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BREXIT—The UK's Departure from the Single Market

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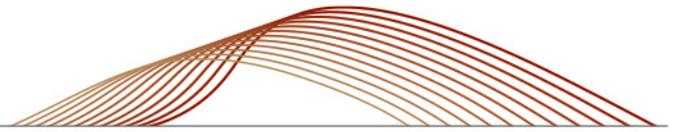
The United Kingdom's Prime Minister, Theresa May, has provided some long awaited clarity on the UK's strategic aims from negotiations of its departure from the European Union including confirmation that the UK will not seek to remain within the European Single Market.

After much anticipation and in preparation for the triggering of Article 50 in March, in a speech delivered on 17 January, Theresa May has laid out her plans for the UK's departure from the European Union following the referendum result in June 2016. Notably, the Prime Minister has confirmed that in light of the European Union's position on the four freedoms that must be accepted to be a member of the European Single Market, the UK cannot remain in the European Single Market.

12 Priorities for Exit Negotiations

The Prime Minister highlighted 12 priorities for negotiation with her European counterparts, namely:

1. Free Trade with the EU—the UK should have the greatest possible access to the European Single Market without being a member.
2. Trade deals outside the EU—the UK will seek to negotiate its own trade deals with countries outside the EU.
3. Certainty—the Prime Minister emphasised that the government would aim to provide certainty wherever possible to protect British business and maintain market stability.
4. Smooth transition—a phased process of implementation should be agreed to enable the smooth transition.
5. Immigration—the UK will take measures to control immigration both from inside and outside the European Union.
6. Legal Sovereignty—the UK would no longer fall within the jurisdiction of the European Court of Justice.
7. Maintaining the Rights of UK/EU Nationals—the rights of EU nationals already living in the UK and UK nationals in the EU should be maintained.
8. Protecting Workers Rights—the UK will implement current EU rules protecting workers and seek to further build on these protections.



9. Continued Collaboration with the EU—collaboration with European partners in the science, research, and technology sectors should be maintained.
10. Foreign Policy—the UK will seek to continue its work with the European Union to share intelligence and strengthen defence and foreign policy.
11. Common Travel Area—free travel between the UK and the Republic of Ireland should be maintained.
12. Strengthening the United Kingdom—efforts will be made to protect and enhance the union between the four nations of England, Wales, Scotland, and Northern Ireland.

Key Business Concerns

Many businesses across the UK including the financial services in the City of London had hoped that the Government would seek to maintain access to the European Single Market with fears that any departure from the single market would have a negative impact on the UK's competitiveness on the global stage and London's reputation as the business gateway to Europe. Emphasising that this is an opportunity for change, the Prime Minister has made clear that the UK will seek greater control of immigration and intends to have the flexibility to negotiate its own deals with countries outside of the European Union. This is however incompatible with the "Four Freedoms" upon which the Single Market is founded and it is clear that these freedoms are indivisible. As such, the UK cannot remain within the Single Market. Instead, the Government intends to push for the "greatest possible" access to the single market and would seek tariff-free trade and a customs agreement with the EU.

The Prime Minister has also sought to allay fears that Brexit will lead to sudden changes to the business landscape by calling for a smooth transitional plan to be a product of the negotiation process and has provided assurances that existing EU laws will be brought into domestic law as part of the repeal of the European Communities Act 1972.

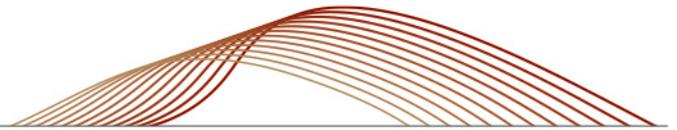
What's Next?

Negotiations will officially begin once the UK Government serves notice to the European Council that it intends to withdraw from the European Union. This is expected to occur by the end of March and will start a two year negotiation period to finalise the exact terms of withdrawal from the union.

If, as envisaged by the Prime Minister, a deal is reached within the two year negotiation period, it is hoped that the final deal would take the form of a transitional plan whereby adjustments to trade, laws, and regulations occur in a gradual but certain manner.

The Prime Minister also conceded, ahead of the UK Supreme Court's ruling on whether the triggering of Article 50 should be put before the UK Parliament, that any deal reached between the UK and the EU will be subject to a Parliamentary vote. This has been heralded as a victory for the democratic process by ensuring the government's decisions receive the appropriate parliamentary scrutiny; however such a move also has the potential to introduce greater uncertainty by virtue of Parliament's power to vote down any negotiated deal.

The default position on trade would be the adoption by the UK of the rules of the World Trade Organisation ("WTO") at the end of the two year negotiation period that will commence upon the triggering of Article 50. These are based on the principles of the "Most Favoured Nation" and "National Treatment". Broadly, this prevents WTO members from imposing tariffs on other members which are lower than those it applies to other members and requires goods (and in some



cases services) imported from other members to be treated in the same way as domestic goods and services.

Application of the WTO rules in the absence of a deal with the EU is seen as potentially damaging and disruptive to businesses as it could lead to the introduction of a number of tariffs and trade barriers with trading partners across the globe. Tariff schedules would have to be negotiated with the WTO, a process which is notoriously slow by virtue of the veto rights possessed by each of the WTO's 164 members.

Commentary

The Prime Minister's speech has provided some long awaited clarity on the Government's strategy for exiting the European Union and should assist business sectors in assessing the potential impact Brexit will have. Additionally, comments from the Chancellor signalling an openness to change the UK's economic model to ensure it remains competitive on a global stage, coupled with positive rhetoric from leaders across the globe to enter into trade deals with the UK, provides reasons for optimism across the business community.

This is however just the beginning of what could potentially be a drawn out exit process and it is not until negotiations begin will the true landscape become apparent. With confirmation that the UK will not seek to be a member of the single market, the key concern for business sectors such as the financial sector which rely heavily on free trade, equivalent rules, and the passporting of rights is what the "greatest possible access" will look like in reality.



If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings London lawyers:

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