



26 March 2019

### Potential consequences of a hard Brexit for dairy trade

There's been a change of course as regards Brexit in the last week or so. At the request of Prime Minister May, 29 March is now off the table. Brexit will now likely happen on 12 April (if a meaningful vote on the withdrawal agreement were to fail a third time, hence a 'hard Brexit') or in the (unlikely) event of the withdrawal agreement going through, Brexit day would fall on 22 May. Another option is of course extending Article 50.

In case the negotiation period is prolonged, the UK will remain a full member of the EU during that time. This poses a problem in light of the upcoming European elections scheduled for 23-26 May 2019 and an extension beyond the elections or the first plenary session of the new Parliament seems unlikely. A prolongation only makes sense if it increases the chances of an orderly withdrawal. In theory, it could also lead to Brexit being reversed, possibly through a second referendum.

In the event that the withdrawal agreement will still be approved (possibly accompanied by some changes to the political declaration on the future framework and/or additional reassurances provided by the EU regarding the provisional nature of the backstop), there will be no major changes to trade conditions during a transitional period which would run from 22 May 2019 until 31 December 2020 (with a possibility for this to be extended until 2022). This transitional period, the existence of which is dependent on there being a withdrawal agreement in place, would provide certainty and order while the EU and UK negotiate an agreement on their future relationship. This 'soft' Brexit is obviously the preferred outcome of traders and businesses in both the EU and the UK.

Assuming there is neither prolongation of the negotiations under art.50, nor adoption of the withdrawal agreement, as stated above the UK will exit the EU on 12 April without any deal. The following is a short summary of the main dairy trade consequences of a no deal 'hard Brexit'. Extensive material on "Brexit preparedness" has already been published by the EU Commission and the UK authorities. You will find links to the most relevant publications at the end of this document and in some of the paragraphs.

In the event of a hard Brexit, we will face a cliff-edge scenario whereby from one day to the next, the rules of trade and movement between the EU and the UK will have changed entirely.

#### 1. Tariffs



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The UK has published its [proposed tariff arrangement which would apply in the event of a 'no deal' outcome](#). The UK has indicated that most tariff lines will enter the UK duty free for an interim period (of up to a year) following a hard Brexit. Certain products will be subject to tariffs – for dairy, these are butter and cheese lines under HS codes 0405 and 0406. The applicable tariffs will be less than the MDN tariffs currently applied by the EU. The products which will be subject to tariffs in the event of a hard Brexit are as follows:

CN code	Description	Tariff
04051011	Natural butter (packed)	€60,50/100 kg
04051019	Natural butter (bulk)	€60,50/100 kg
04051030	Recombined butter	€60,50/100 kg
04051050	Whey butter	€60,50/100 kg
04051090	Butter with fat content 85-95%	€73,80/100 kg
04062000	Grated/powdered cheese, all kinds	€24,90/100 kg
04063010	Processed cheese, not grated or powdered, only Emmentaler, Gruyère and Appenzell used	€19,10/100 kg
04063031	Processed cheese (excluding that made from Emmentaler, Gruyère etc.)	€18,40/100 kg
04063039	Processed cheese, not grated or powdered, only Emmentaler, Gruyère and Appenzell used	€19,10/100 kg
04063090	Processed cheese, not grated or powdered, only Emmentaler, Gruyère and Appenzell used – FOR RETAIL	€28,40/100 kg
04064090	Blue vein cheese (excluding Roquefort and Gorgonzola)	€18,60/100 kg
04069001	Cheese for processing	€22,10/100 kg
04069021	Cheddar (excluding grated/powdered or for processing)	€22,10/100 kg

These arrangement will also apply to products from all WTO member countries. Geographical proximity aside, the EU would lose its preferential position on the UK market whereas UK producers would be faced with increasing competition, while losing access to the EU market.

