

What would 'trading on WTO terms' mean for the UK?



The **UK** in a
Changing Europe

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Foreword

Leading Brexiter Jacob Rees-Mogg has often lauded the possibility of 'falling back on the WTO' in the event of a no deal Brexit. Speaking to [the Express](#), Mr Rees-Mogg said that in the event of a no deal, 'I think we shouldn't be afraid of a free trade deal on the base [sic] of World Trade Organisation. That is opening up trade with lots of other countries, there are opportunities to take it further and it would allow us to get on with the rest of the world sooner because it wouldn't have an implementation period.'

The aim of this report is to explain – in the simplest possible terms – what is the WTO and to address some of the (mis)conceptions about what 'falling back on the WTO' actually means in the event of a no deal Brexit. By no deal, we have two situations in mind.

- 1) The Withdrawal Agreement is not approved by the Westminster Parliament (or the European Parliament).
- 2) The Withdrawal Agreement is successfully concluded and a transition period is entered into which expires on 31 December 2020. However, at the end of the transition period (and any extension) no free trade agreement is concluded between the EU and the UK.

This report is written by experts in the field of WTO law but who want to explain WTO rules in terms accessible to non-experts. A shorter version of this report is also available. Our thanks go to Katy Hayward, David Henig, Holger Hestermeyer, Emilija Leinarte, Sam Lowe, Steve Peers and Peter Ungphakorn for their excellent contributions.

The report is structured around a series of questions. Each chapter takes one specific issue and tries to answer common questions arising around that question.

Catherine Barnard and Anand Menon

Chapter 1

What is the WTO?

Catherine Barnard and Emilija Leinarte

Origins

The World Trade Organization (WTO) is a forum where 164 governments negotiate trade liberalisation rules and solve trade disputes between them. The origins of the WTO lie in what is called the General Agreement on Tariffs and Trade (GATT) of 1947. The creation of the GATT was a result of the desire after the second world war to ensure global peace and security. It was negotiated by 23 nations, and eight (Australia, Belgium, Canada, France, Luxembourg, the Netherlands, the United Kingdom and the United States) agreed to apply the agreement provisionally immediately after it was signed.

The purpose of the original GATT was to reduce tariffs (i.e. customs duties levied on goods when they cross a border into another state) and ensure that if countries did restrict trade they did so for genuine reasons, such as because the products are truly dangerous. It also aimed at removing non-tariff barriers (such as import quotas and subsidies). However, the GATT was an international agreement, not an international organisation. From 1947 to 1994 eight rounds of negotiations took place, during which the GATT was gradually transformed into a de facto organisation. At the Uruguay Round negotiations (1986-94), the Agreement Establishing the World Trade Organization was signed in Marrakesh in April 1994, and the WTO was established.

The agreements reached in 1994

1994 was a watershed moment for the WTO. Not only did the states agree to set up the organisation but they also extended the areas covered by WTO agreements to include not just trade in goods, but also services and intellectual property. The states set out principles of liberalisation of trade, prescribed special treatment for developing countries and called for transparency in trade policies. These, and other obligations, are set out in some 30,000 pages of text (about 500 pages are the agreements and the rest is commitments on liberalising trade that countries have made individually under the agreements), commonly referred to as the 'WTO agreements'. These establish the general rules applicable to all WTO member states.

The WTO has agreements covering goods (the GATT), services (the GATS - General Agreement on Trade in Services) and intellectual property (the TRIPS - Trade-Related Aspects of Intellectual Property Rights). The WTO also has a system for monitoring activities of the states (through regular committees and the trade policy review mechanism) and for the settlement of disputes. In addition to the general rules, WTO members make individual 'commitments' which are set out in documents commonly referred to as 'schedules of concessions'. These schedules are the lists of specific promises on tariffs. For example, a state might commit to apply a fixed tariff to a certain agricultural product. This then makes it difficult for that state from imposing a higher import tariff than indicated in its schedule. The schedules also cover other commitments on, for example, how much access it will give to its market to, say, a foreign bank to set up an entity.

It should be noted that not all countries are members of the WTO. Non-members are typically smaller countries, but there are some with which the UK has significant trade with, including Azerbaijan (£800 million trade in 2016) and Serbia (£400 million). The EU has agreements with both countries, though, which cover the same areas as the WTO agreements would do, showing how the WTO provides a basic structure of trade which would have to be recreated in bilateral agreements if the WTO did not exist.

The Structure of the WTO

The WTO is a member-driven organisation: the main decision-making bodies comprise all members and decisions are made by consensus.

Unlike the EU, the WTO does not have institutions, such as the European Commission, composed of officials who act independently of the member states (except for dispute resolution—see below). In the jargon, the WTO is an 'intergovernmental' organisation: decisions are made exclusively by the governments of WTO member states. The role of the WTO Secretariat (i.e. the people who actually work for the WTO itself) is limited to providing technical and professional support to the governments. The Secretariat does not have decision-making powers and, unlike the European Commission, cannot bring action against states who do not comply with WTO rules.

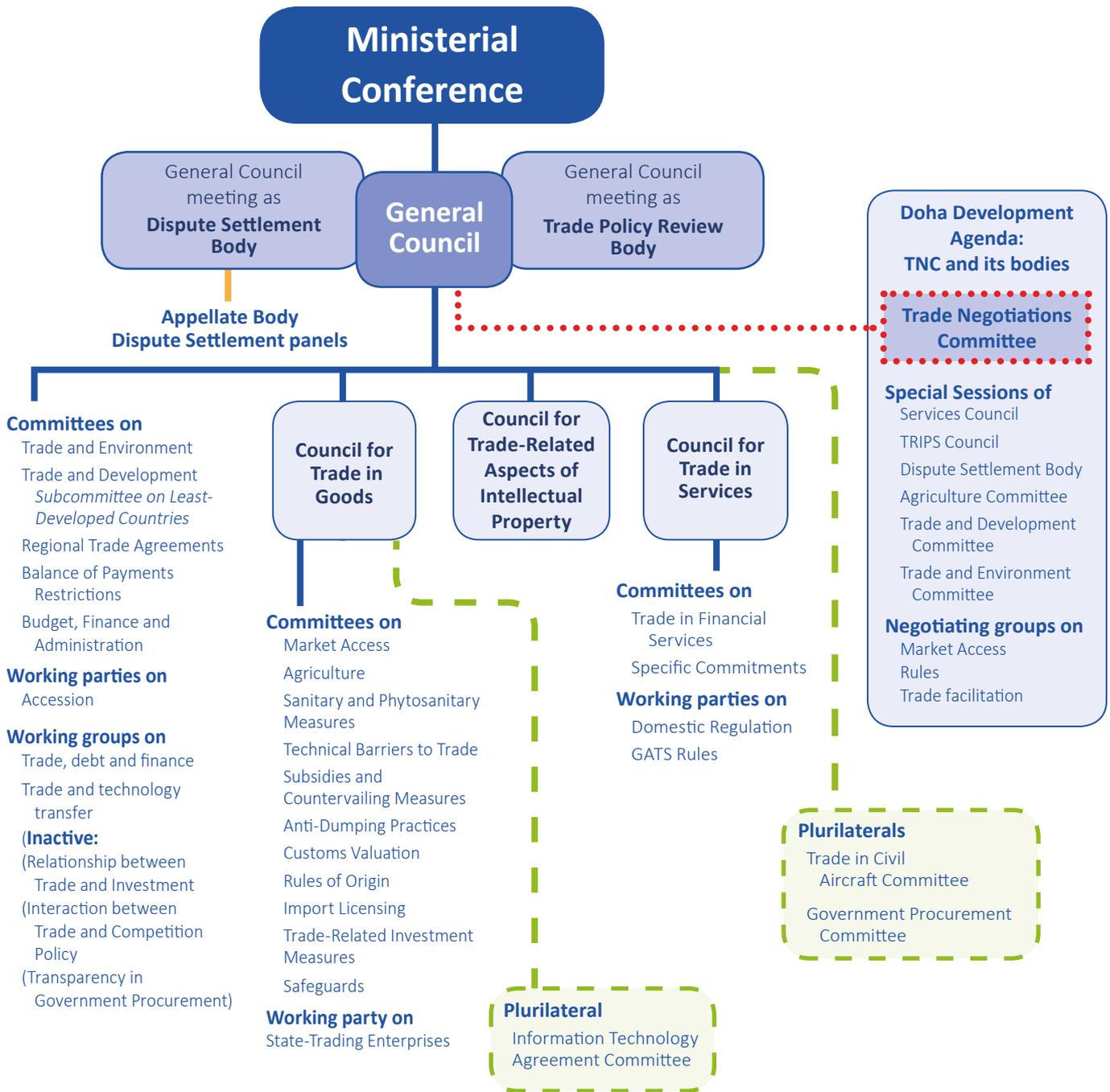
The highest authority in the WTO is the Ministerial Conference, which, like almost all WTO bodies, is composed of representatives of all WTO members. The Ministerial Conference enjoys very broad powers. During its meetings, which happen at least every two years, decisions on all aspects of the WTO system may be taken.

