

# in focus

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Brexit and plant  
protection products  
Clarifying the reality of  
what is possible – and the  
implications for UK agribusiness





The UK's withdrawal from the European Union (EU) has many implications for business. The mechanisms by which companies have been able to trade with each other within a single marketplace are entrenched in commercial practice across Europe.

This paper aims to explain how the current EU trading system works – from the Customs Union and the Single Market, to tariff-free trade. It also explores the possible implications of Brexit for agribusiness, and the sale and movement of plant protection products in the future. As we highlight throughout, the UK's exit from the EU is going to be a long and complex process. Here, we hope to clarify the reality of what is possible so that you can develop a plan for a post-Brexit world.

60% of the food produced in the UK is exported to the EU's bloc of 27 nations.



## How is the European Union structured?

Before we begin to explore the likely implications of Brexit, it is important to first understand how the European Union is structured, and how laws are created and enforced.

### The EU Commission

The Commission proposes and writes laws.

### The European Parliament

The laws are debated, scrutinised and voted on in Parliament by Members of the European Parliament (MEPs), selected by the public in national European elections.

### The European Council

The Council is made up of ministers (elected politicians, e.g. foreign minister, prime minister or president) from each Member State and they scrutinise laws before they are enacted.



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## How did the EU Single Market come about?

By the mid-1980s, the European Community had grown to 12 members: France, West Germany, Italy, the Netherlands, Belgium, Luxembourg, United Kingdom, Ireland, Denmark, Greece, Spain and Portugal.

Although the group of countries had produced a large number of directives and regulations, it was having a problem implementing them; getting a consensus within the group made it difficult to move forward with the concept of having a Single Market.

Then, in 1985, British Commissioner Arthur Cockfield produced a report that contained more than 300 recommendations as to how the Single Market could be brought into being. These recommendations led to the signing of the Single European Act in February 1986, a law which became effective in the summer of 1987.

“The Community shall adopt measures with the aim of progressively establishing the internal market over a period expiring on 31 December 1992. The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this treaty.”

**Single European Act, 1986**

## So, what is the European Single Market?

Originally set up through the EEC (European Economic Community) Treaty in 1957, the European Single Market we know today was created in 1993.

Essentially, it is the trading area in the EU in which most trade barriers are removed.

The European Commission describes it as, “one territory without any internal borders or any regulatory obstacles to the free movement of goods and services”.

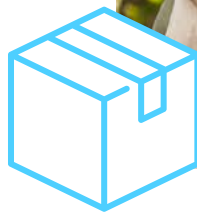
Membership of the Single Market requires regulatory alignment for EU members (where it concerns their trade with the EU); and EU regulatory compliance for businesses outside the EU.

EU Member States have to follow all of the Single Market’s rules, but other countries can decide to align some or all of their regulations to the same standards. So, for non-EU businesses that want to trade in the Single Market, they must show that they meet the relevant rules.

Non-EU Member States who have free trade agreements (FTAs) that align some or all of their domestic rules with the Single Market include European Economic Area (EEA) members, such as Norway, and those with bilateral agreements with the EU, such as Switzerland.



The Single Market is built upon the 'four freedoms' of the EU. This allows for the free movement of goods, capital, services and labour.



## No barriers to trade

The Single Market is the area of the EU in which goods and services can move freely, without internal borders or regulations. This means that barriers, such as tariffs, are not imposed on trade within the Single Market. The rationale for this is that it increases trade within the EU, and with EU partners, by creating smoother and more efficient supply chains.

The Single Market is built upon the 'four freedoms' of the EU. This allows for the free movement of goods, capital, services and labour, which form the basis of all economic activity.

These freedoms cover the full EU population of more than 500 million people.

## Which countries are within the Single Market?

EU Member States form the core of the Single Market. An EU Member State pays a contribution to the EU budget, elects officials to its institutions and adheres to all EU directives and laws.

However, some countries that are not EU Member States have also chosen to align their rules to the Single Market. This group includes members of the EEA, such as Norway, Iceland and Liechtenstein. Switzerland also trades with the Single Market through a bilateral agreement with the EU.

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## What is the Customs Union?

The Single Market is different from the EU Customs Union but they are interconnected.

The Single Market – also known as the Internal Market or Common Market – is the area of the EU in which states freely trade, and with which outside states can align their own rules by agreement.

The Customs Union overlaps with the Single Market. It is a club of countries in which customs (tariffs and duties) have been removed from goods. It also ensures that countries charge the same import duties to countries outside of the Single Market, in order to avoid trade being diverted through members with low duties.

The Customs Union also requires the members of its club to join together to negotiate trade deals involving customs, since these have implications for the entire membership.

Like the Single Market, non-EU Member States can also be part of the Customs Union by agreement. This currently includes Andorra, Monaco, San Marino and Turkey. Many of these arrangements are negotiated by each country and the EU.

