



HM Government

# **Continuity in the availability of goods for the EU and the UK**

POSITION PAPER

# Position Paper by the United Kingdom

## Continuity in the availability of goods for the EU and the UK

This paper outlines the United Kingdom's (UK) position and principles in ensuring a smooth and orderly withdrawal from the European Union (EU) in regard to the availability of goods, in a way that supports the move to the freest possible future economic relationship.

### Introduction

1. Investors, businesses and citizens in the UK and across the EU need to be able to plan ahead with certainty. The UK wants to ensure a smooth and orderly exit that minimises disruption to citizens, consumers and businesses across Europe in terms of the availability of goods.
2. Both the UK and the rest of the EU benefit from the close and longstanding trading relationship for goods. The EU is the UK's largest market for goods, and in 2016 other EU Member States, taken as a whole, exported more goods to the UK than any third country.<sup>1,2</sup> Citizens across the EU also benefit from this close relationship and the integrated regulatory systems, which enable the supply of safe products across the EU and the UK, as well as reduced costs, increased variety, flexibility for supply chains, benefits for patients, and higher quality and innovative products.
3. The UK's ambition is to work towards a comprehensive future agreement with the EU, which includes securing the freest and most frictionless trade possible in goods and services, to the benefit of all. The UK enters these discussions with this in mind, and is seeking to avoid any unnecessary disruption during the move to the future partnership.
4. Delivering this ambition requires agreement in several key areas. The UK's proposals on customs and tariffs in the future relationship are set out in 'Future customs arrangements: a future partnership paper', the first in a series of discussion papers on building the deep and special partnership. This position paper outlines the UK's proposals for the regulation of goods to ensure the availability of goods at the date of withdrawal and to support the move to a future relationship. The UK notes that the European Commission published a position paper transmitted to Member States on Goods placed on the Market under Union law before the withdrawal date.

### Context for a future relationship

5. It is in the interests of both the EU and the UK for our deeply integrated trade and economic relationship to be maintained after the UK's exit from the EU. EU statistics indicate that EU goods exports to the UK amounted to €314 billion in 2016; more than EU goods exports to Brazil, Russia, India and China combined.<sup>3</sup>

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<sup>1</sup> ONS, 'UK Balance of Payments, The Pink Book: 2016', table 9.4.

<sup>2</sup> Eurostat External Trade database (Comext, <http://epp.eurostat.ec.europa.eu/newxtweb/>) – DS-045409. Other EU Member State reported statistics (EU28).

<sup>3</sup> Eurostat External Trade database (Comext) – DS-045409. Other EU Member State reported statistics.

6. Both consumers and producers would benefit from maintaining close trading ties after the UK's exit to ensure the reliable supply of products and reduced costs. In 2016, the EU exported €127.9 billion of consumer goods to the UK and imported €62.3 billion of UK consumer goods.<sup>4</sup> Producers in the rest of the EU rely on UK firms in their supply chains, and vice versa. In addition, the UK is an important contributor to many European value chains, and in 2011 the UK content accounted for 1.9 per cent of the total value of other EU member state exports, and 6.4 per cent of all foreign value-added in other EU member state exports.<sup>5</sup> For some Member States the UK contributes a more significant share of the foreign value-added; around 17 per cent for Malta and Ireland, and around 12 per cent for Cyprus.<sup>6</sup>
7. Deep integration of our economies and regulatory systems has been achieved through membership of the EU, while businesses across Europe develop and use common standards, enabled through National Standards Bodies' membership of European and International Standards Organisations. The Government's European Union (Withdrawal) Bill will convert existing EU law into UK law and provide a power to make corrections to the law, which will ensure that these rules can continue to function in the UK on the date of withdrawal.
8. The UK believes our future relationship should be built from our commonalities and longstanding trust in each other's systems, as it does not benefit either party to ignore our unique starting point. The EU has in the past worked with third countries to address technical barriers to trade. For example, the Comprehensive Economic and Trade Agreement between the EU and Canada establishes mutual recognition of conformity assessment across a range of sectors, and the EU has data sharing arrangements with countries, such as Switzerland and China. These precedents are a useful foundation; however, the degree of integration between the UK and the EU makes our future partnership unlike any other existing arrangement.