The body that oversees the day-to-day work of the WTO is the General Council, which is also composed of representatives of all member governments. It reports to the Ministerial Conference. The work of the General Council is supported by three separate Councils: the Council of Trade in Goods, the Council of Trade in Services and the Council for Trade-Related Aspects of Intellectual Property. Like the Ministerial Conference and the General Council, these three bodies are also composed of representatives of all member governments. Goods and Services Councils also have important committees, on key issues such as agriculture, Sanitary and Phyto-sanitary (SPS) matters, Technical Barriers to Trade (TBT), fair pricing (anti-dumping), state aids (subsidies), rules negotiations and domestic regulation of services. This is where the real work is done on a wide range of policies and actions that directly affect trade.

Although the EU is an independent member of the WTO, in addition to its 28 member states (i.e. together they constitute 29 independent members), it is customary for the EU to represent its member states in the WTO in all trade issues and disputes (except the budget and administration). In WTO meetings, the European Commission speaks on behalf of all EU member states whose representatives usually remain silent. Member states support this arrangement because acting as a bloc gives them greater leverage in WTO negotiations.

WTO structure

All WTO members may participate in all councils, committees, etc, except Appellate Body, Dispute Settlement panels, and plurilateral committees.



Key

- Reporting to General Council (or a subsidiary)
- Reporting to Dispute Settlement Body
- - - Plurilateral committees inform the General Council or Goods Council of their activities, although these agreements are not signed by all WTO members
- Trade Negotiations Committee reports to General Council

The General Council also meets as the Trade Policy Review Body and Dispute Settlement Body

Dispute resolution

Like many international organisations, the WTO has its own judicial system for resolving disputes between member states. The WTO has a two-stage mechanism: the panel system, which is similar to national lower courts; and the Appellate Body, which is similar to courts of appeals.

However, this is where the similarity ends. The WTO dispute resolution system is different from a typical domestic judicial system for the following reasons.

Firstly, unlike the EU ordinary citizens and companies have no access to the WTO dispute resolution system. Only states that are members of the WTO are able to bring complaints against one another. This effectively means that companies and businesses may only attempt to persuade their governments to bring a claim on their behalf. Given how expensive, complex and, importantly, political WTO litigation is, governments filter complaints and only a very small number of them are brought before the WTO panels.

Secondly, claims can be brought only against states, not against private companies or businesses. If a large corporation behaves anti-competitively, the WTO dispute resolution system is generally of no help to other companies who are affected by this.

Thirdly, complaints can be brought only against other states which are members of the WTO, not against the acts of the WTO itself. That is because the WTO is a member-driven organisation that functions primarily as a negotiation forum rather than a supranational decision-making authority.

Fourthly, the WTO dispute resolution system offers limited possibilities for action, or 'remedies' in the jargon. It is not possible to ask for monetary compensation or a fine to be imposed on a violating state. Equally, panels cannot order states to carry out or abstain from carrying out a specific act. So, for example, panels cannot tell states to stop providing state subsidies (such as financial support) to domestic companies. WTO panels can only recommend that a state corrects a violation in future. Violating states are usually encouraged to amend their laws in a way they see fit so long as the result is compatible with WTO law. Remedies are thus future oriented, whereas damage which has already occurred (such as the application of an incorrect import tariff to a foreign producer) generally remains uncompensated. Again, this is different to EU law, which allows individuals to sue other states for financial losses that they have suffered.

Fifthly, a violating state may simply ignore a panel's recommendations. In this case, the complaining state may be allowed to retaliate. For example, if state A was found to have applied a higher tariff than the legally bound ceiling to products imported from state B, the latter may then be allowed to apply a higher tariff to products from state A in retaliation. This, however, is not a desirable solution because the result is that both states suffer higher tariffs. Besides, retaliation does not help companies and businesses who have already suffered from the higher tariffs. That's why compensation, for example, by opening up the market for some other good or service, is available as an alternative.

As far as the EU is concerned, it conducts WTO litigation on behalf of its member states. The European Commission's legal service has a lot of expertise and experience in WTO dispute resolution. Member states are reluctant to get directly involved in WTO disputes due to the professional and financial resources that would be required in typically highly complex and long-lasting WTO litigations.

The two key principles of WTO law

So far we have discussed institutions. We turn now to look at the key principle under WTO law: non-discrimination. It takes two forms: the [most-favoured nation \(MFN\) principle](#) and national treatment.

Most-favoured nation principle

The most-favoured nation principle means that countries cannot discriminate between their trading partners. If state A grants state B a favour (such as a simplified licensing process), that same favour must be granted to all other WTO member states.

The WTO agreements allow two main exceptions to the most-favoured nation principle — free trade agreements and preferences in favour of poorer countries.

The WTO allows groups of its members to conclude free trade agreements under which states may provide favourable treatment to each other. For example, the EU has a number of preferential free trade agreements, such as those with Canada, South Korea, Singapore and Japan. The newly negotiated agreement between the United States, Mexico and Canada, which will replace the North American Free Trade Agreement, is another example.

The second exception relates to developing countries. States are allowed to apply preferential treatment to products coming from developing countries. Under the EU's 'Everything But Arms' scheme, the EU grants full duty-free and quota-free access to the EU single market for all products (except arms and armaments) from countries listed as Least Developed Countries by the UN Committee for Development Policy.

The national treatment principle

The national treatment principle means that once goods (or, in certain circumstances explained in Chapter 4, services) have entered the territory of another state they must be treated in the same way as national goods or services unless there is a good reason why not.

Chapter 2

In the event of a no deal Brexit, can the UK just fall back on WTO terms?

Peter Ungphakorn

As we saw in the foreword, some leading Brexiters think that it would be perfectly acceptable to go from EU membership to trading on WTO terms. In this chapter, we look to answer the most basic question: in the event of a no deal Brexit, can the UK just fall back on the WTO rules or terms? What are the implications for the UK in the short term? And then, in the longer term, what would this mean for a trade deal with the US?

‘WTO rules’ and ‘WTO terms’ — there is a difference

There is a difference between ‘WTO rules’ and ‘WTO terms’.

WTO rules govern all trading relations between the UK and the EU, including the single market, customs union, any other form of free trade agreement or even ‘no deal’. Agreements can go beyond WTO rules in some areas, but not in others. The rules remain the foundation for any arrangement.

WTO terms means particular conditions that countries have agreed in the WTO, such as their individual ‘commitments’ (pledges) on tariffs, agricultural subsidies or opening up of services markets. Its meaning is therefore much narrower than WTO rules.

What does ‘fall back on the WTO’ mean?

Without an agreement on their future trading relations — particularly some kind of free trade agreement — trade between the UK and the EU will be based purely on WTO terms.

As we will see below, this means import duties and various controls will be imposed on trade between the UK and the EU, with impacts concentrated in agriculture and industries that depend on products which repeatedly cross between the UK and the rest of the EU, such as components to make cars or ingredients for processing food.

On top of that, the UK would lose the benefit of free trade agreements it now has with countries such as South Korea and Canada as a member of the EU. Therefore, more British imports and exports would face tariffs.

And it means UK services, which can now access the whole of the EU’s single market (i.e. currently, the 28 member states plus Iceland, Liechtenstein and Norway) relatively freely, would only be allowed the much more restricted access of the EU and UK’s commitments in the WTO.

Trading only on WTO terms is the default position, but in fact no country does it. Although many trade barriers have been lowered through the WTO, all countries seek even less friction. All 164 WTO members have better access to at least one market either through a free trade agreement or through duty-free preferences for developing countries. Most countries have several deals, even if they do not all have one with the EU or the US.

For example, countries such as the US, Brazil, China and India do not have free trade agreements with the EU, but they all have deals with their closest neighbours.

Is the UK a member of the WTO?

Yes, and it [will continue to be outside the EU](#). The UK does not have to renegotiate its membership. However, as we saw in Chapter 1, the EU speaks on behalf of its member states in all WTO affairs, except on the Secretariat's budget and administration. This will change for the UK once it leaves the EU.

