



## Brexit – a brief history

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# What was the Question on 23<sup>rd</sup> June 2016?

- Should the United Kingdom remain a Member of the European Union or leave the European Union?
- Two possible answers:-
  - Remain a Member of the European Union
  - Leave the European Union
- BIFA, a non-political organisation has looked at this issue from a purely trade perspective it is clear:-
  - The situation is infinitely more complex than was at first imagined
  - From a customs/trade perspective UK will find itself in a more difficult position



# EU Referendum-the basics

- EU Referendum held on 23<sup>rd</sup> June 2016
  - Remain 48%
  - Leave 52%
  - Turnout 71.8%
- Only 3 areas voted to remain
  - London
  - Scotland
  - Northern Ireland



# Specific Domestic Problems

- Scotland:-
  - Voted in favour of Remain
  - Renewed questions regarding Scottish Independence
  - How would this affect cross border trade?
- Northern Ireland;-
  - Only UK country with a physical border with another EU MS –The Republic of Ireland (RoI)
  - Has a higher proportion of trade with the EU than the rest of the UK-52.3% (£3.5 bn)
  - £2.1 bn of all the Provinces exports went to RoI
- “Hard border” would cause significant issues:-
  - “Soft border” for people and a “Hard” border for goods?
- Some goods/processes work on an all Ireland basis
  - 33% of milk produced in NI sent to the ROI for processing
  - Baileys Irish Cream crosses the border 5 times during its production process.



# Roles of New Government Departments

- **Department for Exiting the European Union (DExEU)**, led by David Davis will:-
  - Oversee the negotiations to leave the EU and establish the future relationship between EU and UK
  - Work with devolved administrations, Parliament and other interested parties
  - Co-ordinate and lead cross Government activity to maximise opportunities and ensure a smooth exit on the best possible terms
- **International Trade Department**, led by Liam Fox will:-
  - Be responsible for overall trade policy and export control
  - Bring together functions performed by UKTI, UK Export Finance and BIS trade policy and export control
  - Negotiated capability to drive forward trade and investment policy
- **Business, Energy and Industrial Strategy Department**, led by Greg Clark:-
  - Be responsible for industrial strategy, leading the Government relationship with business and furthering the UK's role in science, research and design
  - Bring together the existing functions of the Department for Energy and Climate Change



# Key points to consider during BREXIT negotiations

- What will be the most important:-
  - Trade and Business ? Or
  - Political decisions focusing on other issues e.g. sovereignty, immigration etc
- BIFA always believed that a system as close to the Single Market should be retained
- Complexity of unravelling legislation ; -
  - Alignment v divergence
  - Estimated that the UK will have to re-negotiate 759 trade deals post Brexit
- What compromises will both sides be willing to make? :-
  - Areas of agreement
  - Divergence and **Red Lines**



# EU Membership

- UK is a member of both:-
  - The Single Market, and
  - The Customs Union
- No duties or taxes are collected within the EU and there are no border controls for:-
  - Intra EU trade
  - Goods transiting the EU for import or export
- Access to pan EU systems:-
  - TRACES, EMCS, ETS
- Other areas where systems are aligned
  - Harmonised tariff system, aligning duty rates, tariff suspensions and quotas
  - Sanctions, embargoes and common security measures
  - Free Trade agreements
- Access to Europa database including much useful information used by trade:-
  - Legislation published
  - Verification of VAT and EORI numbers, data on supply chain security



# Single Market

- Single Market rules take 2 forms:-
  - Removal of barriers to trade
  - Harmonising or unifying national rules at EU level
- Access to the Single Market requires Members to accept the four freedoms:-
  - Of goods
  - Of people
  - Services
  - And of capital
- Membership of the Single Market requires acceptance of:-
  - Making payments into the EU Budget
  - Accepting jurisdiction of the European Court of Justice



# Single Market-cont'd

- Single Market aims to create level playing field, by creating a common regulatory framework.
- Countries must undertake to implement common rules and to recognise each others standards.
- Economic operators can sell their products and services throughout the EU using common standards.
- Two main principles:-
  - Subsidiarity
  - Minimum and Maximum Standards



# The Customs Union

- The EU is not just a Single Market it is also a Customs Union
- The EU has Customs unions with three countries:-
  - Turkey
  - Andorra
  - San Marino
- Two key characteristics of the EU Customs Union is:-
  - Common tariff on goods coming into Customs Union from non-member States, because the EU sets the duty rates on goods imported into the Customs Union.
  - Once goods have been customs cleared in one country they can be shipped to others in the Union without further tariffs being imposed



# What is Article 50 ?

1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.
2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.
3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.
4. For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it.

