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Global Counsel



# TRADE POST-BREXIT

CHARTING A NEW COURSE



# CONTENTS

02 Introduction

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03 What would hard Brexit mean?

---

04 Outside the single market – Trade in goods

---

06 Economic impact of hard Brexit on UK industries

---

14 Outside the single market – Trade in services

---

15 Alternative solutions: The policy toolkit

---

16 Challenge and opportunity: next steps for business

---

17 Hard Brexit regulation and enforcement

---

18 Questions businesses should ask

---

19 How we can help

---

20 About us

---

21 Contacts

---

# INTRODUCTION

The UK's vote to leave the EU brings with it the possibility of so-called 'hard Brexit'. Business needs to understand what Britain leaving the EU without a smooth transition to a new framework might mean for cross-border trade both within Europe and between Europe and the rest of the world.

At the point when the British government announces its formal intention to exit the EU by triggering Article 50, a two-year countdown will begin to the UK leaving the EU. Understanding the various changes, analysing the risks they pose and working through potential solutions will all be essential to help firms position themselves to navigate the challenges and opportunities that lie ahead.

The peculiarity of the Article 50 process - with its two-year ticking clock - makes this preparatory work all the more urgent. If no alternative relationship or even temporary transitional arrangement were to be agreed between Britain and the EU before the two years run out, the EU treaties would cease to apply to the UK, with nothing to replace them. This has profound implications for both sides. This report is designed to help business leaders understand and prepare for a sharp shift in the UK's relationship with the EU: hard Brexit.

Our conversations with business leaders suggest the mood is not necessarily one of negativity, but the scale of the potential change coupled with the lack of clarity as to how it might be effected leaves a lot of uncertainty in the short-to-medium term. Businesses are struggling to understand what Brexit would mean for them. Understanding hard Brexit is a good place to start.

'We do not necessarily think that a hard Brexit is the most likely outcome of negotiations,' says Lode Van Den Hende, a partner and international trade law specialist at Herbert Smith Freehills. 'But planning for this scenario is the most

effective way for businesses to compare their current position from within the EU single market with a counterfactual position in which the UK trades with the EU and the rest of the world on the basis of WTO rules. From this baseline, organisations can see most clearly the potential impact of the possible changes and make a corresponding plan of action.'

This report not only aims to help businesses understand the implications of a hard Brexit, but the role they may play in shaping that or an alternative outcome.

## EXPERT CONTRIBUTORS



**Stephen Adams**  
Partner, Global Counsel



**Pierre Mercier**  
Senior partner and managing director  
The Boston Consulting Group



**Lode Van Den Hende**  
Partner, Herbert Smith Freehills



# OUTSIDE THE SINGLE MARKET- TRADE IN GOODS

The EU single market is by far the most advanced free trade area currently in existence — especially for goods. In the event of a hard Brexit, UK exports to the EU would become subject – as they crossed into the EU - to the rates of duty set out in the EU's Common Customs Tariff. The same would be the case in reverse as EU goods were imported into the UK.

Rates of duty vary depending on the goods in question. For example, the duty on personal computers and mobile phones is nil, sunglasses 2.9%, and motor cars 10%. UK exports could, in principle, also be subject to EU trade defence measures in the event that they were deemed to be priced unfairly low ('dumping') or to benefit from subsidies or other forms of support prohibited under the World Trade Organisation (WTO) rules.

In the other direction, it seems reasonable to expect that in general the UK would - at least initially - apply at its own international borders the same duties that it does now - the EU's Common Customs Tariff.

Taken together, this implies that a hard Brexit would see duties applied to many of the significant trade flows between the EU to the UK, with particular impact on agricultural products and manufactured goods.

Owing to the "most favoured nation" principle enshrined in the rules of the WTO, hard Brexit would mean that the UK would be obliged to impose the same duties on imports from the EU as it applied to those from all other WTO members unless and until it reached preferential trade agreements with them, and vice versa.

While the UK could reduce tariffs unilaterally, the WTO rules against discrimination mean that, at the outset, the UK would not be free to distinguish between trading partners in doing so. Such variation can only be done through the signing of free trade agreements (FTA) with other WTO members.

These preferential trade agreements must themselves meet certain requirements under WTO rules, chiefly relating to the breadth and depth of the trade they cover.

In addition to duty on imports and exports, goods currently moving freely between the EU and the UK would become subject to the same customs formalities and import and export processing procedures currently imposed on trade into and out of the EU to and from countries outside. In short, more red tape.

As a member of the EU, the UK also currently benefits from either tariff-free or reduced-tariff access to the markets of third countries with which the EU has concluded preferential trade agreements on behalf of all EU Member States. These include the 2011 EU-South Korea FTA, which has progressively removed all tariffs for industrial and agricultural goods, and the Canada/EU (CETA) Agreement, under which almost all tariffs would be immediately eliminated. Following a hard Brexit, the UK may not immediately or automatically continue to benefit from these agreements with third countries. A period may ensue during which the UK would fall back onto WTO rules on the general treatment of trading partners while it renegotiates its own preferential terms with the countries in question.

“...it seems reasonable to expect that in general the UK would - at least initially - apply at its own international borders the same duties that it does now”

## INDUSTRY IMPACT

‘Even seemingly small tariff changes can be significant. A few percentage points here and there may not sound transformational, but if the margin on a product is 5% and there’s a shift of 5%, that’s 100% of the profit that is potentially in play,’ says Pierre Mercier, senior partner and managing director in the London office of The Boston Consulting Group. ‘Unless companies can pass on the costs to suppliers or customers, they will risk eroding their own profit. In any case, for domestic consumption or exporting, that could lead to significant long-term shifts in supply chains and the flow of goods.’

The UK auto industry is a case in point. Given the large production base in relation to the UK market, plants located in Britain focus heavily on exports. ‘The UK as a source for manufacturing could be jeopardised considerably if exporting conditions change,’ says Mercier. This risk is exacerbated by the fact that the auto industry operates across a small number of plants - often only one or two for most models - and the UK, as an island that is not in the middle of the EU, is already geographically challenged as a manufacturing base.

‘It’s unlikely to be a binary decision,’ Mercier adds. ‘But if there were no future investment, UK manufacturing’s EU-bound flows would dwindle, while investment would go into plants in continental Europe.’

Other industries - typically those with more variable costs that can scale to respond to changes in demand patterns - might be able to adapt, at least in the short term. Mercier cites the meat industry by way of example: if trade barriers for bringing European pigs into the UK go up, there could be more production of pork in the UK to accommodate that.

In the medium-to-longer term, however, even those companies may come under pressure to relocate. ‘If the UK becomes less competitive as a place to convert raw materials or intermediate goods into finished products, then part of that activity will move to more favourable locations in the EU,’ Mercier concludes.