The EU has indeed already indicated that in the event of a hard Brexit, the full MFN duties will apply to imports from the UK – i.e. there will no special treatment for UK goods. This is logical as the EU would not want to open the door to dairy imports from WTO countries simply because the UK is leaving.

In the broadest terms, the tariffs applicable to a range of imported dairy products are as follows:

Tariff line	Product category	Applicable tariff
0401	Milk and cream	Between €12,90/100 kg and €183,70/100 kg, depending on individual 8 digit code
0402	Milk powders	Between €34,70/100 kg and €183,70/100 kg, depending on individual 8 digit code SMP: €118,8/100kg ; WMP: €130,4/100kg
0403	Cultured milk products	Between €20,50/100 kg net and 8.3% + €168,80/100 kg, depending on individual 8 digit code
0404	Whey	Between €7,00/100 kg and €167,2/100 kg, depending on individual 8 digit code
0405	Butter, spreads, butteroil	Between €189,60/100 kg and €231,30/100 kg, depending on individual 8 digit code
0406	Cheese	Between €140,90/100 kg and €221,20/100 kg, depending on individual 8 digit code

For most product lines, including all the main dairy products and ingredients such as cheese, butter, SMP and WMP, the applicable tariffs would render trade prohibitively expensive. In percentage terms, most tariffs are between 40% and 80%.

As far as the preferential concessions under WTO are concerned, the dairy import quotas will be split between the EU and UK according to use rates over the last 3 years. For dairy, the importance of this exercise is somewhat limited as none of the WTO import quotas have been filled in recent years. Details on the methodology and the share of the EU and UK of each quota can be found [here](#). The EU/UK approach is at present being challenged by WTO members exporting agricultural products to the EU under these quotas. The final outcome remains therefore uncertain.

In principle, we could also face a split of the dairy export quotas agreed within the WTO framework, namely those for EU cheese exports to the US and to Canada. Given that these quotas are part of the tariff schedule of USA and Canada respectively, it would be up to these countries to launch the WTO procedure for splitting the quotas between EU27 and the UK. So far no such process has been initiated, meaning that as things stand, only European companies will be able to export under these quotas.

The UK has indicated that it will establish their own TRQs for dairy and other sensitive agricultural tariff lines. These TRQs would operate on an *erga omnes* basis (i.e. applicable the EU 27 and to other non-EU countries). This is apparently intended to balance the need to protect UK farmers from outside competition with the need to secure a supply of imported food.

## 2. Customs

A hard Brexit will mean that trade between the EU and the UK will be subject to the same customs procedures which apply to trade between the EU and a third country. Customs checks and requisite clearance documents would be needed, implying potential long delays at border posts.

A full overview of the documentation and steps which would be required (from the perspective of an importer based in the UK) can be found on the [website of HM Revenue and Customs](#). The European Commission has also published 'preparedness' document covering customs and licences, amongst a range of other areas - these can be accessed [here](#).

## 3. Food law

For those exporting products to the UK, the UK has indicated that it will consider EU products as being equivalent during an interim period of at least 6 months after Brexit. In the longer term this may change. For imports of products of animal origin, the importer will have to notify in advance the UK Food Standards Agency, but this will be an electronic pre-notification and should not result in delays on the border. The UK will also implement a replacement for the EU TRACES systems (whereby imports of high risk food and feed are tracked).

Conversely, the EU has offered no such assurance for UK exporters. It is therefore advisable that UK exporters explore the possibility of having their plants listed as an approved third country establishment by the EU (even if it is not certain whether this process will be completed in time for 'Brexit day'). In order for UK establishments to be approved for export to the UK, the UK will first have to be approved as a country. This seems absurd since currently the UK as part of the EU is in full compliance with EU rules on food safety.

In addition to establishment approval, veterinary certificates will be required in order to export products of animal origin from the UK to the EU so as to certify animal health conditions and compliance with EU food safety legislation. UK exports will also be subject to mandatory checks (documentary, identity and sometimes physical) at border inspection posts.