### **Approach to withdrawal issues**

9. As part of the UK's preparations for a smooth and orderly withdrawal, the UK's objective is to provide legal certainty and avoid disruption for business and consumers with respect to the continued availability of goods in the EU and the UK. In doing this, it makes sense to recognise our common regulatory systems and the UK's ambition for cooperation in the future.
10. It will also be important that business and consumers are confident that goods placed on the market and in use across the UK and the EU comply with relevant product legislation. Moreover, market surveillance and enforcement authorities should have access to information about unsafe products, such as medicines and food, and mechanisms to take action with respect to non-compliant goods.
11. Ensuring products can be lawfully marketed in the UK and the EU is a key element of delivering a smooth, orderly exit from the EU for business and consumers. The provision of

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<sup>4</sup> Eurostat External Trade database (Comext) – DS-057555 – Other EU Member State reported statistics. "Consumption goods" are identified from BEC categories according to SNA definitions, with a correspondence from the UN Statistical Commission (June 2017), 'Classification by Broad Economic Categories Rev.5', p8. Motor spirit and passenger motor cars are also included, which may be used for industry and for household consumption.

<sup>5</sup> OECD Trade in Value Added (TiVA), Origin of Value Added in gross exports, December 2016.

<sup>6</sup> OECD Trade in Value Added (TiVA), Origin of Value Added in gross exports, December 2016.

services, and the tax and customs treatment of goods, are further areas which contribute to this. This includes goods which are placed on the market before the date of withdrawal but cross the UK/EU border after exit. The UK's position is that these should be discussed and resolved in a way that supports the move to a future relationship.

12. The UK believes that the views of business and consumers must be at the heart of this discussion. The UK will continue to engage with businesses and consumer organisations to understand more about their concerns, and notes that there are issues in relation to services as well as in relation to goods. The UK is keen to use the current discussions to ensure that all the relevant issues are resolved – whether in the separation discussions related to goods or elsewhere – in a way that is consistent with the UK's ambition for our future relationship.
13. The border between Northern Ireland and Ireland is the UK's only land border. It is essential to avoid a return to a hard border, and trade and everyday movements across the land border must be protected as part of the UK-EU deal. The Government welcomes the clear commitment made in the European Council's negotiating guidelines and the European Commission's directives to work together on "flexible and imaginative" solutions to achieve this. This will require detailed engagement on customs, agriculture, and other relevant economic matters as negotiations progress.
14. The Government will work with the devolved administrations, and the governments of Gibraltar, the other Overseas Territories and the Crown Dependencies as we progress negotiations with the EU. The Crown Dependencies, Overseas Territories and Gibraltar are constitutionally separate from the UK and have distinct interests. We will fully engage with their respective governments to ensure their priorities on these issues are taken into account.

### **Principles for an agreement on goods**

15. To achieve these objectives, the UK proposes the following four principles.
  - a. First, to ensure the continued availability of products on EU and UK markets at the date of withdrawal, goods placed on the Single Market before exit should continue to circulate freely in the UK and the EU, without additional requirements or restrictions.
  - b. Second, to avoid unnecessary duplication of activities and provide legal certainty, where businesses have undertaken compliance activities prior to exit, they should not be required to duplicate these activities in order to place goods on the UK and the EU market after exit. This includes recognising the validity of type approvals, certificates and registrations issued prior to exit.
  - c. Third, to ensure that goods in circulation continue to comply with product legislation, and market surveillance authorities can ensure the necessary action is taken with respect to non-compliant products, the agreement should facilitate the continued oversight of goods.
  - d. Fourth, where goods are supplied with services, there should be no restriction to the provision of these services that could undermine the agreement on goods.

**Principle A: Goods placed on the Single Market before exit should continue to circulate freely in the UK and the EU, without additional requirements or restrictions**

16. The UK believes that all goods lawfully placed on the market before exit should continue to circulate freely, without additional requirements or restrictions. This should apply to all types of good, including those regulated by harmonised Union law and those which are entitled to free circulation under the mutual recognition principle.
17. To avoid disruption to business and consumers, it will be important that the agreement makes use of currently applicable definitions of what is meant by goods “placed on the market”, recognising where these are sector specific, and provides a clear and workable interpretation of the term.
18. For example, for manufactured goods that are regulated under the New Legislative Framework, a practical interpretation of “placed on the market” could refer to all products that have completed the manufacturing stage prior to the date of withdrawal, and where an offer – either for the type of product or for an individual product – has been made. This would be consistent with the EU’s ‘Blue Guide’ for product safety legislation as applied to internet sales.<sup>7</sup>
19. As the agreement will cover goods already available on the UK and the EU markets, it is important to provide certainty that no changes will be needed to any requirements to ensure the continued supply of products. This includes, but is not necessarily limited to:
  - a. ensuring there are no requirements to change labelling for these products;
  - b. recognising the validity of approvals, registrations and authorisations issued for these products; and
  - c. where there is a requirement to have a person responsible for compliance with particular product regulations (for example, Responsible Person for cosmetics, or Authorised Representatives for medical devices) based in the EU, that person should be able to continue carrying out that responsibility for products placed on the market prior to exit whether they are based in the EU or in the UK, and there should be no requirement to relocate.
20. Regarding this last requirement, as these persons have been responsible for the original approval and marketing of the product and in some cases are named on the product, they will be best placed to interact with authorities in both markets to ensure products can be traced through the distribution chain. Failure to recognise this in the agreement could cause significant disruption, and mean that products in free circulation would need to be relabelled in order to maintain traceability requirements, which could impact on public safety.

