

# UNDERSTANDING THE LONGER-TERM OUTLOOK AFTER BREXIT FOR CLAYTON PLANT PROTECTION.

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Clayton's growing portfolio in 2021 is a mix of Generic products, Parallel imported products and Third party products. The longer-term regulatory outlook following Brexit however, is currently set to have an impact on part of this product mix going forward.



## Background

The UK Government is launching a public consultation regarding the future 'Exhaustion of rights' regime to be adopted post Brexit. The exhaustion of rights regime underpins all parallel trade (Crop Protection and otherwise) and this is therefore a critical piece of future legislation regarding Parallel crop protection products. The consultation information can be viewed here:

<https://www.gov.uk/government/consultations/uks-future-exhaustion-of-intellectual-property-rights-regime>

**We would encourage all industry stakeholders to visit the consultation now and submit their views.**

## Parallel Import Products

A parallel import product is a product that is imported from an EU Member State which is identical to the reference UK product. It differs from a generic product in that a parallel product is still manufactured by the authorisation holder of the reference product, but it is relabelled and sometimes repacked by parallel import licence holders such as Clayton Plant Protection (UK) Ltd.

## Legislation for parallel trade

The key legislation that underpins parallel trade across all industries is the principle of exhaustion of IP Rights. Whilst the UK was a member of the EU it was automatically subscribed to the EU regime for Exhaustion of IP rights. This meant that once a product had been sold into any EU market the IP rights over that product were deemed exhausted.

This allowed parallel importers to resell any product that had already been sold into an EU member state into another EU member state without infringing the originators rights over that product. Now the UK has left the EU it is up to the UK Government to decide on what future regime they would like to adopt.

## Find Out More

Further information on Clayton's product range including labels can be found at [www.claytonpp.com](http://www.claytonpp.com)



## What can be done

The consultation essentially outlines 4 main options:

- **Unilateral application of EEA scheme** – effectively continuation of status quo with regard to parallel imports from \*EEA members, exports to EEA still not allowed as this would require agreement with EEA (regulated products e.g. pesticides would still require separate authorisation)
- **National regime** – effectively bans all parallel imports of all products
- **International regime** – allows imports from all countries (regulated products e.g. pesticides would still require separate authorisation)
- **Mixed regime** – variable by sector

Even if an IP (intellectual property) regime is adopted that allows the continuation of parallel trade a method would need to be established and adopted to confirm the identity of pesticide formulations from source countries for parallel trade in pesticides to be allowed to continue.

Such systems already exist in pharmaceuticals but have not yet been adopted for pesticides.

*\*EEA (European Economic Area) members include all EU member states as well as Iceland, Liechtenstein and Norway. The UK is no longer an EEA member following its withdrawal from the EU on 31 January 2020.*

## The Impact

Currently all parallel import licenses for pesticides are due to be revoked as follows:

Last date of sale for importer (Clayton): 31 Dec 2022

Last date of sale for distribution: 30 Jun 2023

Last storage and use for farmers: 30 Jun 2024

The loss of parallels could lead to:

- Increased prices for UK consumers of other plant protection products as competition will be removed and companies will be able to charge a premium in the UK vs EEA without the threat to them of parallel imports
- Shortages of products as any shortfalls in the UK will not in future be able to be fulfilled by parallel imports, thus having a direct impact on farm

To ease the workload for the regulator all active ingredient expiry dates that were due to expire in the next 3 years have been extended. This has also therefore extended the expiry date of existing authorisations for plant protection products containing those actives. Where unfavourable data becomes available CRD do however reserve the right to withdraw products before the extended expiry dates.



## What are we doing – adapting to change

As well as lobbying against this change, Clayton are also mitigating the risks associated with the expected loss of parallel plant protection products by rapidly expanding and investing in their own generic range of plant protection products as well as establishing distribution agreements with like-minded European and Global manufacturers.

*\*Information in this Technical Bulletin is for guidance only and is based on the understanding from current official information at the time of writing. Always use Plant Protection Products safely.*

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