A qualified majority shall be defined in accordance with Article 238(3)(b) of the Treaty on the Functioning of the European Union.

5. If a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article 49.



# CIP 42 (2016)

- CIP 42(2016) dated 24<sup>th</sup> June 2016 stated:-

“As the Prime Minister announced this morning, there will be no immediate change to the movement of goods and people in and out of the United Kingdom (UK) from the EU.

We are still a member of the EU. Until Article 50 is invoked, we will continue to engage with EU business as normal and be engaged in EU decision-making in the usual way. Once it is invoked, we will remain bound by EU law until the terms of our exit have been determined but we will not be involved in decision-making. The period between invocation of Article 50 and our eventual exit from the EU is expected to last at least two years.”



# The Tariff, rates and other measures

- Leaving the Single Market and Customs Union could result in the disappearance of the Harmonised Tariff and loss of access to:-
  - The TARIC
  - Additional conditions such as the MEURSING codes for milk and sugar
  - Access to information relating to Tariff Quotas, ADD information etc.
- The retention of some form of tariff alignment UK/ EU post Brexit:-
  - Using the first 6 digits of the World Customs Organisation (WTO) Harmonised System (HS) 6 digits.
  - Alignment of Duty rates etc
  - Will the UK formulate its own Tariff quota system ?
- The Tariff is a crucial method for controlling trade with other countries.
  - Facilitating the free flow of legitimate trade
  - Collecting Statistics
  - Protecting the public and industry



# Customs Security Measures

- Supply chain security is in part governed by EU legislation:-
  - Economic Operator Reference Identifier (EORI) identify EU countries trading with 3<sup>rd</sup> countries
  - Authorised Economic Operator (AEO)
- AEO is a WCO scheme underpinning trade relations between many countries:-
  - Should be retained
  - UK could write its own simplifications
- As these are EU schemes so where will this leave UK traders?
  - Will not have an EU EORI number
  - Mutual recognition agreements?
- Export Control System (ECS) and Import Control System (ICS)
  - Will ECS declarations be required for goods leaving the UK to be exported to the EU?
  - As part of the import process into the EU ICS declaration be required ?



# Embargoes, sanctions and Export Controls

- UK has the Export Control Order 2008 and the UK Strategic Export Control Lists
  - Individual sanctions, treasury controls and embargo legislation originates in the EU.
  - UK will have various choices-adopt EU or US legislation etc.
- UK has its own Export Control Order, Military and Dual-Use List:-
  - Legislation on Dual-Use also comes from an EU Directive, permitting free movement (without licences) around the EU for Dual-Use goods listed in Annex1.
  - EU Directive covers Union General Export Authorisations (UGEA's) permitting the movement of dual-use goods to Wassenaar countries such as Switzerland, Norway, USA, Canada and Australia.
  - Leaving the EU will mean that this Directive and the UGEA's will not be available to UK companies.
- Suggested solution would be for the UK as a Wassenaar member to be added to the UGEA and the UK to create an EU27 dual-use OGEL:-
  - Have to register to use OGELS and users are audited increasing administration
  - If not extended it will become more problematical to source Dual-Use goods from the EU.



# Other areas to consider

- All modes will be impacted by changes to customs regimes:-
  - Road
  - Air
  - Sea
- Air:-
  - Open skies policy
  - EU Regulation 300/2008
  - AC300
- Maritime:-
  - Emissions
  - Port Regulation
- Road:-
  - Drivers hours regulations including tachograph
  - Size and weights directives
  - “O” Licencing
  - Transport Manager and Driver CPC
  - Driving Tests
  - EU Market access by imposing of strict cabotage regulations on UK truckers?? and vice versa
  - Roadworthiness



# Lancaster House Speech

- “Britain will not be part of the Common Commercial Policy nor bound by the Common External Tariff. **We will therefore no longer be part of the Customs Union.**”
- **“Britain will also no longer be a member of the EU Single Market.”**
  - Theoretically the UK will leave the EU by the Spring of 2019
- “Instead, the UK will pursue a new strategic partnership with the EU, including an ambitions and comprehensive **Free Trade Agreement** and **new customs agreement**. This will seek to ensure that cross-border trade with the EU is **as frictionless and seamless as possible.**”



# The White Paper

- **“8. Ensuring free trade with European markets-** We will forge a new strategic partnership with the EU, including a wide reaching, bold and ambitious free trade agreement, **and will seek a mutually beneficial new customs agreement with the EU.”**
- Our new relationship should aim for the freest possible trade in goods and services between the UK and the EU (.....) This should include a new customs agreement with the EU, which will help to support our aim of trade with the EU that is as frictionless as possible.”