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<sup>7</sup> European Commission: The ‘Blue Guide’ on the implementation of EU product rules 2016.

### ***Agri-food products***

There is extensive trade in agricultural products and food between the UK and the EU, with the UK being a net importer of agricultural and food (agri-food) goods. While EU imports of agriculture, fisheries and food products from the UK were €16.6 billion in 2016, exports to the UK were €39.8 billion.<sup>8</sup> Over 70 per cent of the UK's annual agri-food imports come from the EU.<sup>9</sup>

A specific definition of “placing on the market” exists for these products because the food chain can involve long production cycles and certain goods are held in storage for long periods. In order to maintain legal certainty for producers in the UK and the EU, an equivalent definition to the specific sectoral approach to “placing on the market” in Regulation 178/2002 should be used so that any food and feed falling within the scope of that definition before the date of withdrawal can continue to be made available.<sup>10</sup> This position should apply to both animal-derived and non-animal derived food and feed.

Under this sectoral legislation, food and feed products are considered to have been placed on the market at a point earlier than the actual supply of the good for consumption, distribution or use. Those products held in storage for the purpose of sale for example will also have been “placed on the market” under current EU law. Any deviation from the use of this sector-specific definition would introduce retrospective changes for goods across the UK and all Member States that had been placed on the market prior to the date of withdrawal. This is likely to cause significant legal uncertainty and potential disruption for businesses and consumers both in the UK and the EU. In addition, the agri-food sector is subject to extensive and stringent controls to maintain the safety of food, particularly in respect of food and feed products from third countries (for example documentary checks, physical inspection and certification). The impact of a narrow approach, therefore, would be particularly high.

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<sup>8</sup> Eurostat External Trade database (Comext) – DS-016894. ‘Agriculture, fisheries and food products’ is here defined as HS codes 1-23 inclusive. Other EU Member State reported statistics.

<sup>9</sup> Eurostat External Trade database (Comext) – DS-016894. UK reported statistics.

<sup>10</sup> REGULATION (EC) No 178/2002 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety. ‘placing on the market means the holding of food or feed for the purpose of sale, including offering for sale or any other form in transfer, whether free of charge or not, and the sale, distribution and other forms of transfer themselves.’

**Principle B: Where businesses have undertaken compliance activities prior to exit, they should not be required to duplicate these activities**

21. While the UK notes the relevance of “placing on the market” in product legislation, the UK recognises that in some cases commercial activities will have taken place in relation to goods that, according to their sector specific definition, have not been placed on the market prior to the date of withdrawal. For example, people may have entered into contracts to purchase goods before they have been made, such as pre-ordered cars. The UK wants to minimise disruption to this broader range of goods and economic activity, in addition to providing certainty with regard to those goods that were placed on the market before exit.
22. As part of this commercial activity and in preparing to place goods on the market, businesses will have undertaken a number of complex, lengthy and often costly procedures to ensure that goods and business practices are compliant with Union legislation and production requirements. This could include, for example, undergoing an inspection by an EU-recognised body to ensure production is in accordance with Good Manufacturing Practice or collecting and submitting data on the hazards and risks of a chemical substance.
23. The Withdrawal Agreement should recognise the validity of this compliance activity where it has taken place prior to exit. This should be recognised for both the UK and EU markets regardless of where the activity took place, and it should be recognised for the full time period or type of products intended when the compliance activity was undertaken. Any further compliance activity required after withdrawal as a result of the prior compliance activity should be conducted as originally intended. This would avoid business and authorities in both the EU and the UK needing to undertake significant duplicative compliance activity after exit, for example to re-inspect approved manufacturing plants or collect and submit data again.
24. The UK recognises that in some cases this activity is not a one-off activity but an ongoing role is conferred on authorities or business: for example, where a Qualified Person is required for testing and batch release of medicines to the market. The UK wants to avoid unnecessary disruptive transfer of activities between the EU and the UK, and these ongoing activities being duplicated for both markets, particularly where the UK’s aim is for this activity to be recognised as part of a future relationship. Therefore, the UK proposes that for any compliance activity recognised through the withdrawal agreement, the authority and business should be able to continue to carry out ongoing functions for relevant products or types of products for both UK and EU markets and this activity can take place in their location as at the date of withdrawal.
25. Where there are ongoing obligations for the assessment bodies after the product has been assessed, the UK proposes that bodies should continue to fulfil any ongoing obligations for the product life-time. The UK recognises that both parties would need to be confident that bodies are capable of carrying out these activities. This is explored further as part of Principle C: continued oversight.