[UK manufacturers will no longer be able to use the 'EC' health mark on their packaging](#). For exports, the new "United Kingdom" or "GB" identification mark (the EU will only accept the latter as it is the official ISO code) would have to be applied from day 1. A transitional period is likely to be granted for UK products remaining on the UK market.

In addition, UK products may no longer be labelled as originating in the EU or bear the EU flag. The EU organic logo may also not be used, until there is an equivalency agreement in place for organic products.

The EU food information regulation requires that the name and the address of the food business operator responsible for the information is mentioned on the label. In case the manufacturer is not established in the EU, this is usually the importer. UK businesses exporting to the EU will therefore need to indicate an EU address or the name of the importer (and vice versa) on the packaging. Also on



## European Association of Dairy Trade

At this point the UK authorities are expected to allow for an implementation period (of 21 months). Whether the EU will do the same is unclear. Additional guidance on food labelling by the UK government is [available here](#).

In the longer run, we may see divergence on food legislation, be it on safety, standards or labelling, which may create further barriers to trade in dairy products.

More details can be found in the [EU preparedness notice on food law](#).

### 4. Free trade agreements

The EU is the sole successor to its existing trade agreements, meaning all FTAs will cease to apply in relation to the UK after Brexit. In the event of there being no withdrawal agreement, the UK government aims to have provisions in place with third countries to ensure that there will be bilateral deals as close to Brexit day as possible. These provisions would supposedly replicate in so far as possible the conditions carved out in existing agreements between the EU and third countries, while ensuring that the necessary technical changes are in place to allow the agreements to operate on a bilateral basis. Each FTA partner of the EU can however decide not to sign any bilateral deal with the UK and many are expected to seek additional concessions from the UK. At this stage, only agreements with Switzerland, Eastern and Southern Africa and the Faroe Islands have reportedly been concluded.

Even if the withdrawal agreement is adopted, any FTA partner could decide to no longer apply tariff preferences to UK products. Companies in the EU27 using UK ingredients in their exports are advised to take this into account, as rules of origin would prevent the use of non-originating dairy ingredients.

### 5. Circulation of goods placed on the market before Brexit day

The withdrawal agreement contains provisions aiming to ensure that goods placed on the market before the end of the transitional period may continue to be sold (and in the case of non-animal products to circulate freely between the EU27 and the UK) after the end of the transitional period (in case no definitive trade arrangement is yet in place) until they reach the end user. In a hard Brexit scenario, no transitional regime whatsoever is foreseen. It is therefore possible that products from the

UK would be considered as non-compliant from day 1, even if they were already physically present in another Member State before Brexit.



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### 6. List of useful documents – ‘no deal Brexit’ (preparedness)

[Tariff arrangements of the UK in the event of no deal](#) (13 March 2019)

[European Commission guidance - withdrawal of the United Kingdom and customs related matters in case of no deal](#) (11 March 2019)

[European Commission communication: Implementing the Commission’s contingency action plan](#) (19 December 2018)

European Commission Article 50 taskforce: [full list of Brexit preparedness notices](#)

UK Government: Department for exiting the European Union: [publications](#)

Guidance document: [UK Government’s preparations for a ‘no deal’ scenario](#) (latest version – 21 December 2018)

[Partnership pack](#) – preparing for changes at the UK border (latest version 21 December)

[How to prepare if the UK leaves the EU with no deal](#) – covers a wide range of different policy areas

### 7. Other Brexit documents of interest

[Apportionment of TRQs post Brexit \(Council approved document\)](#) (January 2019, EU total volumes outlined)

[EU and UK proposal: devision of WTO import TRQs](#) (6 December 2018)

[Annex to proposal: devision of WTO import TRQs](#)

[Draft Council political declaration on the framework for a future relationship with the UK](#) (22 November 2018)

[Text of withdrawal agreement](#) (14 November 2018)

[UK Government white paper on the future relationship](#) (July 2018)