For example, Turkey is able to trade freely in goods as a result of the EU-Turkey Customs Union. Similarly, it is possible for a country to trade in the Single Market but not be a member of the Customs Union. This is the case with EEA countries, such as Iceland, Norway and Liechtenstein.

## What is tariff-free trade?

Tariff-free trade is one of the freedoms that underpins the Single Market. It is thought that tariff-free trade increases economic activity and gross domestic product (GDP), the measure of the economic activity within a state or trading area.

It is also argued that tariff-free trade makes producers more competitive by giving them more incentive to make their goods cheaper, both by more efficient production and by paring back profit margins. Some also claim that the costs of tariffs are handed down to consumers by increasing the price of retail goods.

Higher prices may discourage consumers from buying products, which could have a negative impact on growth. The removal of barriers is known as ‘negative integration’ because it is taking something away.

## It’s not all about tariffs

As well as removing barriers to trade, such as tariffs, the Single Market also seeks to harmonise the rules that govern trade.

Like the removal of tariffs, this is thought to make trade smoother by removing administrative burdens and therefore reducing cost.

Under the rules, states must respect EU law in trade done within the Single Market. The application of EU law to participants in the Single Market is known as ‘positive integration’ because it is adding a provision.

## Regulatory alignment

As well as making EU law applicable above national laws for trade done in the Single Market, a single set of EU regulations are enforced. This is known as 'regulatory alignment'.

It means that all Member States participating in trade in the Single Market respect the same regulations.

This single set of rules ensures that the same equality of goods and services are maintained throughout the EU. Apples arriving in Dover from Spain are the same quality as those being shipped from France to Germany, for example.

These regulations enforce minimum standards, which mean that countries can make laws stricter for products that are produced within their borders.

However, it must allow products from other countries which fall below this standard, but which meet the EU standard, to be sold in its country, under a process known as 'mutual recognition'.

As well as regulation directly affecting standards, EU legislation also harmonises rules on other, related areas, such as respect for workers' legal rights, and maximum working hours (currently set at 48 hours per week under EU law).

### **Regulatory alignment for plant protection products means adherence to EU regulations:**

- Plant Protection Product (Regulation) 1107/2009
- Maximum Residue Limit (Regulation) 396/2005
- Classification, Labelling and Packaging (Regulation) 1272/2008, as well as other relevant EU legislation



It is thought that tariff-free trade increases economic activity and gross domestic product (GDP), the measure of the economic activity within a state or trading area.

## The role of the European Court of Justice (ECJ)

The ECJ adjudicates between parties in legal disputes and interprets EU law in practice. It is distinct from the Commission and EU Parliament, which conceive and pass EU law. The ECJ has a role in the Single Market by determining, for example, whether one national law is contravening or upholding EU law where trade is concerned.

All EU Member States are obliged to adhere to the rulings of the ECJ where it affects trade within the Single Market. Non-EU Member States, such as Norway, are required to recognise the rulings of the ECJ when it resolves disputes in its trade within the Single Market.

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## So, what might a post-Brexit world look like for plant protection products?

In the UK, the Health and Safety Executive's (HSE) Chemicals Regulation Division (CRD) is responsible for the regulation of plant protection products, in addition to biocides, detergents, and chemicals, as well as for compliance with the Classification, Labelling and Packaging (CLP) Regulation.

Given the current regulatory and compliance structures of the EU, as outlined above, the key question is: would a post-Brexit CRD be more pragmatic than the EU?

The continued use in the UK of active substances and their associated products banned by the EU would not be possible as it would constitute a threat to the Single Market if UK access were to be retained. New active substances to the UK and the EU could possibly be processed faster in the UK than in the EU but the UK would have to predict the EU's regulatory decision exactly and there would be the need for import tolerances which are a sensitive issue.

Currently there are two scenarios for leaving the EU: one with a trade deal negotiated between the UK and the EU 27 Member States; or simply leaving without a deal.

Under the Withdrawal Agreement, EU law remains in place until December 31, 2020. On the whole, nothing changes immediately, except that the UK no longer has voting rights on EU legislation. Access to the Single Market and membership of the Customs Union continues throughout the transition period because the regulatory framework via the ECJ remains intact.

After January 1, 2021 the UK will be outside the jurisdiction of the Single Market, Customs Union and European Court of Justice unless a new trade deal with the EU has been negotiated. There is no legal mechanism in place for an extension to this transition period unless the UK government changes the Withdrawal Agreement it passed in January 2020 forbidding an extension to be requested.

If the UK leaves under a no-deal scenario, as all EU law has now been transposed into UK equivalents, the legal framework, in theory, will be the same. But because the UK would not recognise the ECJ, the UK would be outside the Single Market and Customs Union. A hard border would be required between the UK and the EU to protect the integrity of the EU Single Market.

