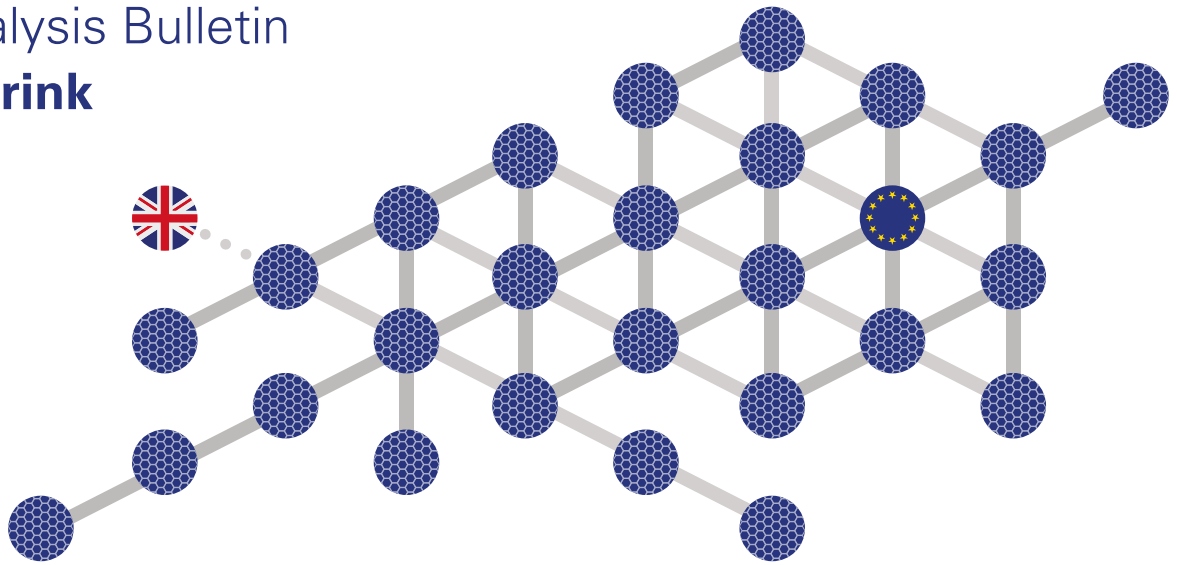


Brexit Analysis Bulletin

Food & Drink



The food and drink sector embraces primary production (agriculture); secondary production and processing; wholesale and retail distribution; food service and hospitality. All could potentially be significantly impacted by a Brexit.

Background

Food and drink counts for a significant proportion of UK GDP and employment. According to DEFRA, 54% of UK food supply is produced in the UK; 27% from the EU; and 19% outwith the EU. Within that, the global nature of processed food means many foods are made from products from multiple sources via complex supply chains.

Impact on free trade

The biggest impact and greatest fear for food business operators (FBOs) is what form of free trade will be possible outwith the EU. As noted in earlier bulletins, seeking to join the European Economic Area (EEA) alongside countries such as Norway is an option (but not the only one) and it is not clear whether it is the preferred still less a practical option given public pronouncements both from the EU and the the Leave campaign. made so far. Within the EEA, the UK would still be bound to comply with EU laws and regulations but without the ability to influence these. While this (the EEA) would avoid the danger of high tariff barriers, the alternative to the EEA of individual or multiple free trade agreements would require extensive negotiation with attendant

uncertainty during any transitional period. Many trade deals with non-EU states (eg. South Korea and India) have been negotiated at EU level, so by definition would need to be replicated – over what timescale and on what terms?

UK FBOs are almost unanimous in their view that tariff barriers would be damaging to their business, and that while trade deals are negotiated, UK suppliers would face major competitive disadvantage. Closest to home, the Scotch Whisky Association is likely to remain particularly anxious about the imposition of tariff barriers given the benefits to the Scotch Whisky industry of free access to the EU market of circa 500m consumers and to worldwide markets through such EU-brokered Free Trade Agreements as are in place.

Currency weakness

Sterling has weakened in recent weeks against all major currencies, especially the US Dollar and the Euro in light of the referendum result and a weaker pound increases raw material costs which would inevitably have to be passed on to consumers. The longer the uncertainty and the more complex or disadvantageous the trade



negotiations the greater would be the likely reduced value of Sterling.