# ECONOMIC IMPACT OF HARD BREXIT ON UK INDUSTRIES

## Case studies

### 08 Case study 1: UK auto manufacturer

UK car exporters face high tariffs on sales to EU markets

### 10 Case study 2: UK fashion/apparel retailer

UK retailers face high tariffs on clothes traded with the EU

### 12 Case study 3: UK chocolate manufacturer

UK chocolate manufacturers face high tariffs on trade with the EU



# BACKGROUND: APPROACH AND ASSUMPTIONS TAKEN

## APPROACH

We have modelled the potential impact of tariff changes due to Brexit for three case studies...

- auto manufacturer
- fashion/apparel retailer
- chocolate manufacturer

...comparing 'pre-Brexit' with two 'hard Brexit<sup>1</sup>' scenarios.

### THESE ARE



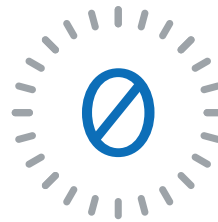
#### PRE-BREXIT

- Free trade within the EU



#### WTO

- Hard Brexit - WTO MFN<sup>2</sup> tariffs applied
- UK tariffs also set at current EU rates



#### UK ZERO TARIFF

- Hard Brexit - WTO MFN<sup>2</sup> tariffs applied
- UK tariffs set at zero

## ASSUMPTIONS

In doing so, we note that this relies on several assumptions:

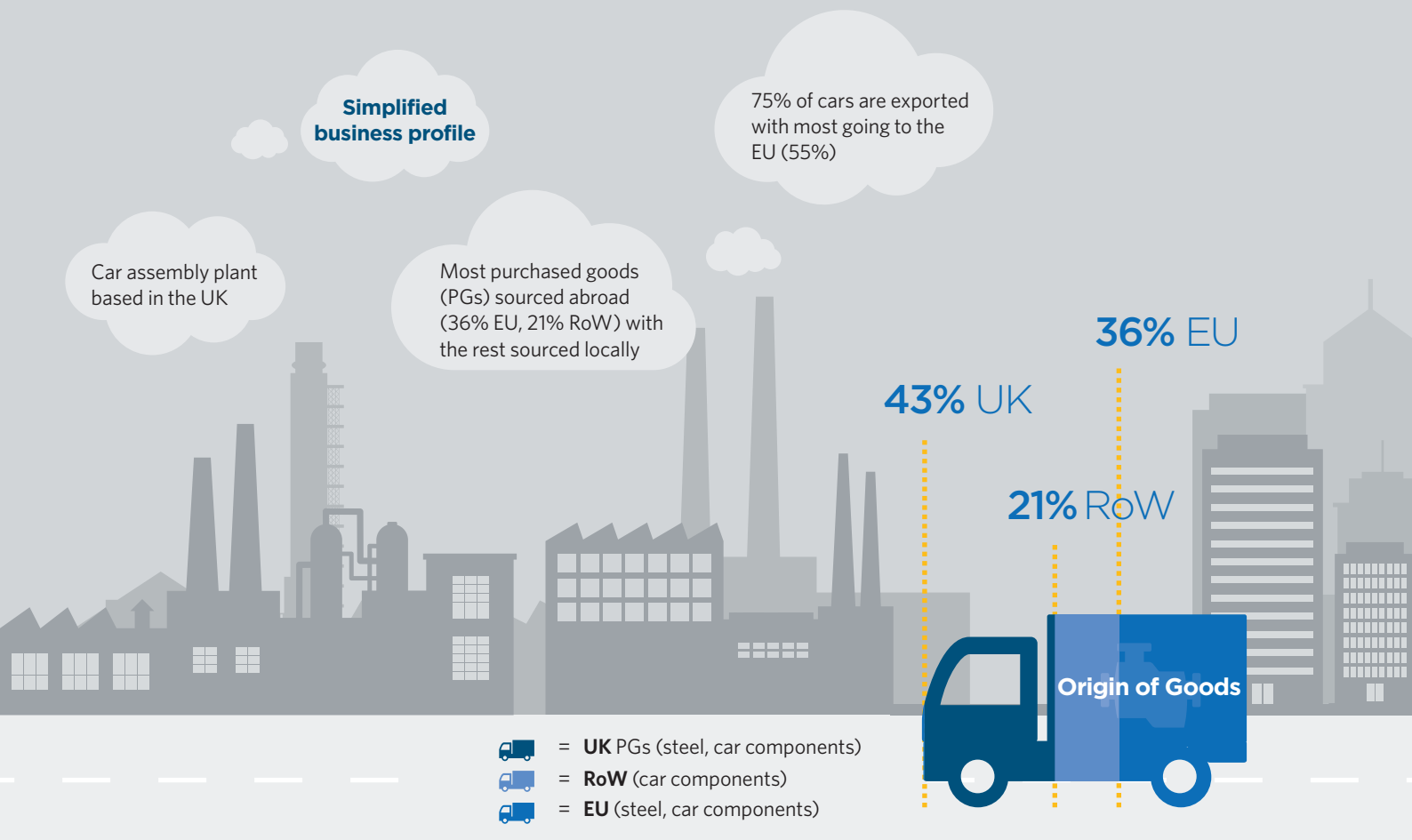
- it ignores any changes made to the manufacturing/purchasing process post-Brexit
- exchange rates are considered fixed
- UK companies do not change their export patterns nor prices (ie, export prices and flows of goods are held consistent)
- reduction in tariff costs (eg, in the UK Zero Tariff scenario) are passed on to manufacturers/distributors
- anti-dumping measures, (present or future) are ignored for the purposes of this analysis.