The UK will need to have its own WTO 'commitments'

'Commitments' are the result of negotiations. They say how much access a country will give to imports of goods and services from other WTO members and what its limits on farm subsidies are. Until now, the UK's WTO commitments have been bound up in the commitments agreed for the whole of the EU. As an independent WTO member, the UK will have to [extract its own commitments](#) from those of the EU.

Most of those commitments can be copied from the EU's, particularly tariffs on ordinary products such as shoes, televisions and cars. Some other parts, such as on services, require technical adjustments so that, for example, references to EU rules and institutions are converted to their British equivalents.

However, negotiations are needed on what are called 'tariff quotas'.

Negotiations over tariff quotas

Sorting out the 100 or so 'tariff quotas' (or tariff-rate quotas—TRQs) is [the most complicated part of the UK establishing its own schedules of commitments](#) in the WTO. Among WTO members, the method proposed jointly by the UK and the EU is controversial.

The quotas allow limited quantities of a product to be imported at a low tariff or duty free, while anything outside the quota is charged a much higher duty. Box 1 contains an example of the problem.

Box 1

Tariff quotas and the case of New Zealand lamb

The present tariff quota for New Zealand lamb imports into the EU (currently including the UK) is around 230,000 tonnes. Inside the quota, imports are duty free. Outside of this quota, a mixed tariff is charged: up to 12.8% of the price, plus up to €902 to €3,118 per tonne. That is fairly complicated, but the bottom line is that it is much more expensive.

After Brexit, what should the UK's tariff quota for lamb (or any other product) be? And what about the EU27?

The UK and the EU have jointly proposed in the WTO that their quotas should be split in a way that keeps the same total — so for New Zealand lamb, that is still 230,000 tonnes. The UK and EU say that the share each gets should be in proportion to the percentages that ended up in the UK and the EU27 on average in 2013–15 using EU data. The result is a 50:50 split — about 115,000 tonnes in each quota.

New Zealand and a number of other countries have complained that this method weakens the trading rights that they negotiated in the WTO because it reduces the quotas' commercial value.

While the UK is a member of the EU and its customs union, New Zealand can choose to sell anywhere in the EU where the prices are more profitable. Splitting the quotas in the proposed way limits exporting countries' flexibility to choose between selling to the UK and, say, Germany, wherever is more profitable. There are other objections too.

Sorting out the tariff quotas means difficult negotiations. They ought to be sorted out in practice — if not legally — by March 2019, unless the UK and the EU continue with a customs union beyond Brexit day (which they will if the transition period and proposed 'backstop' apply).

The sting in the tariff-quota tail

New Zealand may be unhappy with the proposal for splitting quotas on lamb and other products, but for UK and EU farmers it is, in fact, much worse. The tariff quotas mean that, with no deal between the UK and the EU, trade between them in some agricultural products would dry up completely. In others, it would be severely reduced.

None of the WTO tariff quotas takes into account current trade between the UK and the rest of the EU. For example, over 80,000 tonnes of lamb is exported duty free and quota free from the UK into the EU27 and about 11,000 tonnes goes from the EU to the UK.

All of the lamb quotas, except some tiny amounts, are reserved for specified countries. None is for the UK or the EU27, since they currently trade within the single market. Under present proposals and without a UK-EU trade deal, after Brexit the EU and the UK could only trade lamb duty free with each other through left-over tariff quotas opened to unspecified countries.

The amounts available to unspecified countries can be tiny. For lamb, for example, this amounts to just 400 tonnes out of the total EU28 quota of about 281,000 tonnes.

The UK currently exports 80,000 tonnes to the EU27. After Brexit the EU27's quota available to the UK and others is only a proposed 378 tonnes. The UK currently imports 11,000 tonnes duty free from Ireland, France and other EU members. After Brexit, those EU countries could only export duty free to the UK through a miniscule 22-tonne UK tariff quota available for all-comers.

However, a UK-EU customs union would avoid this bottleneck.

Rolling over current free trade agreements

An under-reported fact is that the UK already has free trade agreements with many countries, both big and small, via the EU.

There are a number of questions for the UK. Should it try to sort out existing agreements first (which would be quicker) and then embark on new agreements with the same countries? Or should it start from scratch with new agreements (which would take much longer)?

According to [the EU's latest information](#), it has free trade agreements:

- **in place** with 35 countries (including Iceland, Norway, Switzerland, South Korea and Mexico). Switzerland's deal, by contrast, is not one agreement but a large set of agreements accumulated gradually over decades;
- **partly in place** with 48 countries, and with many provisionally applied, for example, because they have not yet been fully ratified (including with Canada, Colombia, Ecuador, Peru and Ukraine);
- **pending** with 22 countries (including Japan, Singapore and Vietnam); and
- **under negotiation** with 21 countries, half of them suspended or paused (including with the US and India, and recently launched new talks with Australia and New Zealand).

The UK will lose the benefits derived from all of these deals unless it can reach agreement with each of the countries to roll them over for the UK. This is more complicated than it sounds.

First, the other countries would obviously have to agree. Many have said that they want to reach a deal with the UK in principle, but they would also have to agree on the details, which is an entirely different task with no guarantee of success.

Second, many of the details in the EU agreements refer to or recognise EU rules, regulations, standards, institutions and legal procedures for goods, services and intellectual property. When rolled over to UK agreements, these references would have to be converted to their UK equivalents. And if the UK wants to deviate from those EU arrangements — one of the purposes of Brexit, after all — then this would have to be renegotiated with each of the trade partners.

Third, many of the free trade agreements also include the tariff quotas discussed above. The issues raised in the WTO about sorting out tariff quotas are likely to arise in these bilateral talks as well.

Fourth, one of the problems with free trade agreements is 'rules of origin'.

Rules of origin — 'Made in the United Kingdom'

To understand the problem of rules of origin, let's look at the [free trade agreement between the EU and South Korea](#). In that agreement, rules of origin take up 65 (excruciating) pages of the 1,400-page document.

One of the points of the EU-South Korea agreement is to allow the EU and South Korea to trade goods with no or minimal barriers, including no tariffs.

To qualify for duty-free access to the South Korean market, or for recognition of standards under the agreement, a product has to be shown to have been 'made in the EU'. The same goes for South Korean products entering the EU: they have to be 'made in South Korea'. Under any future UK-South Korea deal, British products would have to be declared 'made in the UK'.

These rules vary according to the product. They can say something like 'if over 55% of the value has been added in the EU', then that is enough to be considered made in the EU. That 55% is broadly speaking the requirement for cars under the EU-South Korea agreement, for example. A Land Rover or Mini exported from the UK before Brexit qualifies for reduced tariffs because the 55% EU content in the car's value comes from components from anywhere in the EU.

After Brexit, under a rolled over agreement, the 55% requirement would be for UK content alone, a much tougher ask. Parts sourced from Germany, France or Spain would no longer count. Under present manufacturing methods, that would be almost impossible and so the car would not count as 'made in the UK'.

In other words, simply rolling over existing EU free trade agreements on current terms would make them much less valuable to the UK.

One solution would be for the Land Rover or Mini to continue to be considered 'made in the EU' (not just the UK) even though the free trade agreement is between the UK and South Korea. But getting there would be far from simple.

It requires an agreement on what is called '[diagonal cumulation of origin](#)'. The car could be declared 'made in the EU' and qualify for free trade with South Korea if 55% of its value comes from components made in the UK or the EU27. The parts could still criss-cross between the EU27 and the UK before everything is assembled into a complete car and shipped to South Korea. Clearly, the EU would have to be brought into this part of the UK-South Korea talks.

And that is just one product. The same would have to be done for most, if not all, of those 65 pages of rules of origin for all the other products in the present EU-South Korea agreement.

But that is just one deal. There are over 100 EU free trade agreements wholly or partly in place, or pending. The UK would probably have to handle them in phases. In practical terms, it is unlikely to have enough staff to do them all at the same time while they are also working on all the other aspects of the Brexit negotiations.

The reality of US trade — 20 or so additional agreements

For many, Brexit's big prize is improving trade relations with the United States.

The US and the EU have tried and failed to [negotiate a free trade agreement](#). A key question is what the UK would be able to offer the US that the EU cannot in order to strike a deal.

Over the years, the US and the EU have accumulated about [20 smaller bilateral trade agreements](#) (the exact count depends on what is meant by 'trade'). These include mutual recognition pacts — where each side recognises that the other's standards and methods of assessing whether the products conform as being the same or equivalent to its own. They also have agreements to protect 'geographical indications' — the names identifying the origin and characteristics of products, such as Bordeaux or Cognac — for some wines and spirits.

If the UK wants to preserve the benefits of those agreements, for example on standards and regulations, or to keep some names protected in the US, then it will have to renegotiate those agreements — although [Scotch Whisky](#) will remain protected because it is already registered in the US.