Agriculture

The UK's farmers remain vocal in their demands to understand what would replace EU common agricultural payments. The dependence on the sector and EU subsidy has been a popular media target (visions of wine lakes, butter mountains and subsidised over production dominate). The reality is that without CAP the marginal viability of much of UK farming would become much more apparent. The fact that the Scottish Government required in the spring of this year to provide emergency interim funding to compensate for non-payment of EU farm subsidies following an IT problem demonstrates the knife edge on which many farms currently operate. Whilst some form of transitional or replacement subsidy will no doubt be sought, the substitute for CAP and what form it would take is an unanswered question

Employment

Free movement of labour and migrant workers have supported the UK labour force throughout the food production and supply chain, and possible restrictions on mobility of labour, both unskilled and technical, would be a major concern to FBOs. Skill shortages are anticipated by many FBOs at all levels (including in managerial, technical and export facing positions) if post-Brexit the UK were unable to access a mobile EU labour pool.

Food legislation

This is a double-edged sword. FBOs have been critical of extensive EU legislation, most recently, relating to the Food Information for Consumers (FIC) nutrition labelling changes. However, Pan-European safety, nutrition and labelling measures have also facilitated Pan-European product availability and export growth.

Critics point to burdensome regulations on animal slaughter and transport, and highlight the failure of EU regulation to combat food fraud – all as evidenced by the horse-gate scandal which highlighted the complexity of

global supply chains and the issues of food authenticity. While food authenticity may have damaged the reputation of many suppliers, the food safety and product recall regime is generally considered to work well and to have enhanced consumer safety and confidence. Exporters will be concerned at different standards applying to UK sales and export sales.

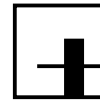
European brands

EU trademark protection may not be recognised in the UK post-exit so where brands are the subject of European trademark registration, a brand audit will need to be conducted to determine whether brands may also need to be protected in the UK. In addition, many iconic products, including Arbroath Smokies, Stornoway Black Pudding, Melton Mowbray Pies and Scottish Farmed Salmon will lose the coveted PGI/PDO status which will continue to be enjoyed by Parma Ham and numerous European PGI foods. This would involve loss of prestige, and potentially of brand value. Producers of PGI protected products will hope that robust successor protection can be provided to avoid damage from inferior products.

Conclusion: for the moment

Until the political turmoil settles and negotiations start in earnest about the shape of the UK's relationship with Europe, FBO's exporting to the Eurozone will need to comply with EU law in all of these areas and will be excluded from the market if they don't, but will be significantly hampered in their medium to long term planning. Once UK is outside Europe, the ability to influence EU legislation will be lost, and if part of the EEA, or looking to export into Europe, FBOs will still be subject to these laws.

The issues posed by Brexit to the food and drink sector are significant, potentially increasing prices to consumers and disadvantaging, at least in the short term, the competitiveness of UK manufacturers. Much will depend on the extent to which the FBO trades with the EU and how quickly and in what form alternative free trade agreements can be negotiated.



SHEPHERD AND WEDDERBURN'S BREXIT ADVISERS JOINING THE DOTS OF THE EU REFERENDUM

What next?

Shepherd and Wedderburn has been for many years offering balanced and impartial advice on how the different scenarios might play out in the event of constitutional change.

Now that the vote has been cast to leave the EU, members of our dedicated Brexit group continue to interrogate the regulatory and commercial issues and to advise clients on next steps and outcomes.

For further information in the first instance, please contact:



George Frier
Partner, Head of Food & Drink
T +44 (0)141 566 8520
M +44(0)771 153 0208
E george.frier@shepwedd.co.uk

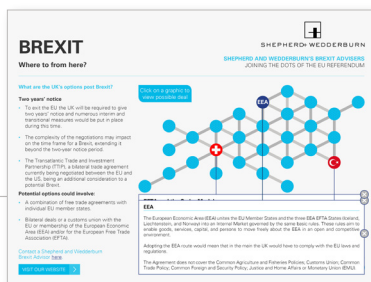


Joanna Boag-Thomson
Partner, IP and Commercial Contracts
T +44 (0)141 566 8570
M +44(0)775 387 1607
E joanna.bt@shepwedd.co.uk



Bookmark our Brexit Advisers page for a comprehensive collection of Brexit updates and guidance

Click here to view our 'Where to from here' Brexit infographic.



Click here to read our 'What now' Brexit bulletin.