1. Hard Brexit assumes no trade deal with the EU.

2. MFN = WTO tariffs currently charged on goods imported into the EU

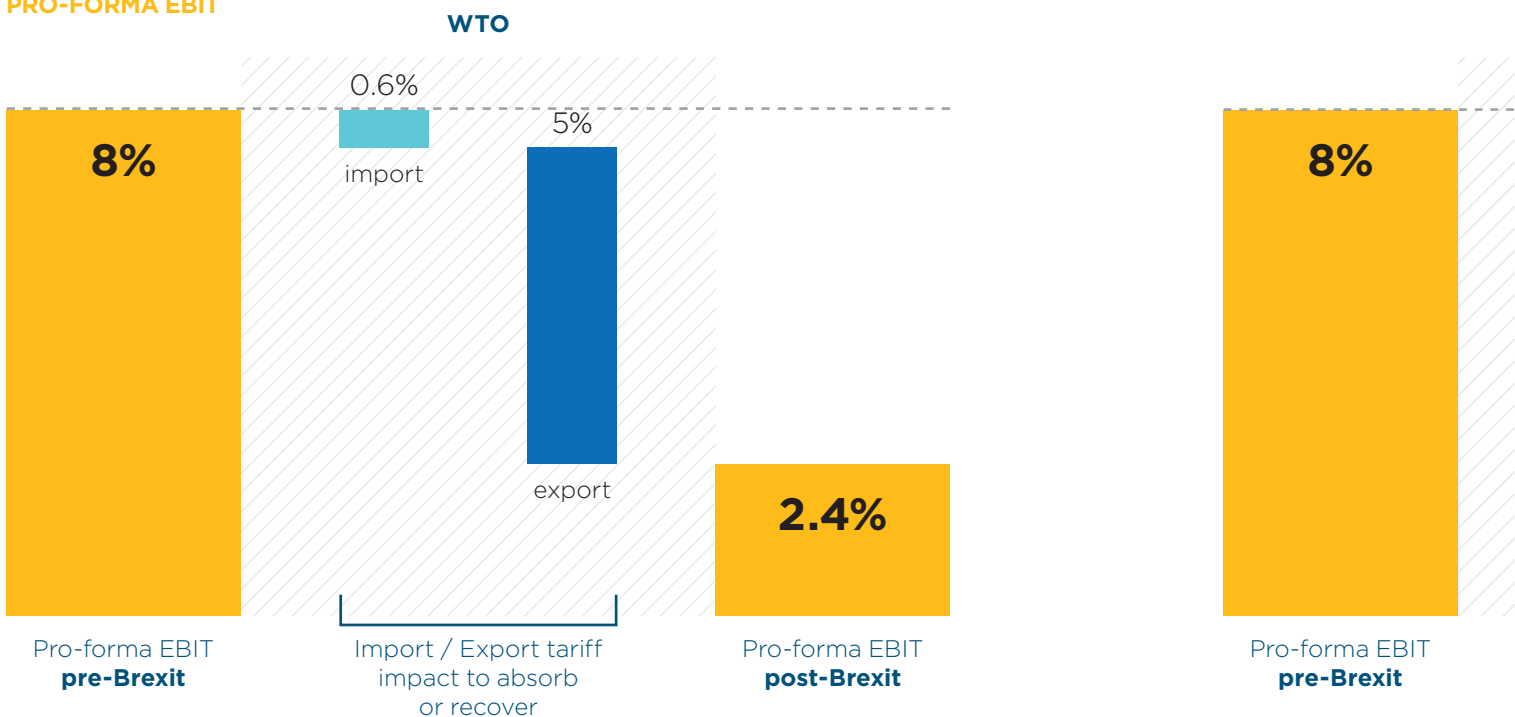
# UK AUTO MANUFACTURER

UK CAR EXPORTERS FACE HIGH TARIFFS ON SALES TO EU MARKETS



## IMPACT OF BREXIT

PRO-FORMA EBIT



1. Exports: 1/2 of RoW exports go to US (tariff = 2.5%) and 1/2 to China (25%). 2. At expense of UK treasury  
 Source: BCG analysis, WTO website, HM Government: 'The process for withdrawing from the European Union'.  
 Figures are rounded to the nearest whole number.

### Simplified P&L

|                |            |
|----------------|------------|
| Revenue        | 100%       |
| <b>Costs</b>   | <b>92%</b> |
| R&D            | 9%         |
| SG&A           | 14%        |
| COGS           | 69%        |
| Conversion     | 17%        |
| PGs            | 52%        |
| Car components | 44%        |
| Steel          | 8%         |
| <b>EBIT</b>    | <b>8%</b>  |

55% EU  
25% UK  
20% RoW

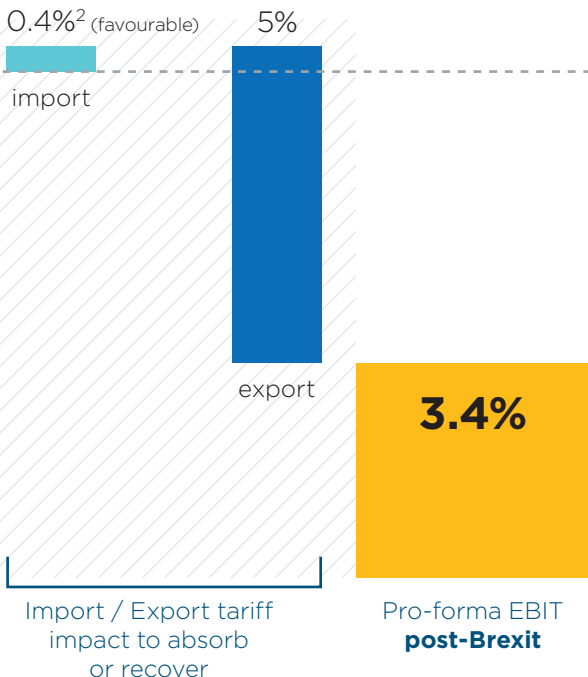


- = UK car sales
- = RoW car sales<sup>1</sup>
- = EU car sales

### Impact of Brexit on Tariffs (%)

|     | Pre-Brexit | WTO  | UK ZT |                |
|-----|------------|------|-------|----------------|
| RoW | 13.8       | 13.8 | 13.8  | Car exports    |
|     | 3.8        | 3.8  | 0     | Car components |
| EU  | 0          | 10   | 10    | Car exports    |
|     | 0          | 3.8  | 0     | Car components |
|     | 0          | 0    | 0     | Steel          |