Negotiating beyond these is unlikely to be easy. The US-EU trade talks stalled on issues such as services, how to deal with safety and health standards, and procedures for handling disputes between companies and governments. The crunch issue with things like food safety is different approaches. The EU prefers avoiding risk when the impact is uncertain, whereas the US emphasises what is known scientifically — think of the famous differences over chlorine-washed chicken, hormones in meat and other food safety standards. All of these are controversial in the UK as well as the rest of the EU, meaning UK-US talks could fail too on the same grounds.

[Some experts](#) warn that a UK-US deal would require the UK to adopt an approach on food safety and animal and plant health closer to the US's, and this might cause difficulties for producers wanting to export to the EU with its different approach. There are also fears that the US will want more private-sector competition in health services.

And there is more. The latest revision of the agreement between Canada, Mexico and the US [includes a clause](#) that appears to prevent signatories from negotiating an agreement with China. Some see this as a precedent the US could insist on when negotiating with other countries, including the UK. But one of the UK government's Brexit objectives is a deal with China, as one of the world's fastest-growing economies.

We will not know for sure about any of this until any talks actually take place.

Chapter 3

In the event of a no deal Brexit, can the UK become the Singapore of the North Atlantic?

Peter Ungphakorn

Introduction

Some people argue that the difficulties raised in Chapter 2 are a lot of fuss about nothing. Their solution is for the UK to simply scrap all import duties and border checks on goods coming into the UK. The WTO's Trade Facilitation Agreement would ensure frictionless borders for British exports to the EU, they claim. The idea is that by cutting tariffs, this would reduce the cost of imports, particularly for food. Singapore and Hong Kong are examples of places with low to zero import duties on most or all products. Some argue that the UK could become the Singapore of the North Atlantic. Are they right?

Can the UK decide not to impose checks on EU goods?

One proposal for 'frictionless borders' in Ireland and at UK ports is for the UK to unilaterally scrap tariffs, inspections and other processing for imports from the EU.

While the UK is part of the EU's internal market, goods entering the UK from the rest of the EU are not normally inspected because they come under the joint controls of the EU and all its member states. They are assumed to be safe because of those internal market controls, just as any product crossing from, say, Somerset into Devon is assumed to be safe because they are within the UK's internal market. However, when the UK is outside of the EU's internal market, this assumption will no longer hold.

It is true that under WTO rules, the UK could scrap tariffs and checks on imports from the EU. But that would mean handling imports from all other WTO members in [the same way](#) or violating WTO non-discrimination rules (particularly the '[most-favoured nation](#)' principle, explained in Chapter 1). There would be no tariffs, inspections nor paperwork on any imports, and there would be little control over the safety of products from anywhere.

How much are the tariffs?

The [average import duty](#) that the EU (and, for now, the UK) charges is 3.2%. The average is higher for agricultural goods, at 8.7%, and lower for everything else, at 2.8%. When we look at the detail, duties exceed 25% for more than one in ten agricultural products, sometimes by a large amount, whereas almost none of the products in any other sector has duties above 25%. The highest tariff rates are in fact way above 25% — the equivalent of 189% for some dairy products and 116% for some animal products. For processed food, the tariff rates are extremely complex. They can change just because a recipe is tweaked, for example by reducing the sugar content.

Those rates do not apply to imports under free trade agreements or preferences for developing countries, but under 'no deal' they would have to apply to trade between the UK and the EU.

Clearly, trade in food and other agricultural products will be hit hardest. Both importers and exporters

will be affected. However, a 10% import duty might not mean a 10% increase in the import price (for example, if the exporter can lower its price to offset some of the impact). The price rise in the shops would be even less because the effect of the tariff would be diluted by transport costs, other overheads and profit margins as the product is distributed and sold within the country. And, of course, it is also affected by the value of the pound.

The UK's [National Farmers Union](#) seems [more alarmed](#) about a lack of agreement, in the event of a no deal Brexit, on regulations and standards than on tariffs — an indication that the delays these could cause may be even more serious than tariff barriers.

The effect of zero tariffs on UK producers

What might happen if tariffs were cut to zero?

First, almost half of EU imports (including the UK's) already enter duty free, either because the normal tariff is zero or because of free trade agreements or preferences for developing countries (see Chapter 1). Perhaps a further 10–20% are charged a duty of no more than 5%. Less than half of imports are charged a duty above 5%.

Those figures are for the whole of the EU. We can expect the figures for the UK to be similar. Therefore, the gains from a zero-tariff policy are likely to be limited for at least half of the goods the UK imports.

Second, slashing import duties would have the biggest impact on sectors that are the most protected. Higher tariffs shield businesses in these areas from competition from imports. These are generally agriculture and food and drink.

The reasons for protecting agriculture include ensuring some local production is kept alive and local farmers are kept in business, preserving rural communities and protecting the environment. Singapore and Hong Kong are both cities, and neither has agriculture of any significance. They both rely on food imports, and imposing duties would therefore be counter-productive. The UK is different.

Third, the impact on farmers of removing tariffs would depend on how fast that happened. British dairy experts suggest smaller producers would find it difficult to compete, and many could fold if tariffs were eliminated overnight. A longer phase-out would give them more time to adapt or to switch to other activities. Larger and more advanced producers ought to be able to compete and could benefit.

Fourth, some prices would fall and the sources of some products would change. More dairy products might be imported from, say, New Zealand (which has liberalised agriculture) and Canada (which has a protected 'supply management' dairy sector).

Fifth, the impact on food prices would be considerably less than the size of the removed tariffs. Scrapping a 10% tariff will cut prices in the shops by less than 10% because exporters could raise their prices in the face of demand from the UK, and the percentage cut in import costs is diluted by other expenses as the product moves from ports to supermarket shelves.

Sixth, some people argue that unilaterally scrapping import duties would weaken the UK's hand in negotiating free trade agreements. This is true for bargaining in order to lower tariffs. But modern trade agreements also deal with standards, regulations, services and other issues, which is why Singapore also has them (including one pending with the EU), despite having no high tariffs to use as bargaining chips.

Seventh, the model and assumptions used recently by a [group of economists](#) called Economists for Free Trade supporting eliminating British tariffs is challenged by most mainstream economists. For example, they make some bold assumptions about how much costs can be cut if some regulations are removed

— others question both the assumptions about the size of the saving and the wisdom of removing the regulations. That means the numbers they produced to estimate how much the British economy would benefit are also challenged by most economists.

If the UK levies tariffs, that will be good for the UK government's coffers, right?

No. Wrong.

In developed countries, the money raised from customs duties is a tiny part of the government's income. [According to the World Bank](#), it is now less than 2% of US government revenue, and in 1972—before the UK joined the EU—it was 2.2% for both the UK and the US.

In other words, any additional revenue from imports entering the UK will be insignificant, compared with overall government revenue, and that would be reduced by slower growth in exports—decelerating economic activity as a result—and a weaker economy as a whole. This also explains why countries prefer to have free trade agreements with each other instead of trying to preserve customs revenue.

The Trade Facilitation Agreement will not make any difference

What about the WTO's [Trade Facilitation Agreement](#) (a pact on streamlining border procedures for goods)? Will it keep British and EU borders 'frictionless'?

The short answer is no.

Both the UK and the EU already comply with this agreement, meaning any procedures they introduce on imports from each other will also comply, as long as the criteria are the same as for imports from, say, the US, China or India.

In any case, the provisions that deal specifically with streamlining at the border — electronic paperwork, 'single window' processing and so on — generally ask countries [no more than to do their best](#). Any legal challenge on this basis would be difficult to win. (The agreement does create firmer obligations in other respects, but with little immediate impact on border clearance.)

Chapter 4

Isn't there a WTO agreement on services?

Holger Hestermeyer

Introduction

Like most developed countries, the UK is a service economy. More than 80% of UK economic output stems from services. They are everywhere you look: from finance to law, catering to tourism, and transport to telecommunications. Even the manufacturing sector depends heavily on services. They not only contribute to the production of goods, but at times manufacturers even make more profits by selling services than the goods they manufacture. Just think of aeroplanes, which are often sold alongside lucrative maintenance services.

Despite the importance of services in modern economies, the legal regimes for trade in services under WTO law are far less stringent than they are for goods. They have also been negotiated more recently: as we saw in Chapter 1, whereas goods have been dealt with since the 1947 General Agreement on Tariffs and Trade (GATT), services were not covered until the WTO was set up in 1994. Trade in services is now regulated in the General Agreement on Trade in Services (GATS), which is part of the WTO agreements.

