

February 2020

Brexit

The UK has now left the European Union and a transition period is in place until the end of 2020 while the UK and EU negotiate additional arrangements.

The current rules on trade, travel and business for the UK and EU will continue to apply during the transition period.

Next Steps

Negotiations are ongoing and the government has advised people and businesses to start preparing now for the new rules.

On 10 February, the Government confirmed plans to introduce import controls on EU goods at the border after the transition period ends on 31 December 2020. At a Border Delivery Group stakeholder event, Michael Gove confirmed that traders in the EU and GB will have to submit customs declarations and be liable to goods' checks and that policy easements put in place for a potential no deal exit in 2019 will not be reintroduced as businesses now have time to prepare.

Businesses should make sure they have an Economic Operator Registration and Identification (EORI) number, register for the New Computerised Transit System and consider how they want to make declarations, such as by using a customs agent. The deadline for applications for customs support funding has been extended by HMRC to 31 January 2021.

EU-Vietnam Free Trade Agreement

On the 12th February, the European Parliament gave its final consent to the conclusion of the EU-Vietnam Free Trade Agreement. The FTA will come into force one month after the EU and Vietnam have reciprocally notified each other that legal procedures have been completed, which is expected to be around the Summer of 2020.

In regards to how this will affect the UK, an FSPA contact from the Department for International Trade has commented: *"The Withdrawal Agreement agreed between the UK and the EU sets out that the UK can continue to be treated as a Member State for the purposes of EU-international agreements, including trade agreements, during the Implementation Period. This means that the EVFTA – once it has entered into force - will apply to the UK until the end of the implementation period (31 December 2020). We are working closely with Vietnam to have a bilateral agreement (mirroring the EVFTA) in place by then."*

CJEU provides clarity on principle of exhaustion in digital media

The Court of Justice of the European Union made a landmark ruling in where it has found that digital exhaustion does not exist under Article 4 of Directive 2001/29 (the **"InfoSoc Directive"**).

The principle of exhaustion provides that a copyright owner's right to control copies of their work "exhausts" on its first sale by the copyright owner or with their consent. The case, involving a trader (Tom Kabinet) operating an online marketplace where members paid to access second-hand e-books, was originally heard at the District Court of The Hague in 2017 who referred the case to the CJEU. The

CJEU was asked if the resale of e-books was permissible under the principle of copyright exhaustion i.e. the right to distribute the e-book was exhausted on initial sale by the copyright owner, so Tom Kabinet could resell the e-book without requiring the right holders' permission.

The Court of Justice of the European Union decision

The Court ruled that rights exhaustion of e-books would damage the rights of owners much more than it would with physical copies because e-books do not deteriorate with use and so are a complete substitute for new physical copies of the work. The court also found that where licences governing use of e-books were for personal use only, the re-sale of an e-book constituted a communication to a new public, thereby violating article 3(1) of the Directive. In its finding, the Court made reference to the World Intellectual Property Organisation (WIPO) Copyright Treaty (which underpins the InfoSoc Directive) stating that it called for rights exhaustion to be "reserved for the distribution of tangible objects," such as physical books.

This ruling provides some much-needed clarity on the scope of copyright exhaustion and is an undoubtedly welcomed helping hand to copyright owners in an era where digitalisation threatens right holders rewards.

Facebook and eBay agree to crackdown on fake reviews

Fake or misleading reviews are illegal under the Consumer Protection from Unfair Trading Regulations 2008. It is therefore a relief that at the start of this month, the Competition and Markets Authority (CMA) confirmed that Facebook and eBay have taken action in relation to fake and misleading views that are available on their websites.

In particular, the companies have:

- taken down content that the CMA identified to them,
- removed content which the companies had identified themselves, and
- agreed to establish measures to prevent content appearing on their websites in future.

These actions have resulted in Facebook removing 188 groups and disabling 24 user accounts, and eBay permanently banning 140 users. The CMA would still like Facebook to take further action in relation Instagram (owned by Facebook), and Facebook has agreed to look into this.

The original press release can be found here: <https://www.gov.uk/government/news/facebook-and-ebay-pledge-to-combat-trading-in-fake-reviews>

Corporate Responsibility: European Commission's report on IPR protection and enforcement

The European Commission Directorate General for Trade published its latest biannual report on "the protection and enforcement of intellectual property rights in third countries" on 9 January.

