enjoys tariff-free access to the EU Single Market). However, the Swiss model is not easy to replicate — the EU and Switzerland have signed over 120 bilateral agreements, including a free trade agreement in 1972 and two major series of sectoral bilateral agreements that aligned a large portion of Swiss law with the EU at the time of signing. For many, these agreements have created a complex and sometimes incoherent network of obligations, which are not easy to sustain.

In addition, any bilateral preferential access to the Single Market could also trigger the intervention of other world trade partners of the EU who could challenge this preferential treatment under the most-favoured-nation principle of WTO law.

Should the UK not be able to secure preferential access to the EU Single Market, its commercial relations with the EU will be governed by the WTO rules, which are definitely not as wide in scope as the four freedoms of the Single Market.

As regards trade with non-EU countries, BREXIT would put into question the application of the benefits derived from several free trade agreements that the UK has benefited from as a result of being part of the EU. This includes Free Trade Agreements with South Korea, Chile, Mexico and South Africa. The ability of the UK to maintain the trade benefits negotiated for such a large trade zone — and in particular, the reduction of trade barriers — would largely depend on the not-easy legal interpretation of its rights as a remaining party to those agreements independently and in its own right, after having left the EU. Perhaps more significantly, the UK would also be excluded from the benefits derived from any future agreements to be entered into by the EU, including TTIP with the US, or further agreements with ASEAN, India or Singapore.

So, although the UK would enjoy more freedom in negotiating its own new bilateral trade treaties, leaving the EU could compromise its bargaining power, as the EU as a whole currently represents one of the biggest and most powerful trading blocs in the world.