How services are traded and the barriers to services trade

The reason the trade regime for services is weak lies in the nature of services trade and the particular barriers that they face. Goods trade involves tangible products physically moving across a border. Services trade, however, is much more complicated. WTO law identifies four different ways in which services are traded, known as the four 'modes of supply'.

- **Mode 1** ('cross-border supply'): as with trade in goods, in this mode the service itself crosses the border. This is the case, for example, with an architect working in a UK office sending building plans to a client abroad.
- **Mode 2** ('consumption abroad'): here the consumer travels to the country of the service supplier and consumes the service there. Think of a Japanese tourist taking a train in the UK.
- **Mode 3** ('commercial presence'): this refers to a service supplier setting up a presence in another country to provide its services. For instance, a UK bank might establish a branch in France or an Italian restaurant chain might open a restaurant in the UK.
- **Mode 4** ('presence of natural persons'): this is where a person crosses a border to supply a service, which includes foreign construction workers and even British footballers playing in Madrid, for example. This is considered further in Chapter 5.

Because goods and services are traded differently, the barriers to trade in each also differ. Tariffs and quotas imposed at the border play a large role in goods trade. However, the main barrier for trade in services has always been national regulations. Think of some examples: immigration law affects a service supplier's ability to supply and a consumer's ability to consume services abroad. Capital requirements for setting up corporations can make establishing a commercial presence more difficult and hence also

are a barrier to trade. Legally required qualifications, such as for lawyers, also hinder services from being offered abroad.

But the regulations that pose barriers to services trade are hardly ever passed for the sole motive of imposing such barriers. They often pursue legitimate objectives, such as consumer protection and environmental protection. Thus, tackling barriers to services trade risks limiting states' power to pass such legitimate regulation.

What GATS provides

Obligations in the GATS fall into two different categories. The first group, so-called 'general obligations', which includes the most-favoured nation (MFN) principle, automatically bind all WTO members. But the same is not true with regard to the second group, 'specific commitments', which deal with, for example, states agreeing not to limit the number of foreign branches in the host state. Members are not obliged to make such commitments.

Where a WTO member has, after negotiations, decided to make commitments, it enters them into its schedule. As explained in Chapter 1, a schedule is a list of member-specific promises that a WTO member makes. The GATS also includes a 'built-in' agenda for developing the agreement in relation to such issues as domestic regulation. However, it is safe to say that this agenda has not fully lived up to its promises.

Finally, the GATS has a number of annexes, additional agreements with more detailed provisions, among them annexes on air transport services, financial services and telecommunications.

General Commitments

One of the main general obligations of all WTO members is the requirement to treat all other members on an most-favoured nation basis. As we saw in Chapter 1, this means all other members have to be treated on an equal footing, and this applies for trade in both goods and services. The UK is thus, in principle, not allowed to treat, say, China better than Russia.

There are, however, some exceptions to this obligation. For example, members are permitted to enter into free trade agreements, giving privileged access to partner countries, provided that they fulfil certain requirements. The GATS also provides that (notwithstanding the most-favoured nation obligation) members may recognise education or experience, requirements or licences gained in another country to fulfil their criteria for authorisation, licensing or certification of a service supplier, e.g. based on an agreement.

Another general obligation relates to transparency. It requires new rules relating to services trade to be published and the establishment of enquiry points to provide relevant information.

Specific commitments

There are three types of 'specific commitments' in the GATS that members can make in their schedules. Commitments can be made for all services sectors or for specific sectors, and they are made separately for each of the four modes of supply.

- 1) 'Market access' commitments: these are commitments not to impose, for example, limitations on the number of service suppliers (e.g. only ten foreign law firms can operate in the territory), or the people that may be employed in a particular sector (e.g. a limited number of foreign staff) or measures which restrict or require types of legal entity (e.g. the service can only be supplied by a public limited company or through a joint venture with a local company.)

- 2) 'National treatment': members may also commit to treat services and service suppliers of other members no less favourably than national ones, so that foreign services and service suppliers are not discriminated against.
- 3) Additional services commitments beyond market access and national treatment.

So can the UK comfortably fall back on the GATS?

While some have argued that GATS is a safety net that the UK could comfortably fall back on after Brexit, the analysis above disproves that notion. Whatever the defects of the EU single market with respect to services, the EU's regime is vastly more integrated than the WTO's: for example, in the EU equal treatment is the norm and there is an extensive programme of mutual recognition of qualifications.

The limits of WTO obligations on services become much clearer when compared with those relating to trade in goods. As we have seen, for goods national treatment automatically binds all WTO members. Once a good has been imported, it cannot be treated worse than an equivalent domestic good. For services, however, national treatment is optional—it applies only where a member has decided to commit itself. Otherwise, members remain free to discriminate against foreign services and bar them from accessing their domestic market. The only limitation is that they must discriminate against all other members on an equal footing.

It is true that the WTO offers more detailed obligations for some services sectors. For financial services, for example, the GATS offers two additional annexes. Some members have also made commitments following an 'Understanding on Commitments in Financial Services', which describes an alternative approach to making specific commitments on financial services. But the numerous specific commitments of the EU in this area, for instance, fall far short of offering access to the EU market on the same terms provided by EU law for member states.

The same holds true with regard to air transport services. While the existence of a GATS annex on such services seems promising, the annex explicitly does not apply to traffic rights or services directly related to the exercise of traffic rights (except for selling and marketing of air transport services and computer reservation system services). The loss of access to intra-EU air traffic rights that will result from the UK no longer being a member of the EU cannot be compensated for by WTO law, as WTO law does not contain any obligation to grant market access.

Chapter 5:

Doesn't the WTO cover movement of people too?

Steve Peers

Introduction

The issue of movement of people is partly covered by the movement of services, as discussed in the previous chapter. Those who move abroad to consume services (such as tourists) or to provide services (as employees of a construction company, for example) would be covered by Modes 2 and 4 of General Agreement on Trade in Services (GATS). However, the GATS is not the final word as regards the status of such people, and a number of categories of people fall outside the scope of the GATS anyway. In this chapter, we shall see just how limited the WTO provisions are on movement of people.

The immigration carve-out

Scope

First of all, an annex to the GATS provides for a general 'immigration carve-out':

'The Agreement shall not apply to measures affecting natural persons seeking access to the employment market of a Member, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.'

As we can see, permanent employees are not covered by the GATS, so 'free movement of workers' (i.e. dependent workers, as defined by EU law) is outside the scope of WTO law. So is part of 'freedom of establishment' as far as the EU is concerned, as the EU has not made GATS commitments on self-employed workers. Aspects of business movement like the status of key personnel, intra-corporate transferees and business visitors are within the scope of EU GATS commitments, but only where the company concerned is providing services, not making goods.

Movement of persons to reside on non-economic grounds is not within the scope of the GATS either. Although the people concerned may be receiving services, long-term residence to do so is outside the scope of the GATS, according to the annex. While the GATS has some impact on recognition of qualifications, family reunion and social security issues, which have day-to-day importance for many people, are outside its scope. GATS will not address the issues faced by the vast majority of UK citizens who moved to the EU27, or EU27 citizens who moved to the UK, before Brexit day.

National immigration law

The annex also says:

'The Agreement shall not prevent a Member from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to any Member under the terms of a specific commitment.'

A footnote states that requiring a visa for citizens of some, but not all, WTO Members is not a breach of the agreement.

So, even for those within the scope of the GATS, national immigration law rules on entry and stay, including visas and border controls, are left to member states' law according to the annex. That means that it will be up to the EU (or its member states) and the UK to regulate border crossings, decide on whether visas are required and lay out details of work permits, even where GATS market access gives natural persons a right to supply or receive services in the other party.

Conclusion

In terms of the movement of employed people – the way that the majority of EU nationals have come to the UK - GATS specifically and WTO more generally have nothing to say. In the future and in the absence of a deal, the UK government will be free to impose whatever restrictions or controls it likes in terms of visas for workers and their families. For companies and firms, and for individuals wishing to move, this is bad news.

Chapter 6

Could a hard Irish border be avoided under WTO rules?

Katy Hayward

Introduction

The Irish border has become one of the most seamless and frictionless borders within the EU. This is a remarkable achievement given that it was only in 2007 that the last remnants of British military watchtowers were removed under the desecuritisation process that began with the 1998 Good Friday ('Belfast') Agreement.

Indeed, the 1998 Agreement, formalised in a treaty between the British and Irish governments, is all about the Irish border. Recognising that there is conflict in Northern Ireland about whether a border should exist at all, the agreement sought to defuse this dispute while putting in place systems of governance that make the border far less significant both in real and symbolic terms. The context of European integration, which has centred on facilitating cooperation across borders, was the bedrock of this process.