# Article 50 Letter

- “We are leaving the European Union. But we are not leaving Europe-and we want to remain committed partners and allies to our friends across the continent”.
- “The United Kingdom wants to agree with the European Union a deep and special partnership that takes in both economic and security cooperation.”
- The UK does not seek membership of the Single Market
  - Four freedoms
  - No “cherry picking”
- Implementation period
  - “We should work together to minimise disruption and give as much certainty as possible.”
  - To “avoid any cliff edge” reference is made to “implementation periods.”



# Article 50 Letter –cont'd

- “The Republic of Ireland is the only EU Member State with a land border with the United Kingdom. We want to avoid a return to a hard border between our two countries.”
- “We also propose a bold and ambitious Free Trade Agreement as the UK is exiting the EU member state, both sides have regulatory frameworks and standards that already match. We should therefore prioritise how we manage the evolution of our regulatory frameworks to maintain a fair and open trading environment.”



# UK Negotiating Objectives

1. Certainty
2. Control of our own laws
3. Strengthen the Union
4. Maintain the Common Travel Area with Ireland
5. Control Immigration
6. Rights for EU nationals in Britain. Britain and British nationals in the EU
7. Protect workers' rights
- 8. Ensure free trade with European markets**
9. New trade agreements with other countries
10. The best place for science and innovation
11. Co-operation in the fight against crime and terrorism
12. A smooth Brexit.



# EU's negotiating objectives

- 22nd May 2017, the European Parliament voted to adopt the Article 50 negotiation process and mandate the European Commission to conduct the negotiations.
- Relevant text reflects:-
  - The two-phased approach to negotiations
  - Prioritised those matters to ensure the orderly withdrawal of the UK from the EU
- The negotiating directives cover four main areas:-
  - Safeguarding the rights and status of citizens
  - Main principles of the financial settlement which must be agreed before moving onto stage 2 of the negotiations
  - Negotiations should not undermine the Good Friday Agreement
  - Arrangements must be found for dispute settlement and governance of the withdrawal agreement
- Nothing is agreed until everything is agreed, individual items cannot be settled separately.



# Potential key Brexit dates

- 29<sup>th</sup> March 2017 - the UK triggers Article 50
- 19<sup>th</sup> April 2017 - EU draft negotiating guidelines were published
- 29<sup>th</sup> April 2017 - European Council adopts Brexit guidelines
- 22<sup>nd</sup> May 2017 - Brexit negotiation directives approved by the Council
- 19<sup>th</sup> June 2017 - Formal negotiations begin
- 24<sup>th</sup> September - German Federal elections
- August 2017 - UK Government publishes White Papers on Customs, Trade, Northern Ireland, Jurisdiction
- 30<sup>th</sup> September 2018 - Date by which the EU's chief negotiator Michel Barnier, wants to conclude the terms of Britain's exit from the EU
- 31<sup>st</sup> March 2019 - Date by which Theresa May wants to conclude the negotiations over Brexit
- 2019 ????? - Britain formally exits the EU, following ratification of Brexit by other MS and the European Parliament.



# Customs Bill-Main elements

- The Bill would allow the Government to
  - Operate standalone domestic Customs and indirect tax regimes when the UK leaves the EU
  - Provide a Customs service
- To provide continuity for business, the legislation will mainly be based on existing EU law-the UCC
- The main elements of the Customs Bill will provide a domestic legislative framework allowing the Government to:-
  - Charge customs duties on imported goods and adjust the rates of these duties
  - Collect payments of customs duties, administer the customs regime, and tackle duty evasion
  - Control the import and export goods
  - Accommodate potential negotiated arrangements with the EU



# BIFA's position relative to Brexit



- BIFA has always believed that retaining something as close to the Single Market as possible is desirable:-
  - Must be clearly understood that anything less will hurt
- Transition Period:-
  - Minimum of three years
- Implement the UCC
  - Focus on promoting AEO
- Resolve citizens rights issues-the transport and logistics sector is heavily dependent on migrant labour.
- Improve Government performance-better systems and more joined up
- Introduce postponed VAT accounting





# Contact BIFA

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