26. Given the lead-in times for some third-party conformity assessments, it is likely that some products will be undergoing testing, registration or authorisation processes at the point of exit. For these cases and given the ambition for a close future relationship, the body carrying out the assessment should be permitted to complete the assessment, with the results recognised in both the UK and the EU markets.

***Approvals, authorisations, certificates and registrations issued prior to exit should continue to be recognised as valid***

27. As noted above, one key compliance activity is that many products must undergo third party assessment or submit a registration before being placed on the market to ensure the product meets the requirements in relevant product legislation. These assessments can be valid for a full product life-cycle, or in some cases be time limited or required for a representative sample of goods.
28. The UK wants to ensure that any approvals, registrations, certificates and authorisations issued by a third party (whether a private entity or a public agency) prior to exit should continue to be recognised as valid by both markets after the UK's withdrawal. These assessments will have been conducted and the data will have been provided in accordance with legislative requirements by a body recognised as competent. Therefore, it would avoid disruption and provide legal certainty if the results of these activities were recognised in both markets. These approvals should be valid for the intended time period or product life-cycle as when they were granted to avoid the need for retesting of products.

**Principle C: The agreement should facilitate the continued oversight of goods**

29. Once a product is placed on the UK and the EU markets, it is essential that both parties can trace products through the supply chain and market surveillance authorities can ensure action is taken with respect to non-compliant goods.
30. Failure to support oversight by market surveillance and enforcement authorities could cause significant disruption and uncertainty for consumers of goods. This encompasses a broad range of activity, for example the:
- a. traceability of products in the food chain;
  - b. requirements on market authorisation holders to report adverse reactions to medicines;
  - c. ability of Type Approval Authorities to audit vehicle manufacturers; and
  - d. ability of market surveillance or enforcement authorities to exchange information about unsafe products.



31. The agreement should provide clarity on how these activities can be conducted, and should be guided by the following considerations.
  - a. For all goods and activity covered by the agreement, assessment bodies should continue to be recognised to fulfil any ongoing obligations for the lifetime of this range of products and activities.
  - b. Both parties must have confidence in the competence of bodies carrying out ongoing obligations. A range of mechanisms provide confidence in assessment bodies, including those used in international settings, such as accreditation and use of international standards.
  - c. The agreement should facilitate ongoing data exchange where currently provided for under sectoral measures.
32. The approach should be consistent with the UK's position on ongoing union judicial and administrative proceedings published on 13 July 2017.

**Principle D: Where the goods are supplied with services, there should be no restriction to the provision of these services that could undermine the agreement on goods**

33. One of the areas the UK would like to explore in more detail is that of services supplied together with goods. The discussions should take account of the deep connections between the availability of goods and the services attached to goods, including those that have been offered prior to exit. The UK wants to ensure that these connections are explored comprehensively through discussions to avoid uncertainty and disruption to business and consumers.
34. Goods and services trade flows have consistently moved in lockstep with each other.<sup>11</sup> Services are essential for production of goods, for their sale, distribution and delivery, and for their operation and repair. For example, EU statistics suggest that in 2015 the EU imported €1.6 billion of maintenance and repair services from the UK, while exporting €2.2 billion.<sup>12</sup> As our economies modernise and grow, the link between goods and services is becoming ever more important.
35. The UK has outlined its position on a number of matters relevant to the provision of services alongside goods that are under discussion in the negotiations. For instance, the UK is aiming to ensure that the qualifications of professionals involved in delivering services linked to goods are recognised in both the UK and the EU as now and the UK is seeking certainty for citizens and businesses in relation to the laws that apply to their cross border contracts.

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<sup>11</sup> From 2005 to 2016, global services exports as a proportion of total world exports have been relatively stable, with a minimum value of 19.4% in 2011 and a maximum value of 23.4% in 2016. In recent years there has been a slight upward trend. Source: WTO Statistical data sets, <http://stat.wto.org>. Total world exports are the sum of world services exports (BPM6) and total merchandise exports

<sup>12</sup> Eurostat – International trade in services (since 2010) (BPM6) – bop\_its6\_det. Other EU Member State reported statistics.

36. There may also be other issues affecting the continuity of service provision at the point of exit which would result in similar disruption, if left unresolved at the point of the UK's exit from the EU. The UK's position is that while it would be helpful to agree what these issues are, they should be discussed and resolved in a way that smooths the path to our future relationship.

## **Conclusion**

37. These key principles are aimed at providing legal certainty, while avoiding disruption to business and consumers in regard to the availability of goods. They represent a starting point for enabling a smooth and orderly withdrawal, and moving to a deep and special future partnership, which enables our close trading relationship to continue to flourish.

