

## Client Alert

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## EVFTA and Brexit: The future of trade between the UK and Vietnam

On 23 June 2016 the United Kingdom voted to leave the European Union, and on 29 March 2017 the UK invoked Article 50 of the *Treaty on the European Union*, officially commencing the withdrawal process ("**Brexit**").<sup>1</sup> Negotiations to determine the terms upon which the UK will exit the EU are ongoing ("**Withdrawal Negotiations**"). A key aspect of the withdrawal will likely be the UK secession from the EU customs union and accompanying trade agreements entered into by the EU. As a non-member of the European Union the UK will no longer be entitled to enjoy preferential trading terms available in EU free trade agreements.

The European Union - Vietnam Free Trade Agreement (EVFTA) is one such EU trade agreement. The EVFTA was signed by Vietnam and the EU on 30 June 2019 in Hanoi and is expected to enter into force in early 2020 following ratification procedures. After which traders in Vietnam and the European Union will enjoy lower tariff rates, preferential market access for service providers and other beneficial trade provisions.

### Trade between UK and Vietnam: What will happen?

The EVFTA will apply to territories identified as a part of the territory of the EU or the territory of Vietnam.<sup>2</sup> Following withdrawal the UK will no longer be considered a member state of the EU, and thus outside of the territories covered by the EVFTA.

It is still possible for trade between the UK and Vietnam to benefit from the EVFTA in the following circumstances: (1) a withdrawal transition period; (2) the UK remaining a member of the EU customs union; or (3) a separate Vietnam - UK free trade agreement based upon the terms of the EVFTA.

	Scope	Timing	Notes
<b>1. A Withdrawal Period</b>	UK participates fully in EVFTA (as an EU member)	Only during the 'Transition Period' (currently negotiated to end December 2020)	This period could allow the full range of preferential trade activities, though only temporarily.
<b>2. Customs Union</b>	Goods may move between the UK and EU without customs duties	Following the UK's complete withdrawal, may continue indefinitely	Only goods will be able to move duty-free between the UK and EU. No preferential trade in services.
<b>3. UK - Vietnam FTA</b>	Separate agreement between the UK and Vietnam.	Following the UK's withdrawal, may continue indefinitely	Only UK and Vietnam trade will be facilitated. UK and EU trade terms will depend upon a separate agreement.

<sup>1</sup> Treaty on European Union and the Treaty on the Functioning of the European Union, *Official Journal of the European Union* C 326 , 26/10/2012 P. 0001 - 0390.

<sup>2</sup> The territory of the European Union is defined in Art. 17.24 of the EVFTA as the territory so identified in the *Treaty on European Union* and the *Treaty on the Functioning of the European Union* (*Ibid* footnote 1).