Consequently, both the UK and the EU have agreed on two principles that must be adhered to during and after the process of the UK's withdrawal:

- 1) a hard border must be avoided; and
- 2) the operation of the 1998 Agreement must be protected.

If WTO rules were to work for the Irish border, therefore, they would have to enable continuity on both these fronts.

North-south cooperation

The context of shared EU membership both normalised and enabled the type of north-south cooperation across the Irish border which is a pillar of the 1998 Agreement. Would WTO rules be sufficient to protect this?

There are at least 142 areas of informal cooperation (in education, health, transport and security, and environmental protection, for example) across the Irish border, much of which has been facilitated by the common legal and policy framework of the EU. Such a framework is far more comprehensive than WTO rules, which are primarily an effort to remove barriers to trade and prevent unfair discrimination rather than tools for creating a single market.

There can be no expectation that WTO rules sustain or even relate to the areas for north-south cooperation and everyday cross-border movement currently enjoyed on the island of Ireland. The alternative would have to be bilateral arrangements between the UK and Ireland. The UK and Ireland could agree, for example, to recognise each other's professional qualifications and driving licences, perhaps as an extension of the existing arrangements for the Common Travel Area, which give UK and Irish citizens uniquely privileged status in each other's jurisdictions.

There are limits, however, to how far the Common Travel Area could stretch to facilitate cross-border cooperation. There are also limits on the scope for bilateral cooperation between an EU member state and a non-member state, given the obligations and implications of EU membership. Bilateral British-Irish arrangements could, for example, cover major emergencies planning and the Enterprise cross-border rail service, but this would be insufficient to cover areas that relate to EU law, such as commercial vehicle roadworthiness or environmental protection reporting.

In sum, a no deal Brexit that resulted in the UK operating on WTO terms in its trade relations with the EU would provoke severe disruption to north-south cooperation on the island of Ireland. This would have a direct impact across a range of areas that are intended to be provided for in the Protocol on Ireland/Northern Ireland in the Withdrawal Agreement, including broadcasting, telecommunications and the single electricity market. Such north-south cooperation is not confined to tokenistic 'peacebuilding' activities, but reflects the long-standing, unique situation of Northern Ireland since its establishment just under a century ago.

Applying the rules

In the event of a no deal Brexit, trade with the EU will be on non-preferential, WTO terms. This means that the EU's most-favoured nation (MFN) tariffs and non-preferential rules of origin would apply to all consignments moving between Northern Ireland and Ireland, as they would be moving between the UK and EU. All goods going from Northern Ireland would have the EU's most-favoured nation rates applied, and those going from Ireland into Northern Ireland would have the UK trade tariffs applied. Notwithstanding the counter effect of a drop in the exchange rate between sterling and euro, the estimated reduction in trade from Northern Ireland to Ireland would come from the effect of tariffs and non-tariff barriers arising from WTO rules, especially in the agri-food sector.

InterTrade Ireland (itself a north-south implementation body established by the 1998 Agreement) commissioned a [report](#) on the costs of implementing WTO rules. It found that products with the highest tariffs are mainly in the food, clothes and tobacco sectors. As Irish cross-border trade involves a lot of agricultural produce, higher tariffs would apply in a WTO scenario on trade in Northern Ireland compared to estimates for the UK as a whole. Although a substantial fraction of products would face no tariff, the small percentage of products that would incur tariffs of over 35% make up a significant share of cross-border trade. This would be devastating for many cross-border businesses, and thus for Northern Ireland and the Irish border region. Are there any ways of minimising this risk and avoiding a hard border in such a scenario?

Avoiding a hard border

There is some ambiguity in the definition of a 'hard' border itself. There are three possibilities:

- it refers only to physical infrastructure;
- it relates to the conduct of checks and controls at the border; and
- any checks and controls on movement across a border.

WTO rules cannot be said to avoid a hard border under any of these definitions. First, because tariffs and quotas will apply, this in effect requires checks and controls on the movement of goods across a border. To tackle this, the UK could pronounce that it would unilaterally not perform any checks or controls on goods crossing the border, thus making Northern Ireland a wide-open back gate for black market goods into the UK.

Only a slightly less gung-ho approach would be for the UK could decide to apply no restrictions at all on the movement of goods into Northern Ireland from Ireland, in order to avoid the need for controls in the first instance. Most-favoured nation rules would mean that it would have to have the same policy for goods entering its territory from all other countries. The competitiveness of British producers and manufacturers would be placed under severe pressure in such an eventuality. More to the point, to have no restrictions on goods entering the UK would somewhat undermine the motivation of other states to negotiate ambitious trade agreements with it.

Secondly, such checks and controls typically require the use of physical infrastructure. At the very least, designated entry points are required for goods entering a different customs territory. In terms of a land border, this tends to take the form of 'approved' roads. This means that customs procedures can be facilitated as effectively as possible, so paperwork (even electronic versions) can be checked, exit and entry can be recorded, and inspections can be performed on those rare occasions where they are deemed necessary.

To remove the need for any physical infrastructure, there would have to be very tight and complex alternative systems in place which rely on other means of knowing, for example, when a vehicle has left and arrived at its expected destination (and thus there being no time for changing the freight on the road). This requires registration, data submission, monitoring and surveillance – backed up by targeted inspections – on a scale unknown even during the height of the conflict. To track cross-border traders in this way would hardly respect the promise of sensitivity and pragmatism that led the UK government to commit to avoiding a hard border in the first place.

The nature of cooperation and trade across the Irish border reflects its context: it is a rural, underdeveloped, close-knit region emerging out of violent conflict. Much of its fragile development has depended on the type of economic production that would be most severely affected by WTO rules, for example in agri-food supply chains. WTO rules would introduce a roundly unwanted level of friction in a place where border controls represent a step backwards in politics as well as economics.

Chapter 7

What about barriers which come from different regulatory standards? Don't the WTO's SPS and TBT agreements ban these non-tariff barriers to trade?

Sam Lowe

Introduction

Outside the EU, and absent a deep free trade agreement, UK goods and agricultural exports entering the EU will face new barriers to entry and friction at the border. You only have to look at the long list of barriers facing imports from, say, [the US](#) to know that this is true. However, some have attempted to [downplay](#) the negative impact of the UK trading with the EU without a preferential trade arrangement in place, on the basis that new 'non-tariff barriers' to trade (i.e. barriers coming from different regulatory standards) '[would be illegal under WTO rules](#)'.

David Collins, a professor of international economic law at City, University of London, argued in a piece for [The Spectator](#) that 'while EU leaders like to threaten us with hints that our exports would be unsellable in the EU, the fact is that non-tariff barriers such as arbitrary health and safety inspections and borders would be prohibited under the WTO's Sanitary and Phyto-sanitary ([SPS](#)) and Technical Barriers to Trade ([TBT](#)) agreements.'

This is misleading. While 'arbitrary' inspections would indeed be prohibited, the SPS and TBT agreements will not prevent the EU from applying new checks and procedures to imports from the UK post-Brexit, consistent with the UK's presumed new status as a third-country trading with the EU without a preferential trade agreement.

The SPS agreement

It is important to clarify what exactly the EU's commitments (or pledges) under the SPS and TBT agreements amount to. While Article 4 of the SPS agreement requires WTO members to 'accept the measures of other [WTO] Members as equivalent, even if these measures differ from their own' so long as 'the exporting Member objectively demonstrates to the importing Member that its measures achieve the importing Member's appropriate level of sanitary or phytosanitary protection', it leaves the ultimate decision in the hands of the importing member. In the EU's case, it recognises equivalence via [SPS agreements](#), not unilateral proclamations.

In practice, we already know how the EU will treat UK exports at the border (in the long run) in the event of a WTO-based trading scenario: it will be the same as for any other third country with which it does not have a preferential relationship.

This would mean that all products of animal origin exported from the UK to the EU must enter the EU's territory via a [veterinary border inspection post](#) where document, identity and physical checks would

be carried out. A full 100 per cent of consignments of milk for human consumption would be subject to document and identity checks, for example, with no fewer than 50 per cent of consignments subject to additional physical checks.

An SPS agreement may reduce the frequency of such checks, but it would not remove the need for products of animal origin to enter via a veterinary border inspection post. It should be noted that two of UK agriculture's main routes to market – the Port of Calais and the Eurotunnel – are not currently veterinary border inspection posts. The only examples of third countries which can export to the EU without the need to send their products via such an inspection post are Switzerland and the EEA/EFTA nations (Norway, Iceland and Liechtenstein). All have harmonised their SPS regimes with the EU, both domestically and in relation to third-country imports, via deep preferential partnership agreements.

