



# Brexit – an overview

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# The General Situation



# 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
- UK voted in favour of leaving the EU :-
  - Remain 48%
  - Leave 52%
  - Turnout 71.8%
- BIFA, views this issue from a purely trade perspective the situation is:-
  - More complex than was at first imagined
  - From a customs/trade perspective UK will encounter difficulties at least in the short term.



# EU Membership – what it means

- 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 movement:-
  - 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



# 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



# Roles of key 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



# Article 50 - text

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.



# Industry Specific Issues



# The Tariff, rates and other measures

- Leaving the Single Market and Customs Union could result in the disappearance of the Harmonised Tariff and will not participate in:-
  - The TARIC
  - Conditions relating to the MEURSING codes for milk and sugar
  - Information relating to Tariff Quotas, ADD information etc.
- Potential retention of some form of tariff alignment UK/EU post Brexit:-
  - Using the first 6 digits of the World Trade 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.



# Aviation - general

- UK access to the European Single Aviation Market decisive in the rise of Low Cost Carriers (LCC's).
- Benefitted from freedom of establishment rules to set up in countries with:-
  - Low labour costs
  - Ability to operate anywhere in EU without limitations on:-
    - Pricing
    - Capacity
    - Frequency
- Upon Brexit, UK licenced carriers will cease to be “Community Air Carriers” as defined in Regulation (EC) No 1008/2008.
- Also cease to benefit from the terms of the Multilateral Agreement on the Establishment of a European Common Aviation Area.
  - Upon Brexit UK-licenced airlines will lose their right to fly to and from the EU and between the remaining EU member states.



# Aviation-impact with non EU carriers

- UK benefits from air traffic rights negotiated at EU level with third party countries.
- EU-US Open Skies Agreement allows
  - EU and US airlines to fly between points in the EU and US
- To retain the status quo the UK will have to either;-
  - Sign up to the EU-US Open Skies Agreement as an additional party or
  - Negotiate a bi-lateral agreement with the US.



# Aviation Security

- Ironically most of aviation systems currently in use in the EU originated in/from the UK
- Regulation EC 300/2008 governs:-
  - It lays down common rules and basic standards on aviation security and on procedures to monitor their implementation.
  - It applies to all civil airports in the EU, as well as to air carriers and entities providing goods or services to or through these airports.
- Aviation Security Regulation relative to EU ACC3 programme is:-
  - Commission Implementing Regulation 2015/1998
  - Air carriers that fly air cargo or mail into the EU from a non-EU airport are required to comply with the EU ACC3 programme for inbound cargo and mail



# Roadfreight

- 80% of the UK's trade with the EU is carried by road and there is a general acceptance that road is the mode most impacted by Brexit:-
  - Regulation
  - Customs
  - Driver related
- Following issues will have to be addressed:-
  - Access to market-truck quotas
  - Irish land border
  - International Road Licencing
  - Employer Certifications
  - Vehicle Technical Standards
  - Cabotage
  - Infringements and penalties.
- Will there be a shift from accompanied to unaccompanied trailers on the Dover Straits route?



# Oceanfreight

- Generally agreed that this is the sector least impacted by Brexit.
- Currently a ship can be registered on the British Register including corporate bodies:-
  - In the EEA
  - And the Commonwealth
- What will cabotage rights available to UK shipping operating in the EU and vice versa post Brexit?
- Will there be fewer direct services between the UK and rest of the world post Brexit?
  - Rise of the feeder vessel service?
- Emissions and the SECA?
- Customs:-
  - Congestion due to more checks
  - Proof of Union Status



# BIFA's position relative to Brexit



- BIFA has always stated that retaining something as close to the Single Market/Customs Union is essential at least in the short term to allow business to adjust.
- Transition Period:-
  - Minimum of two years
- Resolve citizens rights issues-the transport and logistics sector is heavily dependent on migrant labour.
- Improve Government performance better systems and more joined up
- Conclude a FTA agreement with the EU as a minimum



# BIFA's position relative to Brexit – cont'd

- Road issues to be addressed:-
  - The UK should adopt current regulatory standards or negotiate
  - A Land Transport Agreement covering:-
    - Access to market-truck quotas
    - International Road Licencing
    - Employer Certifications
    - Vehicle Technical Standards
    - Cabotage
    - Infringements and penalties.
    - Mechanism to ensure continued alignment of standards.
- Maritime matters to be addressed:-
  - Ships registration
  - Cabotage
  - Emissions and SECA



# BIFA's position relative to Brexit – cont'd

- Implement the Union Customs Code in full
- Negotiate continued access to pan EU systems, Transit, EMCS, ICS, EORI database
- Retain membership of Aviation Security Regime
- Air to maximise continued market access:-
  - Consider joining the European Common Aviation Area (ECAA) or
    - Negotiate a specific UK-EU bi-lateral deal
  - Join the EU-US Open Skies Agreement or
    - Negotiate a bi-lateral agreement with the US



# What we know so far ?



# Potential key Brexit timeframe

- 29<sup>th</sup> March 2017 - UK triggers Article 50
- 5<sup>th</sup> April 2017 - European Parliament adopted Brexit guidelines
- 22<sup>nd</sup> May 2017 - Brexit negotiation directives approved by the Council
- 19<sup>th</sup> June 2017 - Formal negotiations begin
- August 2017 - UK Government publishes Position Papers on Customs, Trade, Northern Ireland, Jurisdiction
- October 2017 - UK Government publishes White Papers on Customs and Trade
- 19-20<sup>th</sup> Oct 2017 - European Council to review progress of negotiations
- 14-15<sup>th</sup> Dec 2017 - European Council to review progress of negotiations
- 30<sup>th</sup> Sept 2018 - Date by which Michel Banier wants to conclude terms of UK's exit from EU
- 30<sup>th</sup> March 2019 - UK exits the EU following ratification of Brexit by all other Member States and the European Parliament
- June 2019 - European Parliament election.