### UK ZT

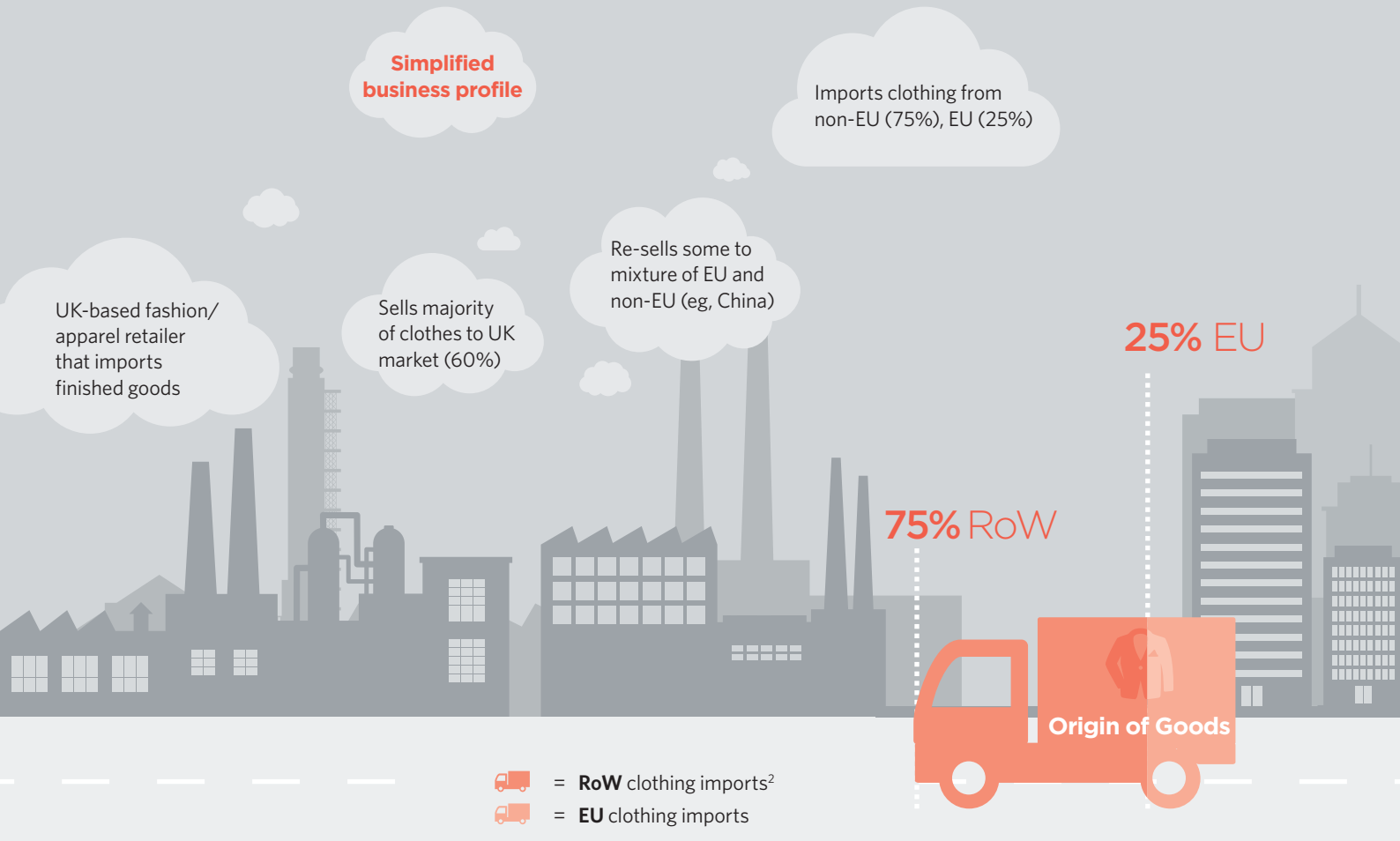


### Consequences and implications

- Under these assumptions, UK auto manufacturers would have to recover ⅓ of current EBIT from tariff changes
- Mitigation of this impact by auto manufacturers could take several forms including:
  - lobbying the UK government to avoid impact / compensate for increased tariffs
  - passing increased costs on to customers
  - renegotiating supply agreements to lower costs
  - shifting component and material sourcing to the UK or to origins with trade agreements in place
- Failing that, auto manufacturers might take part or all of assembly out of the UK
- In addition to the increased tariffs, the new trade regime will likely increase the administrative burden and would result in slower, less predictable flows that could disrupt the "just in time" philosophy that the auto industry operates with

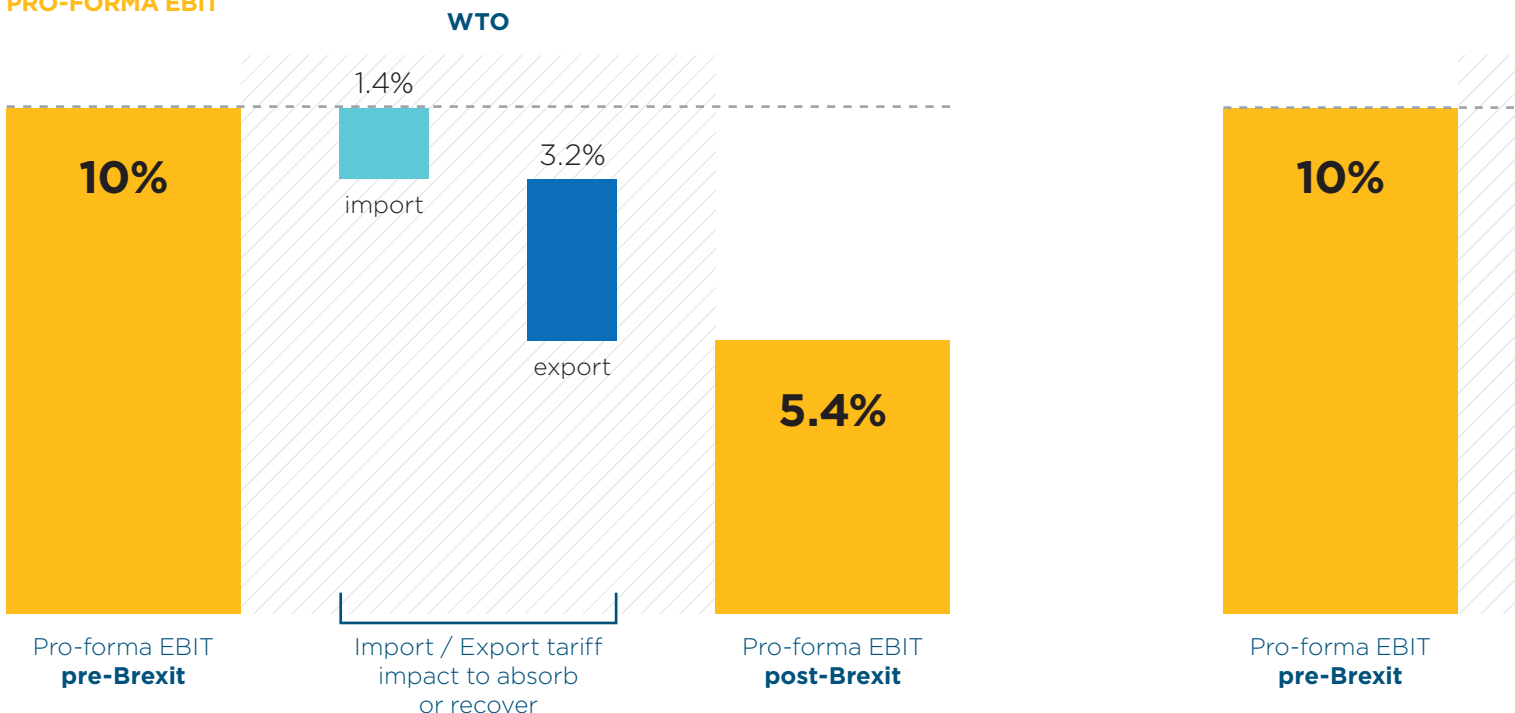
# FASHION/APPAREL RETAILER

RETAILERS FACE HIGH TARIFFS ON CLOTHES TRADED WITH THE EU



## IMPACT OF BREXIT

PRO-FORMA EBIT



1. Assumed: 100% sales to China (tariff = -16%) 2. EU tariffs for clothing imports will be affected by the EU's Generalised Scheme of Preferences (GSP) for developing countries, with tariffs as follows : non GSP (12%), GSP (9.6%), GSP+/EBA (0%). These are all maintained in WTO scenario but set to 0 under ZT scenario. Thus a blended rate is shown to reflect the actual average tariff faced by importers (assumed geographic distribution: 25% non GSP, 50% GSP, 25% GSP+/EBA)  
Source: BCG analysis, WTO website, HM Government: 'The process for withdrawing from the European Union'. Figures are rounded to the nearest whole number.