## 1. A withdrawal transition period

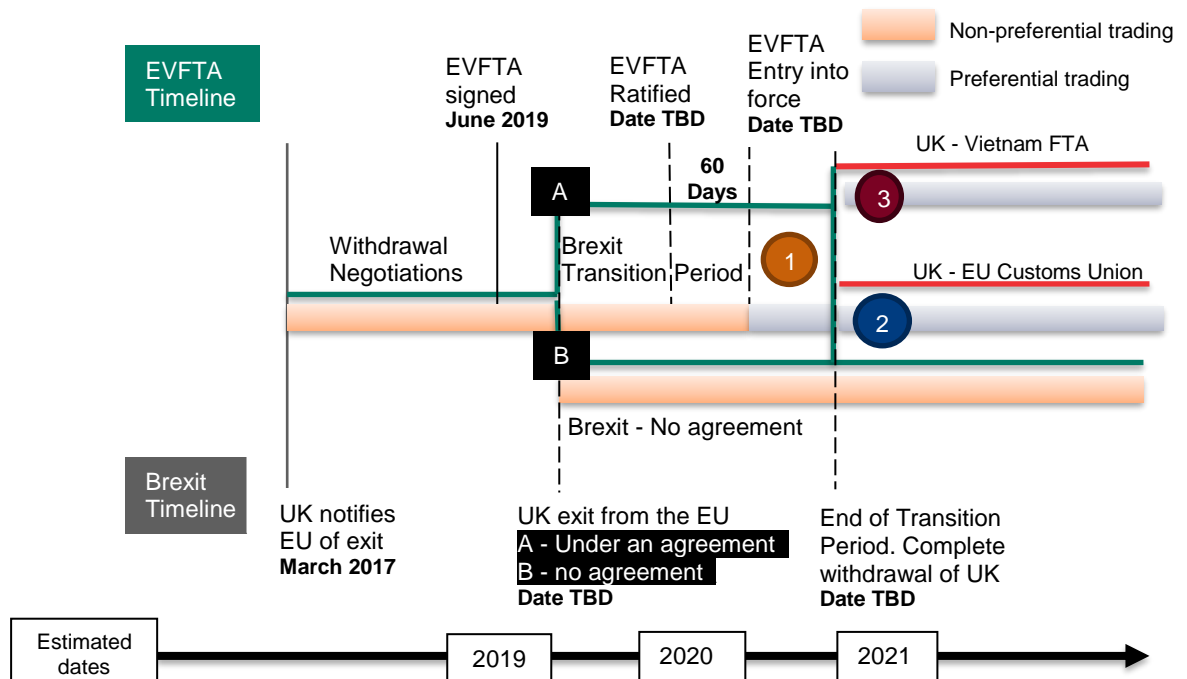
If the EU and UK successfully negotiate a withdrawal agreement, the agreement will include a transition period, wherein the EU and UK will continue to trade under pre-Brexit terms while preparing for the UK's exit ("**Transition Period**"). If the EVFTA enters into force during a Transition Period the EVFTA would temporarily apply to trade between the UK and Vietnam. The latest negotiations on a Draft Withdrawal Agreement have the Transition Period scheduled to end on 31 December 2020.<sup>3</sup>

## 2. The UK as a member of the EU customs union

Similar to the withdrawal transition period, it is possible that the UK and EU will reach an agreement wherein the UK remains a part of the EU customs union, or even establishes their own customs union with the EU. Under a customs union the UK and EU would apply a common external tariff, while removing all internal tariffs. Such a customs union could be recognized in the EVFTA for trade in goods purposes, which would allow UK and Vietnam to trade goods to receive EVFTA tariff treatment. It is unclear at this point how such a union would impact non-tariff barriers, technical barriers to trade, sanitary, phytosanitary standards, and potential barriers to trade, even within a customs union.

## 3. A separate Vietnam - UK FTA based upon the terms of the EVFTA

The UK and Vietnam may negotiate their own FTA, entering into force anytime after the UK has exited from the EU. A UK-Vietnam FTA could be negotiated either during a Transition Period or after the UK has completely withdrawn from the EU. Whether Vietnam may offer the same terms of trade to the UK alone as it offered to the entire EU market remains to be seen.



<sup>3</sup> The draft *Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community*, Official Journal of the European Union 2019/C 384 I/01 ("Draft Withdrawal Agreement"), Art. 126.



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Outside of the above 3 possibilities, trade between Vietnam and the UK would occur under WTO Most Favored Nation (MFN) terms, which are the default trading rules for any two WTO member countries who do not have a preferential agreement. Currently trade between the EU and Vietnam is on MFN terms, until the entry into force of the EVFTA.

Another proposal that has been floated is for the UK to accede to the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP), which took effect 30 December 2018, for the first 6 members to ratify and 14 January 2019 for Vietnam. The CPTPP does not require parties to be Pacific nations, but UK accession would require support of all of the 11 existing CPTPP members.

The UK is currently the EUs second largest economy, trade between the UK and Vietnam in 2018 was valued at nearly USD 6.5 billion.<sup>4</sup>

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Please do not hesitate to contact us if you have any questions related to the EVFTA or ongoing trade and investment between the UK and Vietnam.

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<sup>4</sup> UN Comtrade. [New York] :United Nations