# Article 50 Letter – main themes

- “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 UK does not seek membership of the Single Market
    - Four freedoms
    - No “cherry picking”
- “The United Kingdom wants to agree with the European Union:-
  - “a deep and special partnership that takes in both economic and security cooperation.”
  - “We also propose a bold and ambitious Free Trade Agreement as the UK is exiting the EU ...”  
“Prioritise how we manage the evolution of our regulatory frameworks to maintain a fair and open trading environment.”
- 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.”
- The letter also emphasised the need to avoid a return to a hard border in Ireland



# 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.



# Overview of UK Customs proposals

- The initial Position Paper was issued on 15<sup>th</sup> August 2017 supported by White Paper issued on 09<sup>th</sup> October 2017
- Highlighted the importance of Trade and Customs
- Government position is “As we leave the European Union and therefore the EU Customs Union”
- Two long term solutions;-
  - Highly Streamlined customs arrangement
  - New customs partnership with the EU
- All depends on outcome of negotiations between EU and UK.



# Taxation (Cross-Border) Trade Bill

## covering Customs

- Bill comprises 56 clauses and 9 Schedules:-
  - Will have to be read in conjunction with:-
    - other Customs legislation CEMA 1979 ( which is an important Act), various Finance Acts etc.
    - Secondary legislation (mainly Statutory Instruments)
- Allows Government to create a stand alone customs regime to impose and collect tax
- The Bill:-
  - Will allow the UK to accommodate the transition to a new customs regime
  - Makes provision for the amendment of various UK Acts
  - Facilitates the use of taxation as part of trade policy and links to Trade Bill
  - Charge and vary customs duty on goods
  - Specify what duty is payable on which goods including preferential rates.
- Some of wording is vague and secondary legislation will have to be monitored closely.



# Overview of UK Trade proposals

- The initial Position Paper was issued on 15<sup>th</sup> August 2017 supported by White Paper issued on 09<sup>th</sup> October 2017
- Key Brexit ambition is that the UK can negotiate better trade deals outside the EU than from within it:-
  - 30% of UK GDP stems from the trade in imported/exported goods (2016)
  - 44% of UK's trade was with EU
- Key elements of Trade Bill published on 7<sup>th</sup> November 2018:-
  - Government to create powers to assist in the transition of over 40 existing trade agreements between the EU and other countries
  - Establishment of UK Trade Remedies Authority to protect against unfair practices
  - Target countries already identified for future FTA negotiations
  - Ensure that UK Government has the legal abilities for gathering and sharing trade information
  - Enable the UK to become an independent member of the Agreement on Government Procurement (GPA) ensuring UK companies have continued access to £1.3 trillion worth of government contracts and procurement in 47 countries.



# 8<sup>th</sup> December 2017 announcement

Agreement reached between UK and EU on key points:-

- The divorce bill estimated between £35 and £39 billion
  - Timeframe to settle the debt is yet to be agreed.
- Northern Ireland
  - *UK pledges to “maintain full alignment with those rules of the Internal Market and the Customs Union” where they were applicable to avoiding a hard border on the island of Ireland*
- Citizens Rights
  - EU citizens living in the UK and vice versa will be able to claim permanent residency status
  - EU nationals can bring relatives to Britain to live with them
  - ECJ to have jurisdiction for 8 years after Brexit.
- 15<sup>th</sup> December the European Council voted to proceed to Phase 2 of the negotiations covering:-
  - Trade relations
  - Future broader relationship between UK and EU
  - Anticipated that Phase 2 negotiations will be more problematical than Phase 1



# EU Transition position outlined

## UK refers to implementation

- Transition should run from March 2019 to December 2020 (budgetary constraints)
- All EU rules and regulations-as well as EU rule changes adopted after 2019 should apply in the UK during the transition phase
- “No cherry picking”-so free movement into the UK should continue
- UK cannot be involved in the decision-making of EU bodies
- It cannot implement its own international agreements unless the EU agrees
- Work should continue on finding a solution to the Northern Ireland border question
- Both sides are anticipating concluding the Transition deal arrangements in March 2018



# Areas of divergence relative to Transition

- The EU wants the UK to follow its rules but not be involved in making decisions
  - UK wants a “right to object” to new laws passed by the EU during Transition
  - EU is willing to offer consultation “on an exceptional case-by-case basis agreed by the 27 remaining MS”
- EU rejected demands that the UK be allowed to negotiate trade deals with other countries during the transition period:-
  - EU has to authorise any deals negotiated during this period
  - Approximately 750 deals to be re-negotiated.



# Negotiating the final deal

- UK Government timetable for securing a final deal on the UK's withdrawal from the EU is slipping towards the end of the year
- EU has set an October deadline to reach agreement:-
  - Will not let slip by more than a week or two
  - Required to allow time for:-
    - legislative process in the European Parliament
    - National Parliaments to ratify the agreement
- No agreement on a final Brexit treaty means no transition





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# Contact BIFA

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