### Simplified P&L

|                   |      |
|-------------------|------|
| Revenue           | 100% |
| Costs             | 90%  |
| SG&A              | 50%  |
| COGS              | 41%  |
| IPGs              | 41%  |
| IClothing imports | 41%  |
| EBIT              | 10%  |

### Impact of Brexit on Tariffs (%)

|     | Pre-Brexit | WTO | UK ZT |                               |
|-----|------------|-----|-------|-------------------------------|
| RoW | 16         | 16  | 16    | Apparel exports <sup>1</sup>  |
|     | 7.8        | 7.8 | 0     | Clothing Imports <sup>2</sup> |
| EU  | 0          | 12  | 12    | Apparel exports               |
|     | 0          | 12  | 0     | Clothing Imports              |

30% EU  
60% UK

10% RoW



- = UK apparel sales
- = RoW apparel sales<sup>1</sup>
- = EU apparel sales

### UK ZT

2.1% (favourable)

3.2%

import

export

8.9%

Import / Export tariff impact to absorb or recover

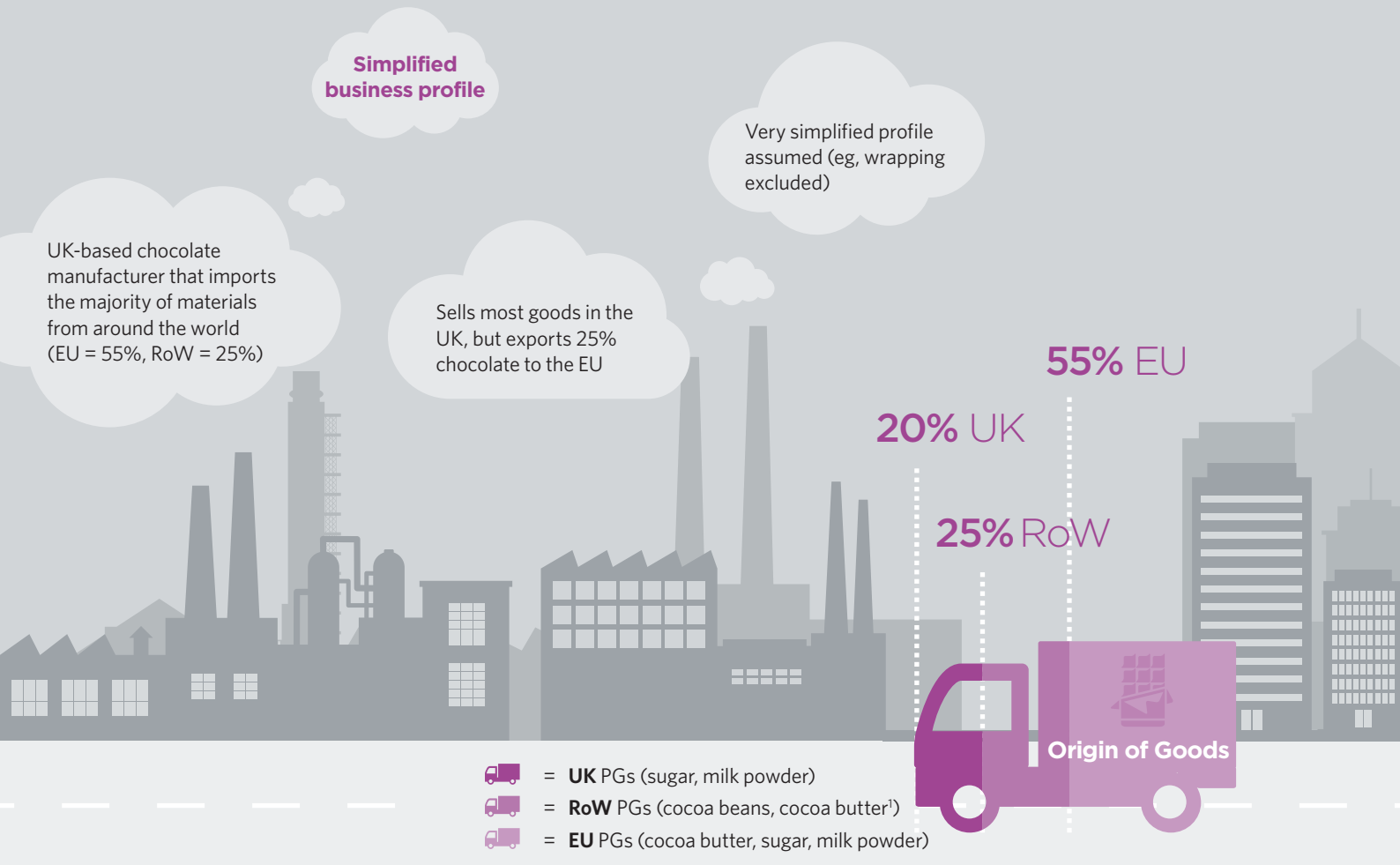
Pro-forma EBIT post-Brexit

### Consequences and implications

- Under these assumptions, fashion retailers would have to recover about 50% of current EBIT from tariff changes
- Mitigation of this impact by fashion retailers could take several forms including:
  - increasing sales prices
  - value engineering clothing (eg, reducing quality to match current "total landed cost")
  - shifting material sourcing to the UK (unlikely) or to origins with more favourable tariffs
  - setting up a bonded warehouse in the UK to avoid duties on items that will be re-exported
  - setting up offshore distribution facilities to avoid import/export friction in the UK
- Increased trade barriers would also reduce retailers' ability to pool inventory between UK and non-UK demand and reduce the ability to operate seamlessly between markets and sales channels (eg, a global distribution centre for e-commerce located in the UK could become less favourable)