The TBT agreement

With regard to industrial goods, the TBT agreement has even weaker requirements for accepting third-country technical regulations as equivalent to EU standards. While UK producers selling into the EU will continue to be able to produce products to European standards, if they so choose, as it would now be the responsibility of their EU-established importer to check that the British goods comply. As such the EU-established importer (rather than the British producer, as is the case now) would be liable if a non-conforming product were to be placed on the EU market. This is less of an issue for EU-based companies with lots of import experience, but might dissuade smaller businesses, for example [toy shops](#), from buying products from the UK.

Some products need to be signed off by a third-party testing centre (conformity assessment body) before they can be placed on the EU market. Declarations of conformity produced by UK-based bodies would no longer be recognised by the EU.

The TBT agreement does, however, 'encourage' countries to enter into the negotiation of mutual recognition agreements (MRAs), allowing conformity assessment bodies based in, say, the UK to certify that products produced in the UK to a given EU standard meet the grade.

The EU has agreed numerous [MRAs](#) of this kind, covering a variety of products and sectors, with various countries, including Canada, Israel, New Zealand and the US. If it were to do the same with the UK, which seems probable, it would reduce some of the administrative burden for UK exporters and potentially remove the need for double testing of goods to allow them to be sold in both UK and EU markets.

Conclusion

None of the above removes the need for risk-based inspections at the border, new import and export declarations, and associated red tape that comes with being a third-country exporter to the EU. Also, when it comes to product authorisation, there is little reason to think that the EU will allow bodies located outside the EU to authorise newly created, highly regulated products such as pharmaceuticals, cars and chemicals.

All of this would constitute new non-tariff barriers facing British companies looking to sell into the EU. And, to reiterate, there is no firm obligation placed on the EU by the TBT agreement to simply accept that nothing has changed and to allow in UK imported products on the same basis as when the UK were an EU member.

Nevertheless, both the SPS and TBT agreements do open up avenues to prevent border friction and reduce non-tariff barriers to trade. However, in the event of the UK failing to negotiate a preferential partnership with the EU and instead trading on WTO terms, they offer little in the way of solace for British exporters. New non-tariff barriers to trade between the two parties would be both inevitable and highly disruptive.

Chapter 8

Won't farmers and the UK fishing industry be a whole lot better off if the UK trades under WTO terms?

Peter Ungphakorn

Introduction

Two sectors that have a particular interest in Brexit are farming and fisheries. They are different but they are both particularly vulnerable to tariffs and tariff quotas, and to regulations on food safety and animal and plant health (known as [sanitary and phytosanitary measures](#)).

Chapters 2 and 3 have already looked at the question of tariffs (some of them so high they make trading too expensive) and tariff quotas. Chapter 7 discussed the implications of meeting EU standards. This chapter looks at how else these two sectors will be affected by falling back on WTO rules.

Agriculture and subsidies

For British agriculture, trading with the EU on WTO terms would be a mixed picture. Producers able to supply the protected domestic market would benefit, but costs of things such as animal feed could rise and cross-border supply chains would be disrupted. This would be particularly acute across the Irish border, as we saw in Chapter 6.

On the other hand, WTO rules and the UK's commitments are unlikely to have an impact on agricultural subsidies.

Both the UK and the EU are phasing out agricultural export subsidies under [a deal struck among all WTO members in 2015](#), and current levels are zero or negligible. A new schedule of commitments on goods for the EU28, including scrapping export subsidies, was [circulated in the WTO in October 2017](#), but because some countries still have objections the WTO has not yet been able to certify it as the legally correct document.

For '[trade distorting](#)' subsidies for farmers (those that have a direct impact on prices and quantities produced) the EU's present agreed limit in the WTO is €72.4 billion (i.e. the EU can subsidise agricultural prices and production quantities up to €72.4 billion per year, which includes support in the UK). The EU's actual support of this type is currently about €6 billion, meaning over 90% of the entitlement is no longer used.

For its [own separate WTO commitments on goods](#), the UK is proposing a trade-distorting support limit of €5.9 billion. The actual amount currently used is not public. We know how much is spent on agriculture, but finding figures for the trade-distorting portion is complicated and difficult to locate.

Nevertheless, the UK is unlikely to break the pattern across the EU, so actual use is likely to be around 10% of the entitlement or even less, and that means there will be plenty of room for manoeuvre. WTO

members are likely to accept the UK's proposed figure (as an inherited legal entitlement, not an actual intention), with some legal and technical tweaking. The UK government [has said](#) that it will continue until the end of the present Parliament (expected to be 2022) with same level of cash funding as present EU support programmes under the Common Agricultural Policy, but that includes support that is not considered to distort trade.

The British government has also introduced [legislation](#) to cover a [seven-year transition period for farming](#) and a range of other issues. These suggest that the main focus will be on environmental protection and support for other purposes, which in the WTO are normally allowed without limit because they are not considered to distort trade.

Geographical indications for food and drink

[Geographical indications](#) are names identifying the origin, quality, characteristics and reputation of products. Examples include champagne, Scotch whisky, Camembert, Cornish pasties and Rutland bitter.

The UK [currently protects geographical indications through the EU's systems](#), covering over 3,000 registered names, mainly from the EU. The protected British names include five wines, three spirits (including one which is joint British-Irish) and 79 food and other drinks.

The UK has agreed to continue protection in three other areas of intellectual property, including trademarks, but not for geographical indications. Instead, British names will continue to be protected in its new system, but initially EU27 producers would have to apply for their names to be registered and risk rejection.

In the Withdrawal Agreement, the UK has also agreed that all names from EU member states currently protected in the EU will be eligible for registration in the UK without having to go through a re-examination. But this would not hold if there was no deal.

Meanwhile, the [British 'no deal' paper on geographical indications](#) warns UK producers that they may have to re-apply for protection in the EU if the EU requires the names to be re-registered. Whether the EU would have grounds to reject names that had previously been accepted remains to be seen.

Fisheries

No deal would affect the British fishing industry in two ways: where it can fish (a major issue but not related to the WTO) and what it can sell to the EU (which is a WTO issue). What that means [is pretty complicated](#).

On access to fishing waters, the draft Withdrawal Agreement does include a number of provisions. But with no deal, there would be no co-operation between the UK and the EU. The UK would be free to prevent EU fishing boats entering its waters, but the EU could also block British boats from entering its waters. Conflict could make the EU even [less willing to cooperate on trade](#).

UK fisheries products are currently allowed into the rest of the EU unhindered. With 'no deal' they would face tariffs and tariff quotas, as well as complicated licensing and clearance procedures under the EU's food safety and animal health regulations.

British products would no longer be automatically recognised as meeting EU standards. Under WTO non-discrimination principles, the EU would have to treat British exports just as it does as products from any other country that does not have an agreement with the EU. This means more costs and more delays at the borders.

Chapter 9

So would the UK be better off trading under WTO terms or should it negotiate a trade agreement with the EU?

David Henig

Introduction

We now know the scope of WTO rules and what they offer as a bare minimum. This chapter explains why states are so keen to negotiate free trade deals which supplement the WTO rules and how this is certainly the case for the UK with the EU.

WTO as a minimum

As we have seen, the WTO provides many of the basic structures to support global trade. Most obviously, WTO rules allow states in their schedules to describe the market access all members receive in terms of the tariffs they pay on goods and the conditions under which they can provide services in other territories.

Then there are the numerous supporting measures in areas such as rules for agricultural produce (so-called Sanitary and Phyto-Sanitary—SPS—measures and subsidies), technical regulations (Technical Barriers to Trade—TBT), customs, intellectual property and investment measures.

Taken together, these provide a basic level of predictability and non-discrimination. Members cannot discriminate against others by charging them higher tariffs or putting in place specific measures, for example discriminating against UK foodstuffs, without specific grounds to justify it.

