

Can we rely on fall-back option of WTO rules?

There are currently a plethora of articles (and MPs) suggesting that, should the UK be unable to negotiate the special customs arrangement it wishes with the EU, we will be able to fall back on the rules of the World Trade Organisation (WTO), of which we are already a member.

This would allow us to continue trading until we can agree our own Free Trade Agreements (FTAs) with the EU and non-EU nations which would then supersede the WTO rules.

For many of the thousands of traded products this could be true, however a closer look at the way the WTO rules work makes it clear this will not be quite so straightforward for agricultural and many other products.

Agriculture and the WTO

The principle aim of the WTO agreement on agriculture was to eliminate most types of non-tariff barriers to make it easier to import and export agricultural produce. This is done by the WTO member nations agreeing and negotiating between themselves "schedules" (essentially a negotiated commitment on how a WTO member agrees to curb protectionist policies). In other words schedules are there to reduce tariff protection, agricultural subsidies and barriers to trade.

The negotiated schedules between each country or trading body in the WTO set the maximum basic rate of duty that is agreed to be charged when importing each specific product. However some of these schedules, for specific items where farmers' lobbies have demanded to be shielded from having to compete with cheap imports, have higher tariffs or taxes that can be charged on specific imports, and set out legally bound duty rates that will be charged for quantities imported over and above tariff quotas. Tariff quotas (or tariff rate quotas - TRQs) in the schedules specify the quantity that can be imported at a lower duty or duty-free, with imports over and above the quota being subject to much higher tariffs. The schedules also set an agreed ceiling for the total amount of "trade-distorting" support (subsidies) that can be provided to farmers, known as AMS (aggregate measurement of support).

So can the UK rely on the "fall-back" of the existing WTO rules?

Although the UK is a member of the WTO, its current WTO commitments are merged with

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the EUs and do not exist for the UK as a separate nation, therefore this will need to be rectified before we can start using the WTO rules. The situation of a member nation wishing to disentangle themselves from a larger collective has never arisen before with the WTO, and the WTO does not actually have a procedure for "amending" our membership to recognise our independence from the EU and separating our own schedules from the collective EU ones, they can only "modify" them (which is not necessarily a speedy process). We will then also have to negotiate with each WTO member to modify the schedules the UK has with them as part of the EU, and this process will also require the modification of all the EUs existing schedules as they have lost one member. It is very unlikely one will be agreed without the other, and indeed the WTO may prefer to negotiate with the EU first as it is the larger trading block. It may be argued by the other WTO members that the UK is not in a position to expect the same concessions it had as part of the much larger EU block. And of course over and above re-establishing all our existing schedules with non-EU countries, we would also have to negotiate brand new schedules of our own for trading with the EU-27.

EU-27 agreement needed before WTO negotiations with Non-EU countries

We may first have to agree with the remaining EU-27 what proportion and quantity of the current EU WTO schedule for each exported and imported product is currently used by/allocated to the UK. In addition the EU has negotiated 86 agricultural TRQs to protect specific products that are produced somewhere in the current EU-28 member states. These are politically contentious items such as cheese, butter, beef, poultry, other meat, live animals, sugar, citrus and other fruit, fruit juice, eggs, cereals and more. This negotiation is not expected to be easy, although detailed records are obviously kept on the amounts imported and exported by each EU member state, so in theory you would have thought they could refer on these figures.

Prime Minister Theresa



May's Florence speech

Theresa May reiterated in her speech in Florence on September 22 that the UK is not seeking to stay in the customs union or the single market, or sign an FTA with the EU such as Canada's, but instead wants a new customs partnership that recognises our existing close relationship. She believes that the fact that the UK already has the same rules and regulations as the EU in respect to trade should be acknowledged in the negotiations, and that the UK's already signed EU Withdrawal Bill will ensure these rules and regulations are carried over into our domestic law at the moment we leave the EU on March 29, 2019. She also gave the EU reassurances over its pre-Brexit negotiation demands (that the "divorce" bill is agreed, EU citizens' rights in the UK are confirmed, and the Irish border issues are resolved) that will hopefully break the current deadlock and allow the delayed trade negotiations to begin.

However Mrs May acknowledged that there will not be time to complete all the negotiations before March 29, and so is suggesting a strictly limited two-year implementation period following Brexit. She further suggested that during the transitional period access to one another's markets should continue on current terms and Britain also should continue to take part in existing security measures. Some commentators believe her statement has also opened the door to Britain paying between 20-40 billion Euros to the EU after it leaves in 2019. As roughly 50% of the current EU budget is used for CAP agri-

cultural subsidies, this could be good news for those farming businesses who rely on BPS claim payments, because a transitional period may include the UK continuing with the current BPS in 2019 and maybe even for a further two years until the transitional period is over, although this has not yet been explicitly confirmed.

The UK's trade options post-Brexit

The UK government therefore has a number of options to pursue in respect to trading with the EU post-Brexit, the primary one being to agree a new type of customs partner-

ship that recognises our existing close trading relationship. If this fails we could try to remain in the Single Market and accept EU conditions, or request to remain in the EU customs union, again accepting the terms offered by the EU, but both these options have already been rejected by the UK government as they intrinsically include free movement of goods, services and people. We could also accept the invitation re-join EFTA (the European Free Trade Agreement) alongside Iceland, Liechtenstein, Norway & Switzerland, which would give us ready-made trade agreements and freedom to negotiate new ones elsewhere, but this would still re-

quire the same free movement of goods, services and people, and membership of the EEA (European Economic Area). Finally, if all else fails, we could use the WTO trading rules, which will require some complex negotiations. So far the UK Government has confirmed the UK will be leaving the single market and customs union, which sets out our stall for future trade with the EU. However this does not address the issue of our existing trade agreements with the rest of the world under WTO rules, which currently are combined with the EUs and presumably will still need to be disentangled under this "new customs partnership".

Time for action

Despite the complexity of the WTO, which is only touched on above, all of the negotiations necessary for the UK to rely on WTO rules post-Brexit are of course possible, and it is highly likely that most countries, (including the EU if we are unable to agree a new customs partnership), will ultimately want to establish FTAs with an independent UK, still the fifth largest economy in the world. But it would be foolish to assume "default" trade agreements are already set up which can quickly and easily slot into place should the UK fail to agree acceptable terms for trading with the EU, or that there are already terms in place for continuing to trade with non-EU countries once we are out of the EU.

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