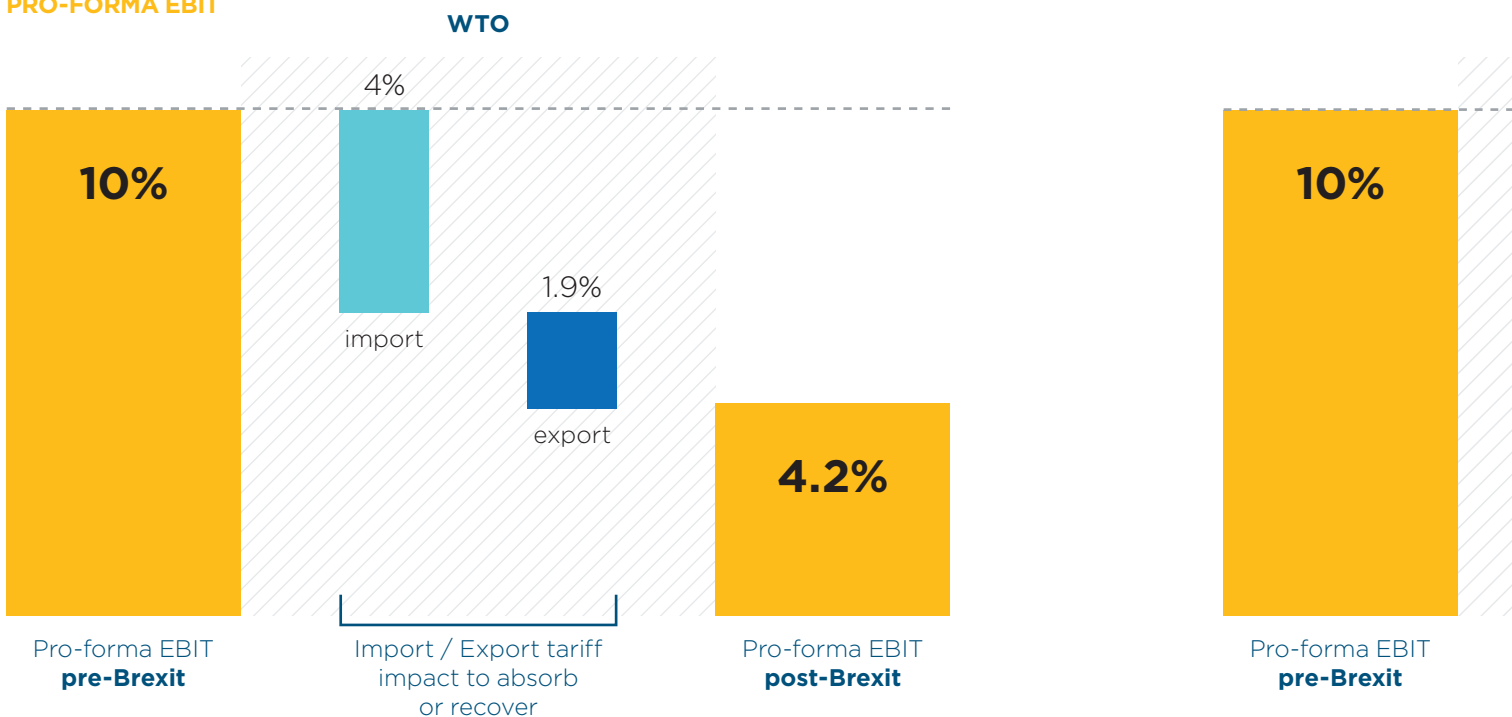
# CHOCOLATE MANUFACTURER

## CHOCOLATE MANUFACTURERS FACE HIGH TARIFFS ON TRADE WITH THE EU



## IMPACT OF BREXIT

### PRO-FORMA EBIT



1. Assumption: 50% of this category is part of Cariforum (tariff = 0% of which the UK would still be a member of post-Brexit. Non-Cariforum rate = 7.7%. Thus an average rate is shown = 3,85%. Source: BCG analysis, WTO website, HM Government: 'The process for withdrawing from the European Union'. Figures are rounded to the nearest whole number.

### Simplified P&L

|              |            |
|--------------|------------|
| Revenue      | 100%       |
| Costs        | 90%        |
| SG&A         | 32%        |
| COGS         | 59%        |
| Conversion   | 29%        |
| PGs          | 29%        |
| Cocoa beans  | 5%         |
| Cocoa butter | 11%        |
| Sugar        | 5%         |
| Milk Powder  | 9%         |
| <b>EBIT</b>  | <b>10%</b> |

75% UK

25% EU

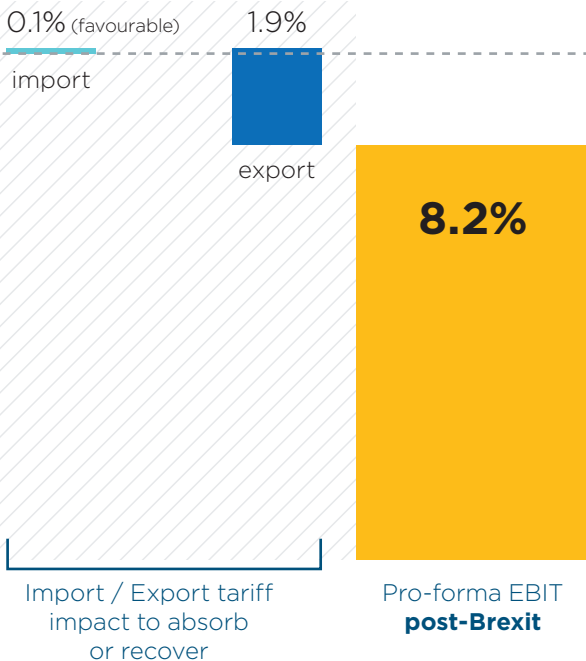


### Impact of Brexit on Tariffs (%)

|     | Pre-Brexit | WTO | UK ZT |                           |
|-----|------------|-----|-------|---------------------------|
| RoW | 3.9        | 3.9 | 0     | Cocoa butter <sup>1</sup> |
|     | 0          | 0   | 0     | Cocoa beans               |
| EU  | 0          | 8   | 8     | Chocolate                 |
|     | 0          | 30  | 0     | Sugar                     |
|     | 0          | 36  | 0     | Milk powder               |
|     | 0          | 7.7 | 0     | Cocoa butter              |

= UK Chocolate sales  
 = EU Chocolate sales

### UK ZT



### Consequences and implications

- The pro-forma impact of Brexit on a chocolate manufacturer's EBIT will be dependent on how much the UK government's agricultural policy (post-Brexit) replicates current EU policy and tariffs
- To the extent that it is possible, chocolate manufacturers in the UK might reconsider where they source their materials since the higher % of purchased goods that are imported, the greater the impact on EBIT; but some products (eg, cocoa) cannot be sourced locally
- UK plants might be encouraged to shift their focus towards domestic sales and scale down to avoid EU tariffs
- Depending on UK policy, multinationals may find it more advantageous in the future to import finished chocolate to the UK from the EU rather than manufacturing it in the UK

# OUTSIDE THE SINGLE MARKET- TRADE IN SERVICES

International trade in services typically involves more complex considerations than trade in goods. In particular, many services are heavily regulated and such regulation often concerns the service provided as well as the service provider.

Where services are regulated, a variety of methods can be applied to facilitate cross-border delivery, ranging from mutual recognition of standards or qualifications through to foreign businesses being required to establish a physical presence within a country in order to facilitate supervision of compliance and enforcement for more heavily regulated services. Free trade in services, especially across borders, requires a high level of cooperation, coordination and trust between the regulators of the participating jurisdictions.

In a hard Brexit scenario, outside of the EU and the EEA, national and EU law and licensing regimes would dictate the UK's rights to access EU markets for services. While many services can be supplied across borders without regulatory restrictions, access for regulated sectors would be guaranteed only to the extent that these terms of market entry and operational rights were codified in the EU's schedule of commitments at the WTO level. The same would be true for EU firms wishing to provide services in the UK. In many cases, these codifications are much less comprehensive than actual conditions on the ground, which are therefore vulnerable to change.

The EU single market for services is much more developed than other international trade agreements on market access. While it is still subject to considerable fragmentation and a wide range of practical obstacles, in principle the EU Treaties and EU legislation guarantee the right to provide a wide range of services throughout the EU and to establish services businesses for the purposes of doing so.