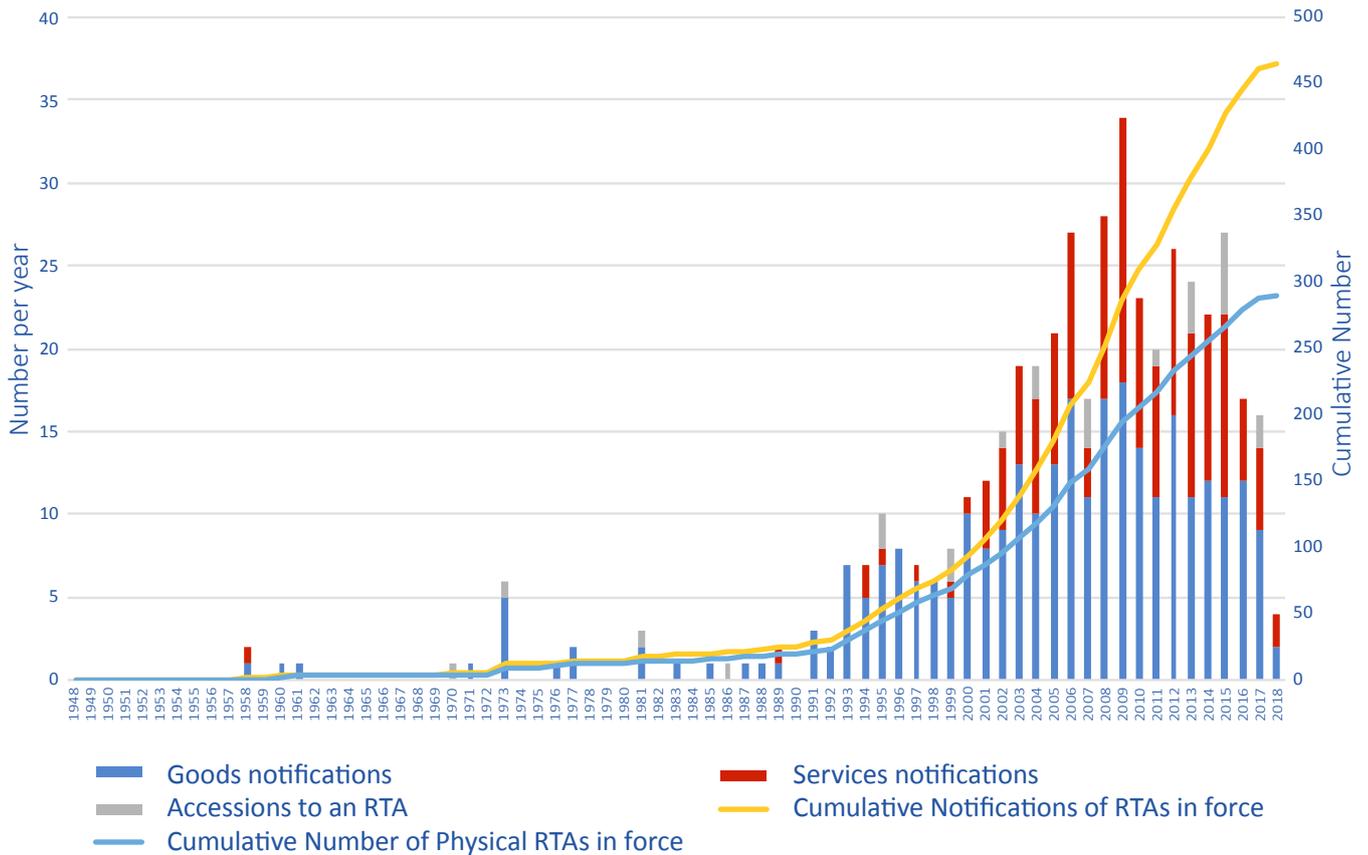
Why do countries seek agreements beyond the WTO?

Since the 1990s, there has been a spectacular rise in bilateral trade agreements (known as Regional Trade Agreements at the WTO), as the chart below shows. These agreements improve market access beyond WTO terms.

As well as such preferential agreements on market access, there are a number of other agreements which help to facilitate trade. [According to the Financial Times](#), the EU has at least 759 agreements with 168 non-EU countries. These include agreements on regulatory cooperation, customs and agriculture.

There are a number of reasons why countries seek to go beyond WTO agreements, but at core is that reducing barriers to trade increases economic growth and [improves consumer welfare](#). The benefits from free trade agreements are not always spectacular, but they are positive. For example, an [early study](#) of the effects of the North American Free Trade Agreement between the US, Canada and Mexico suggested that the impact on US GDP was ‘probably no more than a few billion dollars, or a few hundredths of a percent.’ [More recent studies](#) of the EU-South Korea free trade agreement show increased trade in most products.

Evolution of Regional Trade Agreements across the world, 1948 - 2018



Beyond the pure economic effects, there are a number of other reasons to seek agreements beyond the WTO:

- to match the best agreements made by other countries, particularly in agricultural products, as the impact of rivals having a tariff advantage can [seriously affect](#) a member's exports;
- to create regional trade areas, often in the form of [customs unions](#), encouraging regional integration;
- to focus on particular areas of liberalisation, such as government procurement (i.e. government purchasing of larger products) or services; in this case, groups of countries come together to negotiate what are known as plurilaterals (i.e. agreements between a small number of member states), for example the [Government Procurement Agreement](#);
- to tackle non-tariff barriers. WTO measures in this area are considered weak in that they allow challenges against disproportionate or discriminatory measures, but there are no cross-cutting agreements in this area. The volume of regulation [has been rising](#) across the developed world in recent decades, creating new non-tariff barriers;
- to reform their own domestic markets, in particular to ensure that opening markets to competition [cannot be easily reversed](#);
- to [set the conditions](#) by which products or services may be recognised as equivalent, for example in food, industrial products or professional qualifications; and
- as a precaution against the future breakdown of the WTO, in which case having a large [network of agreements](#) would be helpful.

The relationship between these trade agreements and Article 24 limitations

The WTO schedules allow the negotiation of bilateral or plurilateral agreements offering preferential access. [Article 24](#) of the General Agreement on Tariffs and Trade (GATT) says that 'A free-trade area shall be understood to mean a group of two or more customs territories in which the duties ... are eliminated on substantially all the trade'

[Article 5](#) of the General Agreement on Trade in Services (GATS) contains similar wording saying, 'This Agreement shall not prevent any of its Members from being a party to or entering into an agreement liberalizing trade in services ... provided that such an agreement ... has substantial sectoral coverage [and] provides for the absence or elimination of substantially all discrimination.' The term 'substantially all' is not further defined, but it is generally assumed that a single sector agreement would be in contravention.

These articles in the GATT and GATS cover preferential treatment for members of the free trade agreement, compared to most-favoured nation (MFN) principles for goods and services (see Chapter 1) which are the basic rules that apply to all WTO members. The articles are not assumed to cover bilateral regulatory agreements, which could be sector specific.

Some have argued that bilateral agreements undermine the non-discriminatory principle that lies at the heart of the WTO. [Professor Jagdish Bhagwati](#) is a leading critic and has said that 'it is also now clear that PTAs [Preferential Trade Agreements] have become a stumbling block to multilateral liberalization.' There has not been a successful round of negotiations at the WTO since formation in 1994, and it is currently hard to see a future round of negotiations succeeding, even though this could deliver greater economic benefits than bilateral agreements. Arguably, this is in part a reflection of the success of the WTO, in that all major powers are now members (China joined in 2001 and Russia in 2012) and average tariffs have been declining.

So should the UK get on with negotiating a trade deal with the EU? And how easy will that trade negotiation be?

Most evidence points to the economic benefits of a free trade agreement with the EU being less than those of the EU single market, but greater than WTO terms alone. A [2015 report](#) by the respected Swedish Board of Trade—Kommerskollegium—on the 'Economic Effects of the European Single Market' reviewed various models and found growth numbers for those countries in the single market significantly in excess of those suggested for free trade agreements. For example, one study suggested that 'between 1992 and 2006, EU15 GDP increased by 2.2% and employment by 1.5%, as an effect of the single market.' This is reflected in the forecasts for UK growth under [different Brexit scenarios](#), where there is a marked difference between being in the single market, having a free trade deal and leaving on WTO terms.

As well as being economically preferable to WTO terms, a free trade agreement may also meet other criteria such as preserving some regional integration and avoiding some non-tariff barriers raised by a move from being part of the EU single market to WTO terms.

Though negotiations would probably be lengthy, it should be perfectly possible to reach a deal along the lines of the existing EU-Canada or EU-Japan agreements, though possibly without resolving the Irish border question. All tariffs could be removed, including those which the EU often retains on agricultural goods even in the best trade deals, but UK companies would find services market access considerably lowered compared to being in the single market. The most complex areas to negotiate would be regulatory, with decisions required on which areas the UK would follow EU rules and what that would mean for access and rules in ensuring a level playing field for trade.

Conclusion

WTO terms provide a basic floor for world trade. However, their inadequacies provide incentives for countries to go further and seek preferential access and the tackling of issues inadequately covered through WTO rules. This may undermine, to a degree, the multilateral system, but this has been the direction of travel for some years. In this situation, the UK will want to seek, as other members do, the closest relationship possible with the EU given political constraints. No deal Brexit is clearly an unsatisfactory solution and falling back on WTO terms suboptimal politically, economically and socially.



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