This report recognizes third countries where IPR protection and enforcement is not as robust as it could be, and where areas of concern to the EU have been identified - giving a list of 'priority countries', as follows:

Priority 1: China

Priority 2: India, Indonesia, Russia, Turkey and Ukraine

Priority 3: Argentina, Brazil, Ecuador, Malaysia, Nigeria, Saudi Arabia and Thailand

The Commission reports that China remains the top priority as more than 80% of the seizures of counterfeit and pirated goods by EU customs authorities originate from China and Hong Kong while in Priority 2 countries *"serious systemic problems have been identified in the area of IP protection and enforcement in these countries, causing significant harm to EU businesses."*

The Philippines was removed from the priority lists due to few complaints from stakeholders but has been added to the list of countries that need to be closely monitored as it remains an important country of origin of counterfeit goods destined for the EU in a number of product categories, including footwear, sport equipment, games and toys.

Read the full report here: https://trade.ec.europa.eu/doclib/docs/2020/january/tradoc_158561.pdf

Russia apparel labelling

Russia is introducing electronic labelling for certain products following the implementation of the Treaty on Labelling of Goods with Identification Marking in the Eurasian Economic Union (EAEU) (signed on 2 February 2018).

Certain goods (including particular types of clothes) were due to start following these rules from 1 December 2019, however, Russia postponed the requirements coming fully into force until January 2021. Unlabelled products placed on the market will be able to be sold until February 2021.

From 1 March 2020, the labelling becomes mandatory for shoes (initially it was scheduled to 1 July 2019). There have been no indications that this will be delayed.

Cambodia: 12 February – Final Decision

In January's newsletter, FSPA reported on the letter sent by FESI on 15 January to Commissioner Phil Hogan, in charge of the EU Trade policy, to express deep concerns about the adverse consequences of a possible withdrawal of the Everything But Arms (EBA) tariff preferences could have on Cambodia.

The final decision was announced by the European Commission on 12 February. A partial suspension of Cambodia's preferential trade preferences will take effect from 12 August 2020 unless EU governments or the European Parliament blocks it. This would be significant as zero duties on selected garment and footwear products will be replaced with the standard import tariffs (for clothing the standard tariff is 12%). Estimates suggest that between 20-25% of Cambodian exports will be affected.

The Commission said it would still support Cambodia's diversification of its exports so 'emerging industries' and 'high value-added garments and certain footwear' would continue to enjoy duty-free, quota-free access to the European Union. If the Cambodian government meets the human rights and labour rights requirements of the EBA, the Commission could reinstate the preferences.

Ones to Watch:

MFN Tariff Consultation: The Department for Business, Energy & Industrial Strategy announced the launch of a consultation on the 6th February asking FSPA to give their views on:

- changes to the Common External Tariff to create a bespoke UK tariff regime (the UK Global Tariff);
- which individual products or commodity codes are important to the industry / FSPA members, including the corresponding tariff rates; and
- FSPA members' interactions with the MFN and the importance of tariffs to their sectors.

FSPA have been invited to a panel, to be held on the 19th February where the Department of International Trade will answer any questions, following which we will ask members' for their views. The consultation will close on 5 March 2020 and an announcement on the UK's new Global Tariff schedule will follow shortly afterwards.

Government Freeport Consultation: In February the government launched a consultation into the proposal of opening several secure 'Freeports' around the UK where business can be carried out inside a country's land border, but where different customs rules apply depending on whether goods enter the domestic market after they leave the Freeport, are re-exported, or are processed into a 'final good' before entering the domestic market. Responses from invited stakeholders, including the FSPA, are to be submitted by 20 April 2020.

EEB Campaign: In January, a new campaign, the "Wardrobe Change" was launched by the European Environmental Bureau (EEB) together with 24 civil society groups from across the EU. The campaign is calling for urgent action to be taken by the EU leaders in relation to how clothes are made, sold, worn and re-worn and the corresponding impact on pollution and exploitation.

France anti-waste law: France adopted an anti-waste law on 30 January 2020. This will have a significant impact on the sports, outdoor, clothing and fashion sector. It aims for all plastic to be recyclable by 2025 and will include a ban on designer clothes and luxury goods companies from destroying unsold or returned items. This includes hygiene products and cosmetics. Manufacturers that use plastic in their products will also need to publish the details about the presence of endocrine disruptors.

Digital Services Act: The proposed Digital Services Act is likely to bring in wide-ranging changes to liability and safety rules for digital platforms, services and products and will make social media giants subject to mandatory 'notice and take down' orders forcing the removal of illegal, racist or xenophobic content. The UK is currently drafting its 'Online Harms White Paper' and the European Parliament Committee on Internal Market and Consumer Protection (IMCO) is drafting a report that is expected to have a strong political influence. The draft is due to be published in April 2020.

Switzerland customs duty: The Swiss Federal Council has put forward a bill to abolish customs duties for all industrial products as of 1 January 2022. A decision should be made on the bill by the end of the year. The plan covers products such as clothing, household appliances, cars, healthcare products and bicycles and, if accepted, all sporting goods imported to Switzerland will be duty-free – regardless of their country of origin from 1 January 2022.