In contrast, the EU's WTO schedule of commitments provides generally weaker market access across fewer areas, especially for cross-border trade. For example, the EU 'passporting' system for financial services businesses allows financial services firms in defined areas to operate across the EU once they have been authorised in one EU state. No such comprehensive regime for financial services trade exists for states outside the EU and the EEA – or indeed anywhere else in the world. It is just one example of the way the single market creates a framework for cross-border trade *inside* the single market that has no equivalent for businesses *outside* it.

Please refer to our separately-published materials for detailed analysis of the EU financial services market.

“Free trade in services, especially across borders, requires a high level of cooperation, coordination and trust between the regulators”



# ALTERNATIVE SOLUTIONS: THE POLICY TOOLKIT

Such a hard Brexit baseline is of course not the only future relationship open to the EU and the UK should the UK ultimately find itself outside of the single market. There are a range of ways in which the two sides could continue to facilitate trade and preserve some aspects of the status quo for their mutual benefit.

## CUSTOMS UNION

In principle, the EU could accept a UK request to participate in a customs union with the EU. This could involve joining the existing EU Customs Union with Turkey and a number of other small states, which covers a wide range of industrial goods. In theory it could also cover a wider range of products, including agricultural goods. Inside a customs union, trade in the covered goods would be free of tariffs and subject to reduced customs formalities. However, the UK would also have to mirror the EU Common Customs Tariff and any preferential EU tariff rates agreed with other countries when applying duty to its own import of these goods.

Stephen Adams, a partner at Global Counsel and lead consultant on European and multi-lateral issues, thinks that this is an issue on which the British government has focused closely. He has his doubts, however, that the UK will ultimately pursue this option because of the way it may be perceived to limit leverage in future trade deals, binding the UK to EU tariffs across a wide range of products.

'The case for customs union is a question of weighing up the good for businesses individually and in the short term, against what may be good for the UK in the long term in terms of bargaining power in future trade deals,' he says. 'The customs union has no tariffs and a high level of regulatory convergence, which are good for business and trade in very many respects. But both tie the UK's hands as a regulator and trade partner outside the EU.' Given the emphasis on returning regulatory control to the UK, he thinks this could be problematic.

## A FREE TRADE AGREEMENT (FTA) BETWEEN THE EU AND THE UK

An FTA between the EU and the UK, would achieve similar things. It would:

1. Reduce or eliminate tariffs on most goods traded between the two markets. An FTA could also be used to agree certain simple forms of customs facilitation between the two, such as the elimination of low value goods from customs requirements or forms of cooperation at borders.
2. Confirm preferential terms for services exporters in both directions, including rights to own local businesses and to sell services cross-border in many areas. The EU and the UK could use such an agreement to confer reciprocal access for each other's firms that goes well beyond commitments in the EU's current WTO schedule.
3. Create bespoke dispute settlement arrangements between the two sides in which market access problems could be raised and solutions sought.

Pursuing an FTA could result in the same tariff-free benefits as a customs union, but does not necessarily have the same focus on regulatory harmonisation and leaves intact the UK's prerogative on its own external tariff argues Adams. This might give the UK more freedom to set its own priorities in trade policy, to strike new deals or go further in deals than it can as an EU member state. 'If there's a possible opportunity in Brexit - and it is an if - then it's the possibility for the UK to be a more autonomous regulator and an actor that can improve its trading links with the rest of the world in a way that it cannot as part of the wider block,' he says.

With trade between the two sides already highly liberalised and many businesses exposed to new tariffs, quickly agreeing an FTA would make sense for the two sides. However, politics may complicate things. Any agreement would first need to be negotiated and approved at EU level and may also have to be ratified by individual EU member state parliaments, which creates plenty of potential for delay or obstruction.

# CHALLENGE AND OPPORTUNITY: NEXT STEPS FOR BUSINESS

'All of the matters discussed in this report will inform the strategy for exit negotiations. 'We will need a quite finely-tuned and sophisticated solution to satisfy both the EU and the UK,' says Van Den Hende. 'Even where there are common economic interests, there is currently little political alignment. The EU and the UK face an enormous task in achieving agreement.'

This is further complicated by the fact that the exit protocol set out in the EU Treaty has been interpreted by some as suggesting that such a negotiation on a future agreement can only start once the UK has left. It is almost certainly the case that the time required for negotiations and the need for the UK to have left the EU to conclude a formal bilateral treaty with it, means that such a deal could only be signed and ratified after exit. This raises questions over what might happen in the interim: will there be a temporary imposition of tariffs or a transitional period maintaining something akin to the status quo as a bridge to a future FTA?

'The biggest risk is the UK falling out of the EU at the end of the process without an FTA or transitional arrangement in place – and that's a risk for the other side as well. It will hurt both,' says Adams.

Time and close cooperation are of the essence for both business and government. 'The British government is well aware that it needs to understand what the different options mean for an array of key sectors and that to do this it must engage with business directly. It is business that understands who imports what from where, what exactly is exported, the location of warehouses and the structures of supply chains and so on. This is why the government should conduct very extensive conversations with business,' says Van Den Hende.

Business too has to rise to the challenge. Companies will need to undertake operational and structural assessments to determine their exposure to a hard Brexit scenario and devise strategies to mitigate the risks.

'If there's a problem, engaging with the government with well-evidenced argument is crucial,' Adams agrees. 'Your future is dictated by policymakers' choices, so it is vital to equip them with both evidence and argument. Only with that kind of collaboration can we ensure every policy tool is used to deliver as little disruption as possible.'

With considerable on-going uncertainty, it is perhaps unsurprising that many businesses are focusing on the immediate future. Mercier thinks this is no bad thing – advocating at least for the moment, a phased approach, as the course of Brexit becomes clearer.

'To the extent that you can defer big strategic decisions linked to heavy capital expenditure in the manufacturing or distribution footprint for six to twelve months, then it would probably be wise to do so, at least until you know more about the future trade regime with the EU, potential trade agreements with other countries outside the EU such as the US, Canada and China. Not to mention F/X (foreign exchange) considerations,' he says.

At the same time, this should not translate into doing nothing. Businesses will need to be proactive – analysing and assessing developments, formulating arguments to defend their interests and seeking to influence the approach of governments in both the UK and EU. Scenario planning for a hard Brexit and the issues it presents will also be critical to being able to adapt strategy and implement operational and structural change as necessary. Businesses that do this will be better able to manage whatever economic, political or trading shifts lie ahead.

# HARD BREXIT REGULATION AND ENFORCEMENT

Life outside the EU and the EEA would mean the removal of the UK from the regulatory frameworks that govern important areas of commercial activity inside the single market.

In some cases, this will require new UK regulatory regimes to replace rules currently applied directly from the EU level – for example, some parts of the prudential framework for banks and market infrastructure. In others, EU frameworks may be confirmed as the UK's future domestic rules. The UK government's 'Great Repeal Bill', for instance, aims to convert existing EU law into domestic law on the day that the UK leaves the EU. This may be a useful tool to avoid any initial regulatory gaps, but it may not be a straightforward or indeed an effective solution in all cases.