In a scenario where the UK were to remain in the EU Customs Union but not in the Single Market, this would pose a threat to the integrity of the Single Market. As the UK would be outside of the Single Market, a hard border would be required between the UK and mainland EU Member States at the North Sea ports, Channel ports and Channel Tunnel, as well as the much discussed hard border between Northern Ireland (UK) and the Republic of Ireland (EU).

Between 1957 and 1993, the European Economic Community was a Customs Union with internal borders. These were removed only when enough evidence of harmonisation or mutual recognition of regulations was in place. The Single Market, without borders, is about regulatory homogeneity. Leaving the Single Market reintroduces a border – the thickness of which depends on the degree of regulatory divergence.



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The Customs Union is about the common external tariff. The Single Market is about common regulations.

Therefore, a post-Brexit CRD cannot be more pragmatic than the EU. The UK will have to follow the EU's regulatory system without input, unless it wants to reintroduce hard borders in Ireland, and elsewhere with the EU, such as at the UK Channel ports of Dover, Folkestone and Portsmouth, and at North Sea ports at Hull and Felixstowe.

In addition, agricultural produce will have to be grown according to EU regulations if it is to be exported to the EU without a hard border between the UK and the EU.

Supermarkets with a European-wide business would also be involved in setting secondary standards if UK CRD chose to approve active substances and authorise products not allowed in EU Member States.



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## The realities of Brexit, in summary

### Leaving the Customs Union

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The EU is the world's largest trading bloc, with trade deals with over 70 countries around the world. These trade deals define the common external tariff, which is the tax put on products entering the EU from non-EU countries.

In addition to potential trade restrictions within the EU, leaving the Customs Union would potentially impact the EU's trading with non-EU countries. Obviously, the UK would look to negotiate favourable trading terms with non-EU countries.

Leaving the Customs Union means the re-establishment of a hard border between the UK and the EU.

Checks for country-of-origin rules would have to take place at the border, including for agricultural commodities and produce.

### Leaving the Single Market

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The Single Market is about common regulations. The Single Market, without borders, is about regulatory homogeneity.

Leaving the Single Market reintroduces a border – the thickness of which depends on the degree of regulatory divergence from EU regulations: Plant Protection Product (Regulation) 1107/2009; Maximum Residue Limit (Regulation) 396/2005; and Classification, Labelling and Packaging (Regulation) 1272/2008.

Leaving the Single Market also means the re-establishment of a hard border between the UK and the EU.

Products crossing the border would not necessarily comply with the Single Market regulatory rules, so some would need to be detained and tested. For example, agricultural commodities and produce, such as grain, fruit and vegetables, would have to be tested at the border for the presence of non-approved active ingredients.

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## How TSG can help

It will take a long time for the UK to disentangle from the EU. Businesses need a plan to help manage the likely implications of Brexit. TSG has extensive expertise in regulatory compliance and can assist companies with strategic guidance and planning, helping to navigate uncharted waters in continuing to deliver products to market in the EU.

Interested in learning more?

Get in touch:

+44 (0) 1423 799633

info@tsgconsulting.com

## About the author

Mike Carroll, PhD, Principal Plant Protection Consultant

Mike has previously worked for Arysta LifeScience, Dow AgroSciences and Monsanto in agrochemical research and development, regulatory affairs and project management. He holds BSc and PhD degrees in biochemistry from the UK universities of Bath and London respectively and has worked in the UK, Germany, Belgium and the USA with over 35 years' experience gained in the pharmaceutical and agrochemical industries. He is particularly interested in how regulatory processes differ from country to country and how local politics ultimately controls the regulatory process.

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<sup>1</sup> <https://ukandeu.ac.uk/explainers/the-european-single-market/>

<sup>2</sup> <https://www.theguardian.com/commentisfree/2019/apr/12/brexit-customs-union-labour-irish-border>

## About TSG Consulting ↗

TSG Consulting provides companies with high-quality regulatory and scientific consulting services.

We help clients worldwide address the technical and regulatory issues in taking their products to market in multiple jurisdictions. Our scientific expertise, regulatory knowledge and understanding of local nuances enable our clients to navigate the complex and ever-changing regulatory landscape across the globe.

We serve a number of key markets and industry sectors including agricultural, industrial, consumer, food and beverage, animal health, and medical. Our teams comprise scientists and regulatory experts – many of whom have previously held positions at regulatory agencies, departments, and in industry.

This combination of science, regulatory expertise and knowledge of how institutions and industry operate provides our clients with superior and well-rounded guidance.

TSG Consulting has offices in France, Germany, Spain, UK, USA and Canada. TSG is a Science Group (London listed) company.

[info@tsgconsulting.com](mailto:info@tsgconsulting.com)

[www.tsgconsulting.com](http://www.tsgconsulting.com)

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[info@sciencegroup.com](mailto:info@sciencegroup.com)

[www.sciencegroup.com](http://www.sciencegroup.com)