This raises important questions about the future for business. One issue is the fact that the UK will no longer be covered by EU rules that confer operational rights or advantages in the internal market. For example, the UK may no longer be able to participate in the EU's Unified Patent Court system or be directly covered by EU General Data Protection Regulation. This implies checks on freedoms or advantages that are currently part of the single market package.

The prospect of two separate regulatory regimes inevitably raises the question of duplication and even divergence over time in regulatory licensing procedures and standards. At present, many products licensed for sale in one EU member state can be placed on the market in any other. Mutual recognition and equivalence regimes may need to be agreed, which would recognise UK standards as equivalent to those of the EU, and remove the need to conduct product approval procedures in both markets. In the absence of mutual recognition, business would face the prospect of additional time being spent and costs being incurred dealing with a rising compliance burden.

## ENFORCEMENT RIGHTS

Protection and enforcement of operational rights are crucial for businesses, especially when large investments in trade are made up-front. Inside the single market, EU law protects trading rights which are directly enforceable by private parties. This means that businesses can claim financial compensation or other recourse from EU Member States that fail to abide by their obligations under EU law. These rules have an independent enforcement agency in the European Commission, and can also be enforced through EU and national courts.

By contrast, international trade treaties, such as the WTO rulebook, generally only provide for state-to-state dispute settlement, in which case businesses are reliant on WTO states commencing an action to enforce the rules. When two states have agreed a FTA, these will often also contain a mechanism for raising issues and addressing disputes between the two parties, but these are generally weak. In both cases, private complainants need to persuade a state to take action, and governments may have in mind other economic or indeed political interests when they decide whether to act.

Although the analogy is far from perfect, it is instructive to note that the WTO dispute settlement system, which is the most active of all international trade treaties, will handle approximately ten cases per year, whereas the EU courts will handle approximately 1,500.

# QUESTIONS BUSINESSES SHOULD ASK

- Do my **supply chains** straddle the EU and the UK in a way that could expose my organisation to new tariffs post-Brexit?
- Are my exports to EU markets going to meet **rules of origin** requirements sufficiently to ensure preferential treatment?
- Do my final **distribution networks** cross the same line between the EU and the UK? What does this imply for the cost of my product for the end customer?
- How well can my business model adapt to **the need to process all imports and exports** between the EU and the UK through the customs systems of both sides?
- What does this imply for **inventory management** and the **routes to market** my business uses to present goods from the global economy to EU customers?
- In the services sector, to what extent does my cross-border business's **regulatory position** depend on EU status? Does a hard Brexit incur a significant disadvantage and, if so, how can this be remedied in a cost effective manner?
- How dependent am I willing to be on **third country dispute settlement systems** for enforcing the rights of my operations in the EU? What does this suggest about how I should be structuring my **commercial footprint** in the EMEA region to maximise my routes of legal recourse?
- How concerned should I be about the possibility that the EU and the UK will no longer mutually recognise the **product standards, licensing decisions** or **regulatory decisions** that apply in each market? Does this mean duplicating **product approvals** or **operating licences**?

# HOW WE CAN HELP

Brexit – and the challenge that it represents - has many facets. Our three firms' collaboration on this report and in advising organisations on Brexit, is borne out of this very fact. A measured and methodical response to the questions raised requires **legal, regulatory and supply chain analysis, political and policy insight and strategic advice and implementation.**

The Boston Consulting Group, Herbert Smith Freehills and Global Counsel recognise the importance of these essential elements and of offering holistic assessments on the impacts of, and possible responses to, Brexit aligned with individual clients' needs and strategies.

Initial analysis or due diligence of Brexit-related risks and opportunities, establishes risk exposures and opportunities - a "**Brexit audit**". Issues affecting organisations may be general, they may affect an entire sector, or they may be idiosyncratic and only affect a specific business. For this reason, review exercises must be tailored for individual organisations to reflect their business activities and their specific operating environment.

Given the uncertain timescale and outcome of Brexit, analysis must be scenario based using a hard Brexit base case as suggested by this report alongside selected alternatives.

The focus of any review will be dictated by the nature of the underlying business but might include **regulatory analysis** (eg, market access issues and deregulation opportunities), **supply chain analysis** (eg, impact of tariffs and non-tariff barriers) and **contract reviews** (eg, identification of problematical terms and contracting strategy issues).

The conclusions of this type of analysis allow organisations to assess identified risks and opportunities, calibrating their relative importance and likelihood, and to prioritise further action. Understanding the **interdependencies** and **lead times** (political, operational and regulatory) is crucial to the development of a **phased** and **proportionate** response.

As and when the time comes to take action to mitigate risks or seize opportunities, this may involve **deploying arguments with government** (UK, EU and third countries) directly or through industry bodies to influence their approach based on **prioritised analysis**. On the operational plane it may mean **strategic M&A**, devising **alternative legal structures**, changes to **geographical footprint and workforce**, re-assessing **investment plans**, revising **compliance frameworks** and so on.

Given the evolutionary nature of the Brexit process, any response requires an element of on-going **monitoring** in order to sequence and trigger planned actions but also to continually re-validate adopted strategies.

"...review exercises must be tailored for individual organisations to reflect their business activities and their specific operating environment"

# ABOUT US

## THE BOSTON CONSULTING GROUP

The Boston Consulting Group is a global management consulting firm and the world's leading advisor on business strategy. We partner with clients in all sectors and regions to identify their highest-value opportunities, address their most critical challenges, and transform their businesses. Our customised approach combines deep insight into the dynamics of companies and markets with close collaboration at all levels of the client organisation. This ensures that our clients achieve sustainable competitive advantage, build more capable organisations, and secure lasting results. BCG is a private company with 85 offices in 48 countries.

## GLOBAL COUNSEL

Global Counsel is an advisory firm that works with clients navigating the critical area between business, politics and policymaking. We help companies and investors across a range of sectors to anticipate the ways in which politics, regulation and public policymaking create both risk and opportunity – to develop and implement strategies to meet these challenges.

Global Counsel can provide support in specific markets or policy areas, or build teams to embed alongside strategic decision makers for projects or transactions. Our work is backed up by high quality analytical content and collateral that is politically and economically informed, and which builds quickly into executable strategy. Our team incorporates an international network and is led by former public policymakers and political advisors with experience at the highest level of government and policymaking.

## HERBERT SMITH FREEHILLS

Herbert Smith Freehills is one of the world's leading professional services businesses, bringing together the best people, to meet client's legal services needs globally. Accessing our deep global sectoral expertise, as well as our local market understanding, we help organisations realise opportunities while managing risk to help them achieve their commercial objectives. Operating as a single, globally integrated partnership, we work as a team, using innovative systems and processes to ensure client work is delivered intelligently, efficiently and reliably. When working with Herbert Smith Freehills, clients are assured world class, full-service legal advice and the best results.

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